

ORDER SUMMARY – Case Number: C-10-425

Name(s): Delia Ann Dunn

Order Number: C-10-425-11-FO01

Effective Date: 2/16/2012

License Number or NMLS Identifier [U/L] DFI: 57249
MLO-171663

(Revoked, suspended, stayed, application denied or withdrawn)
 If applicable, you must specifically note the ending dates of terms.

License Effect: Loan Originator License is denied.

Not Apply Until: _____

Not Eligible Until: _____

Prohibition/Ban Until: February 10, 2019

Investigation Costs	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N		
No. of Victims:				

Comments: _____



State of Washington
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

DELIA ANN DUNN,

Respondent.

OAH NO. 2010-DFI-0074

DFI NO. C-10-425-11-FO01

FINAL DECISION AND ORDER

THIS MATTER comes now before SCOTT JARVIS, Director (“Director”) of the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS (“Department”), pursuant to the Amended Statement of Charges and Notice of Intention to Enter an Order to Deny License Application and Prohibit from Industry dated February 28, 2011 (“Amended Statement of Charges”), against Respondent, DELIA ANN DUNN (“Respondent”), on the Respondent’s Petition for Review dated November 1, 2011 (“Respondent’s Petition”), from the Initial Decision and Order dated October 24, 2011 (“Initial Order”), of Administrative Law Judge Jason H. Grover (“ALJ Grover”) of the Office of Administrative Hearings (“OAH”); and additionally, on the Petition for Review of Initial Order by the Division of Consumer Services (“Division”) dated November 10, 2011 (“Division’s Petition”); and the Director having fully considered the entire record on review, including, without limitation, all pleadings, testimony and recorded oral and written argument before ALJ Grover, the Initial Order, the Respondent’s Petition, the Division’s Reply to the Respondent’s Petition (“Division’s Reply”), and the Division’s Petition (“Record on Review”);

NOW, THEREFORE, the Director issues the following Final Decision and Order:

1.0 Background & Procedural History

The Respondent timely requested an Administrative Hearing to contest the Statement of Charges, and this matter was assigned to OAH, which designated ALJ Grover to hear the case.

At the Administrative Hearing, both parties offered Motions in Limine related to the exclusion of evidence, the Respondent as a pro se representative and the Department by and through its counsel, Assistant Attorney General Lisa A. Elley (“Division’s Counsel”).

Respondent’s Exhibits B, E, and F (limited to an Order of Voluntary Nonsuit and a letter dated January 8, 2004), G, H, J, K, and L were admitted at the time of the hearing. Respondent’s proposed Exhibits A, C, D, the remaining portions of F, and I were not admitted on the grounds of relevance or based on the prohibition against admission into the record of offers to compromise or settle, as set forth in Evidence Rule 408.

The Department’s Exhibits 1-4, 6-10, 12-16, 21 and 24-26 were admitted at the time of the hearing, and the Department withdrew Proposed Exhibits 5, 11, 17-20, and 22-23.

After considering the record and presiding over the Administrative Hearing, ALJ Grover issued an Initial Order on October 24, 2011, finding that the Department properly denied Respondent’s application for a mortgage loan originator license, prohibiting the Respondent from participation in the conduct of the affairs of any mortgage loan originator subject to licensure by the Department’s Director under Chapters 31.04 and 19.146 RCW, in any manner until December 15, 2017 (seven years from the date that the original Statement of Charges was issued), and releasing the Respondent from an obligation to pay examination and investigation fees pursuant to RCW 31.04.145(c), in the amount of \$1,725.25.

The Initial Order contains Findings of Fact (“FOF”) and Conclusions of Law (“COL”).

Respondent timely filed Respondent’s Petition.

Division’s Counsel timely filed the Division’s Petition and Division’s Reply to Respondent’s Petition.

2.0 Summary of the Case

The issues before the Director are whether Respondent should be precluded from obtaining a loan originator license until on or about December 15, 2017, and whether Respondent should be prohibited from participating in the conduct of the affairs of a mortgage broker or loan originator subject to licensure in Washington State, through and including the same date. This issue revolves around the following undisputed facts and questions of law:

2.1 Prior Department Order. On or about February 14, 2003, the Department entered a Temporary Order to Cease and Desist under DFI number C-02-177-03-TO01 in connection with the Respondent’s escrow agent license issued by the Division. This order was

served on the Respondent on or about February 18, 2003 by regular and certified mail. The Division issued its Temporary Order after becoming aware of a check issued by Respondent's company, Dunn & Cage Real Estate Services, Inc., d/b/a Escrow by Delia ("Escrow by Delia"), in an amount exceeding \$80,000 that was returned for insufficient funds. The Order directed Respondent to immediately return all records to the State of Washington and to immediately make the records available for Division inspection including all accounts under the Respondent's control; in return, Respondent filed an application for adjudicatory proceeding. Subsequently, Respondent failed to comply with a prehearing conference order issued by an administrative law judge to provide the records no later than close of business on March 19, 2003. Rather than complying with the order, Respondent chose to close her business on March 20, 2003 and withdrew her administrative hearing request. After Respondent failed to comply with the discovery request, the Division filed a Motion for Appointment of Temporary Receiver in Pierce County Superior Court on March 21, 2003, based in part on Respondent's failure to comply with a subpoena duces tecum served in February 2003. A receiver was appointed and requested that the Respondent's attorney provide the records on April 22, 2003. Such records were not provided until August 8, 2003.

2.2 Failure to Disclose Prior Regulatory Action. On or about October 1, 2010, the Respondent submitted an application to the Division for a mortgage loan originator license, using the online Nationwide Mortgage Licensing System. Part of the application package is the Uniform Individual Mortgage License/Registration and Consent Form, which includes, in part, a "Regulatory Action" disclosure section. Applicants are instructed that if the answer to any of the questions in the section is "yes," they are to provide complete details of all events or proceedings and send such complete information to the jurisdiction where they are licensed/registered or requesting licensure/registration. In addition to providing full disclosure, applicants must electronically certify under oath to the veracity, accuracy and completeness of their disclosures. In completing the disclosure form, the Respondent correctly answered "yes" to section A1, requiring disclosure of the filing of a personal bankruptcy petition, and correctly submitted supplemental information as instructed. However, the Respondent answered "no" when asked: "(1) Has any State or federal regulatory agency or foreign financial regulatory authority ever: . . . (4) entered an order against you in connection with a financial services-related activity?"

This answer was false.

At the Administrative Hearing, Respondent testified that she was aware of the order, but answered “no” to the question because the 2003 order was “temporary.” Respondent additionally testified that it was her belief that only “final” orders required disclosure based on the wording of the section, and that it was her belief that the matter was resolved and the order did not need to be disclosed because it was no longer in effect.

But on or about October 1, 2010, the Respondent contacted the Licensing Call Center of the Division seeking clarification regarding the regulatory disclosure question, and told a Division representative, Michelle McGhuey, that she had a possible prior regulatory action but was not convicted of anything. During the conversation, Respondent stated that she would provide additional information, but failed to do so in her filed application. After review, the application was placed on hold by the Division and forwarded to the Division’s enforcement section, where an examination was conducted by Financial Legal Examiner Steve Sherman. After reviewing the matter, the Division filed a Statement of Charges on December 15, 2010, based on the false application answer and the Respondent’s prior regulatory history. An Amended Statement of Charges was filed on February 28, 2011.

2.3 Exclusion of Proposed Evidence under ER 408. The principal question of law in this case is whether ALJ Grover erred in ruling that several of Respondent’s Proposed Exhibits were inadmissible under ER 408. The Respondent assigns error to the Administrative Law Judge’s rulings to exclude Respondent’s Proposed Exhibits A, C, D, F and I on the theory that the Proposed Exhibits were being offered for the purpose of showing prejudice by the Division.

2.4 Authority to Prohibit from Industry – Commencement and Duration The other question of law is whether ALJ Grover had the authority, pursuant to RCW 19.146.220(5)(a) and WAC 208-660-008(9), to prohibit Respondent from participating in the conduct of affairs of a mortgage broker subject to licensure, or otherwise acting as a loan originator for a mortgage broker exempt from licensure under RCW 19.146.020(1)(b), (c), (e) and (g), up through and including December 15, 2017, by reason of Respondent having negligently made false statements or knowingly and willfully making omissions of material fact in connection with his Application in violation of RCW 19.146.020(8).

3.0 Preliminary Considerations

3.1 ER 408 and Prejudice. ER 408 generally prohibits the use of compromise offers or documents connected with settlement discussions to prove or disprove the validity or amount of a disputed claim, or to impeach by a prior inconsistent statement or a contradiction. ER 408(a). Such offers to compromise may form an exception from ER 408 and may be admitted into evidence for other purposes, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. ER 408(b). There is no automatic admission for evidence of settlement negotiations to show bias of a witness or another purpose, such as negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution; evidence admitted for one of these limited purposes under Rule 408 may be properly excluded under ER 403 if its probative value is outweighed by the fact that it is unduly prejudicial, confusing, or a waste of time. These principles apply equally to ALJ Grover and to the Director evaluating the Initial Order.¹

3.2 Standard of Review by the Director. The Director has the authority and duty, prior to entering a Final Decision and Order, to consider whether any part of the Initial Order is *not* supported by the record² and whether confirmation of the Initial Order, without modification, would be an error of law. Indeed, with regard to the COL as contained in the Initial Order, the Director is obliged, in the manner of a reviewing court, to consider the statutes and implementing regulations of the Division under the error of law standard, which permits the Director to substitute his judgment for that of the Division's Amended Statement of Charges and the ALJ Grover's Initial Order.³

4.0 Director's Consideration of FOF and COL. After due consideration of the entire Record on Review, the Director is of the decided view that, while the Evidence Rule 408 was properly applied as to all excluded Proposed Exhibits offered by Respondent, certain conclusions of law contained in the Initial Order should be eliminated as error or otherwise modified.

¹ *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

² See RCW 34.05.464(4); see also *Northwest Steelhead v. Washington State Department of Fisheries*, 78 Wn. App. 778, 896 P.2d 1292 (1995); see also *Towle v. Department of Fish and Wildlife*, 94 Wn.App. 196, 971 P.2d 591 (1999).

³ See *Aponte v. Dep't of Soc. & Health Servs.*, 92 Wn. App. 604, 616-17, 965 P.2d 626 (1998), *review denied*, 137 Wn.2d 1028 (1999).

4.1 No Error in Application of ER 408 to Proposed Exhibits A, C, D and F. The Director disagrees with the Respondent's argument, as set forth in her Petition for Review, that ER 408 was improperly applied as to Proposed Exhibits A, C, D, F and I, on Respondent's theory that each was offered for the purpose of demonstrating bias or prejudice. Proposed Exhibit A consists of a Proposed Consent Order provided to the Respondent for consideration during the course of settlement negotiations. Proposed Exhibit C is a copy of a letter from the Financial Legal Examiner to the Respondent, setting forth terms of a proposed settlement. Exhibit D is a copy of electronic correspondence between the Financial Legal Examiner and the Respondent during settlement negotiations. All three of these Proposed Exhibits consist of documents prepared in the course of settlement negotiations, clearly consisting of offers of compromise.

Proposed Exhibit F, however, was admitted in part and excluded in part: two of the Proposed Exhibit's four letters were admitted into the record, while one letter from the Respondent to OAH referencing settlement negotiations was excluded under ER 408, and another letter outlining a Memorandum of Authorities filed in 2004 in Pierce County Superior Court related to Respondent's prior company, Escrow by Delia, and was excluded as irrelevant pursuant to ER 402. Proposed Exhibit I contains licensing information, Statements of Charges and Consent Orders for two unrelated companies, Central Escrow, Inc. and Escrowpoint, Inc., which were excluded as irrelevant pursuant to ER 402.

In the present case, Respondent fails to cite to any authority as to why the ALJ Grover's evidentiary rulings were improperly made, nor does Respondent set out specific argument as to the Proposed Exhibits' ability to demonstrate prejudice or bias in any way. Proposed Exhibits A, C, and D (and the letter to OAH excluded as part of Proposed Exhibits F) are all documents created during the course of settlement negotiations. None of the documents demonstrates bias or prejudice in any way. All were prepared in the due course of settlement negotiations between both parties with an eye towards resolving the issue before the hearing phase. Respondent was given an extension on the deadline date to execute the Proposed Consent Order constituting Proposed Exhibit A. She refused to execute the settlement by that date, the offer was withdrawn, and the action moved to the hearing phase. Withdrawal of a settlement offer, when one party tacitly rejects it by failing to meet a deadline, does not demonstrate bias or prejudice on the part of the withdrawing party in the legal sense. Without specific allegations as to the

Proposed Exhibits' potential to demonstrate prejudice or bias on the part of the Department, the Director will not disturb the exclusionary ruling of the ALJ Grover.

4.2 No Error in the Application of ER 408 to Proposed Exhibits F and I. The Memorandum of Authorities excluded as part of Proposed Exhibit F and Proposed Exhibit I were in fact excluded on relevance grounds under ER 402, since both Proposed Exhibits pertained to parties and actions unrelated to this case. Respondent fails in her Petition for Review to assign error as to the ALJ Grover's application of ER 402. Since neither document is classifiable as an ER 408 "offer to compromise," the Director will not disturb ALJ Grover's exclusion of either Proposed Exhibit from the record on ER 408 grounds.

4.3 No Error in Exclusion of Proposed Exhibits Despite Incorporation by Reference into Exhibit B. The Director does not agree with the Respondent's argument that her Proposed Exhibits were improperly excluded on the grounds that they were referenced in Exhibit B, which was allowed to enter the record over the objections of the Division. Exhibit B is a hybrid between an Exhibit List and a hearing brief. While Exhibit B does reference the excluded Proposed Exhibits, the Respondent has failed to provide any authority supporting the assertion that the Proposed Exhibits should have been admitted based on this fact alone. Since it appears that ALJ Grover considered each Proposed Exhibit in its entirety and separately issued rulings on each Proposed Exhibit's admissibility, it is not a persuasive argument that a mere reference to the excluded Proposed Exhibits in an included exhibit would require Proposed Exhibits to be admitted. This is particularly the case where the admitted Exhibit B references the excluded Proposed Exhibits in the context of listing all of the Respondent's potential Proposed Exhibits. The Director will not disturb the exclusionary rulings on the theory that the excluded exhibits were merely referenced in another exhibit.

4.4 Error in COL 5.17 of the Initial Order. The Director concurs with the Division's Petition for Review that the ALJ Grover committed error in COL 5.17 of the Initial Order by deciding that the responsibility for setting the effective dates of prohibition falls to the ALJ, on the theory that the Department's Statement of Charges and Amended Statement of Charges do not offer a specific date for the beginning of the probationary period. The Division stated in its Amended Statement of Charges that it was its "*intention* to ORDER" (emphasis added) that "Respondent Delia Ann Dunn be prohibited from participation in the conduct of the affairs of any mortgage loan originator subject to licensure by the Director under chapter 31.04 and

chapter 19.146, in any manner, for seven years.” The Director is persuaded that this stated “*intention to order*” necessarily refers to an act in the future, specifically, the entry of a final order. Upon receipt of the Statement of Charges, the Respondent filed an Application for an Adjudicative Hearing, exercising her due process rights. The Division would have violated the Respondent’s due process rights by imposing a prohibition prior to such hearing. The only procedure available to the Division to take such action prior to a hearing is by entry of a Temporary Cease and Desist Order, pursuant to RCW 31.04.093(7)(l). In this case, however, the Division took no such action, and the Respondent was not prohibited from the industry during the course of the adjudicative proceedings. As it would be a violation of Respondent’s due process rights to retroactively apply the date of prohibition to the time the original Statement of Charges was filed, the Director finds that the date of prohibition must begin with the date of entry of the final order and strikes Conclusion of Law No. 5.17 in its entirety.

5.0 Findings of Fact. Now, therefore, the Director re-affirms FOF 4.1 through FOF 4.21, inclusive, at pages 3-7 of the Initial Order.

6.0 Conclusions of Law. Now, therefore, the Director disaffirms, re-affirms and otherwise modifies COL 5.1 through COL 5.17 and COL 5.19 through COL 5.21, at pages 7-14 of the Initial Order, as follows:

6.1 COL 5.1-5.16 and 5.19-5.21 of the Initial Order. COL 5.1 through COL 5.16 and COL 5.19 through COL 5.21 of the Initial Order are hereby re-affirmed in their entirety and without modification.

6.2 COL 5.17 of the Initial Order. COL 5.17 of the Initial Order is disaffirmed and is hereby stricken.

6.3 COL 5.18 of the Initial Order. Based on the foregoing, the effective date of the prohibition should not retroactively begin on the date that the original Statement of Charges was issued, but must begin on the date of entry of the final order. COL 5.18 is therefore modified to read, as follows:

Based on the foregoing, the respondent is prohibited from participation in the conduct of the affairs of any mortgage loan originator subject to licensure by the Director under chapter 31.04 RCW and chapter 19.146 RCW, in any manner, for seven (7) years from entry of the Final Order.

6.4 Director’s Additional Considerations. The Record on Review provides substantial evidence that Respondent – in spite of her contention that she was confused about whether

disclosure was warranted – contacted the Department and was advised that full information should be provided. Failing to provide such information and responding “no” to the relevant question presented has resulted in the Director determining that this was a *willful* omission of material facts. Accordingly, there appear to be no mitigating factors that would weigh in favor of leniency by the Director in regard to the length of prohibition from participation in the mortgage brokerage industry properly requested by the Division in its Amended Statement of Charges.

7.0 Final Order. Having made Findings of Fact and Conclusions of Law as set forth in Sections 5.0 and 6.0 above, IT IS HEREBY ORDERED AS FOLLOWS:

7.1 Denial of License. The application of Respondent, DELIA ANN DUNN, for a Loan Originator License is denied.

7.2 Prohibition. Respondent DELIA ANN DUNN is further prohibited until and including February 10, 2019, from (1) participation in the conduct of the affairs of any mortgage broker subject to licensure by the Director, and (2) acting as a loan originator (or the equivalent) in Washington State for any mortgage broker claiming exemption from licensure under RCW 19.146.020(1)(b), (c), (e) and (g).

7.3 Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to file a Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of this Final Order upon Respondent. The Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on a petition.

7.4 Stay of Order. The Director has determined not to consider a petition to stay the effectiveness of this order. Any such requests should be made in connection with a Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

7.5 Judicial Review. Respondent has the right to petition the superior court for judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

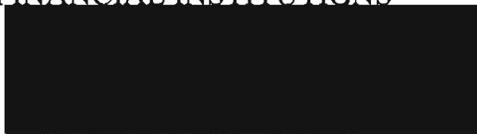
7.6 Service. For purposes of filing a Petition for Reconsideration or a Petition for Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service attached hereto.

7.7 Effectiveness and Enforcement of Final Order. Pursuant to the Administrative Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective immediately upon deposit in the United States Mail.

Dated at Tumwater, Washington, on this 16th day of February, 2012.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By:



Scott Jarvis, Director

BEFORE THE WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF FINANCIAL INSTITUTIONS

RECEIVED
OCT 25 2011
ENFORCEMENT UNIT
DIVISION OF CONSUMER SERVICES
DEPT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

DELIA DUNN,

RESPONDENT.

Docket No. 2010-DFI-0074

DFI No.: C-10-425-11-SC02

I. ISSUES

- 1.1 Whether the Department properly denied respondent's application for a mortgage loan originator license based on false statements or omissions on the application, made by respondent either knowingly and willfully, or negligently?
- 1.2 Whether the respondent should be prohibited from participation in the conduct of the affairs of any mortgage loan originator subject to licensure by the Director under Chapter 31.04 RCW and Chapter 19.146, in any manner for seven years?
- 1.3 Whether respondent should pay examination and investigation fees pursuant to RCW 31.04.145(3) in the amount of \$1,725.25?

II. ORDER SUMMARY

The undersigned resolves the issues presented as follows:

- 2.1 The Department properly denied respondent's application for a mortgage loan originator license.
- 2.2 The respondent is prohibited from participation in the conduct of the affairs of any mortgage loan originator subject to licensure by the Director under Chapter 31.04 RCW

and Chapter 19.146, in any manner until December 15, 2017, which is seven years from the date that the original Statement of Charges was issued.

2.3 The respondent is **not required to pay** examination and investigation fees pursuant to RCW 31.04.145(3) in the amount of \$1,725.25.

III. HEARING

3.1 **Administrative Law Judge:** Jason H. Grover

3.2 **Respondent:** Delia Dunn

3.2.1 **Respondent's Witness:** Willie Dunn

3.3 **Agency:** Department of Financial Institutions (the "Department")

3.3.1 **Department Representative:** Lisa Elley, Assistant Attorney General

3.3.2 **Department Witnesses:** James Brusselback, Program Manager and Enforcement Chief; Steve Sherman, Financial Legal Examiner; and, Maureen Camp, Customer Service Supervisor

3.4 **Exhibits:** The Department's Exhibits 1-4, 6-10, 12-16, 21 and 24-26 were admitted at the time of hearing. The Department withdrew Proposed Exhibits 5, 11, 17-20 and 22-23.

The respondent's Exhibits B, E, F (limited to the Order of Voluntary Nonsuit & the letter dated 1/8/04), G, H, J, K and L were admitted at the time of hearing. The respondent's Proposed Exhibits A, C, D, the remaining portions of F, and I were not admitted on the grounds of relevance or based on ER 408 related to settlement negotiations.

3.5 **Date of Hearing:** June 6, 2011 and August 25, 2011

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IV. FINDINGS OF FACT

I find the following facts more probable than not under the preponderance of the evidence standard:

Mortgage Loan Originator License Application

4.1 On or about October 1, 2010, the respondent submitted an application to the Department of Financial Institutions for the State of Washington for a mortgage loan originator license. The application was submitted through the Nationwide Mortgage Licensing System (NMLS).

4.2 The Uniform Individual Mortgage Licence/Registration and Consent Form (MU4) is part of the application package. It consists of several sections, including a "Regulatory Action" disclosure section. At the top of the disclosure section, applicants are instructed that if the answer to any of the questions is "yes", they are to provide complete details of all events or proceedings and send to the jurisdiction where they are licensed/registered or requesting licensure/registration. Exhibit 1, page 6.

4.3 All answers on this form were subject to the following electronic certification:

I Delia A. Dunn (Applicant) on this date Friday, October 1, 2010 make oath and say that I executed this application on my own behalf, and agree to and represent the following:

(1) That the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this application, are current, true, accurate and complete and are made under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law;

(2) To the extent any information previously submitted is not amended and hereby, such information remains accurate and complete;

(3) That the jurisdiction(s) to which an application is being submitted may conduct any investigation into my background, in accordance with all laws and regulations;

(4) To keep the information contained in this form current and to file accurate supplementary information on a timely basis; and

(5) To comply with the provisions of law, including the maintenance of accurate books and records, pertaining to the conduct of business for which I am applying.

If an Applicant has made a false statement of a material fact in this application or in any documentation provided to support the foregoing application, then the foregoing application may be denied.

I verify that I am the named person above and agree to the language as stated.

Exhibit 1, page 8.

4.4 In completing the disclosure form, the respondent correctly answered "yes" to the question contained in section A1 concerning the filing of a personal bankruptcy petition, and she correctly submitted supplemental information as instructed. Based on the foregoing, the undersigned finds that the respondent understood the disclosure instructions.

4.5 However, under the Regulatory Action disclosure section, when asked the question, "(I) Has any State or federal regulatory agency or foreign financial regulatory authority ever: . . . (4) entered an order against you in connection with a financial services-related activity?" the respondent answered "No." Exhibit 1, pages 6 & 7. This answer was false.

4.6 On or about February 14, 2003, the Department entered a Temporary Order to Cease and Desist under DFI number C-02-177-03-TO01 in connection with the respondent's escrow agent license issued by the Department. Exhibit 2. This order

was served on the respondent on or about February 18, 2003 by regular and certified mail. Exhibits 3 & 4.

4.7 At hearing, the respondent did not deny that she was aware of the order. However, she testified that she answered “no” to the question because the February 14, 2003 order was “temporary”. She testified that she thought the question only applied to “final” orders based on the wording of another question in the disclosure section. She also testified that she thought the matter was resolved and the order did not need to be disclosed because it was no longer in effect.

4.8 On or about October 1, 2010, the respondent called the Licensing Call Center of the Department for clarification regarding the regulatory disclosure question. She told the Department representative, Michelle McGhuey, that she had a possible prior regulatory item but that she was not convicted of anything. After talking to the representative, she stated that she would provide additional information. Exhibit 26. She never provided it.

4.9 After a review, the application was placed on hold and the matter was forwarded to enforcement.

4.10 An investigation was conducted by Financial Legal Examiner, Steve Sherman. Mr. Sherman reviewed the matter together with the respondent’s prior history with the Department. Based on the false application answer and the respondent’s prior history with the Department, a Statement of Charges was drafted on December 15, 2010. That Statement was amended on February 28, 2011.

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Respondent's Prior History

4.11 On August 8, 1999, Ms. Dunn was licensed by the Department as a Designated Escrow Officer for Dunn & Cage Real Estate Services, Inc., dba Escrow by Delia.

4.12 An examination of Dunn & Cage was triggered based on a check from her trust account being returned for insufficient funds and unpaid business taxes. Various attempts were made by the Department to examine the books and records of the business. The respondent consistently refused to comply with Department requests for records.

See Exhibits 9 & 10.

4.13 In February 2003, the Department became aware of a check issued by Escrow by Delia in an amount exceeding \$80,000 that was returned for insufficient funds. On or about February 14, 2003 the Department issued a Temporary Cease and Desist Order on Dunn & Cage Real Estate Services, Inc. dba Escrow by Delia and on the respondent, Delia Dunn, as Designated Escrow Officer. Exhibit 2.

4.14 Under the terms of the Order, the respondent was to immediately return all records to the State of Washington and to immediately make the records available for Department inspection including all accounts under her control. Exhibit 2, page 5.

4.15 The respondent filed an application for adjudicatory proceeding. Exhibit 6.

4.16 The respondent failed to comply with a prehearing conference order issued by an administrative law judge where the respondent agreed to provide the records no later than 5 PM on March 19, 2003. Exhibit 12. Rather than comply with the prehearing order, on

March 20, 2003, the respondent chose to close her business and withdraw her administrative hearing request. See Exhibit 8, pages 14-17 and Exhibit 15.

4.17 When the respondent failed to comply with the discovery request, the Department filed a Motion for Appointment of Temporary Receiver in Pierce County Superior Court on March 21, 2003. Exhibit 7. Part of the basis for that motion was the respondent's failure to comply with a subpoena duces tecum served in February 2003.

4.18 A receiver was appointed. The receiver requested the records from the respondent's attorney on April 22, 2003. Exhibit 14.

4.19 No records were provided by the respondent until August 8, 2003.

4.20 At hearing, the respondent admitted that she intentionally resisted providing records to the Department. She testified that she wanted to wait until the last possible moment to produce them because she felt "steamrolled" by the Department.

Costs of Investigation

4.21 The Department expended in excess of 25 hours investigating, preparing the statement of charges, and preparing the matter for hearing. The time records are set forth in detail in Exhibit 25.

V. CONCLUSIONS OF LAW

5.1 **Jurisdiction:** There is jurisdiction in this matter pursuant to Chapter 31.04 RCW, Chapter 34.05 RCW and Chapter 10.08 WAC.

5.2 **Burden of Proof:** In the absence of a specific statute or regulation that applies to the Department in this matter, the standard of proof to be applied in this hearing, governed

by the Washington State Administrative Procedure Act, is preponderance of the evidence.

5.3 RCW 31.04.234 provides:

Applicants for a mortgage loan originator license shall apply on a form as prescribed by the director. Each form must contain content as set forth by rule, regulation, instruction, or procedure of the director and may be changed or updated as necessary by the director in order to carry out the purposes of this chapter, but must not be inconsistent with that required by the nationwide mortgage licensing system and registry.

5.4 RCW 31.04.241(2) provides:

As part of or in connection with an application for any license under this section, *the mortgage loan originator applicant shall furnish information* pertaining to personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, *including* (a) the submission of authorization for the nationwide mortgage licensing system and registry and the director to obtain an independent credit report obtained from a consumer reporting agency described in section 603(p) of the federal fair credit reporting act, and (b) *information related to any administrative, civil, or criminal findings by any governmental jurisdiction.*

[Emphasis added].

5.5 RCW 31.04.027 provides:

It is a violation of this chapter for a licensee, its officers, directors, employees, or independent contractors, or any other person subject to this chapter to:

...

(8) *Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed with the department by a licensee or in connection with any investigation conducted by the department;*

[Emphasis added].

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5.6 WAC 208-620-550 provides:

In addition to RCW 31.04.027, the following constitute an "unfair or deceptive" act or practice

...

(5) *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;*

5.7 In the present case, the respondent made a negligent or intentional false statement on her application, and negligently or knowingly omitted material facts in the application when she answered "no" to the question, "[h]as any State or federal regulatory agency or foreign financial regulatory authority ever . . . entered an order against you in connection with a financial services-related activity?"

Denial of License

5.8 RCW 31.04.247 provides:

(1) The director shall issue and deliver a mortgage loan originator license if, after investigation, the director makes at a minimum the following findings:

(a) The applicant has paid the required license fees;

(b) *The applicant has met the requirements of this chapter;*

(c) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that, for the purposes of this subsection, a subsequent formal vacation of such revocation is not a revocation;

(d) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court (i) during the seven-year period preceding the date of the application for licensing and registration; or (ii) at any time preceding the date of application, if the felony involved an act

of fraud, dishonesty, breach of trust, or money laundering;

(e) *The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of chapter 120, Laws of 2009.* For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years;

(f) The applicant has completed the prelicensing education requirement as required by this chapter;

(g) The applicant has passed a written test that meets the test requirement as required by this chapter;

(h) The consumer loan licensee that the applicant works for has met the surety bond requirement as required by this chapter;

(i) *The applicant has not been found to be in violation of this chapter or rules adopted under this chapter;*

(j) The mortgage loan originator licensee has completed, during the calendar year preceding a licensee's annual license renewal date, continuing education as required by this chapter.

(2) *If the director finds the conditions of this section have not been met, the director shall not issue the mortgage loan originator license. The director shall notify the applicant of the denial and return to the mortgage loan originator applicant any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.*

[Emphasis added].

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5.9 WAC 208-620-710 provides:

(4) 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.

5.10 In the present case, the respondent failed to disclose information in her application, as required by RCW 31.04.234 and RCW 31.04.241(2). The respondent's failure to disclose this information constituted either a negligent or wilful false statement and omission of material facts in connection with her application for a mortgage loan originator license, in violation of RCW 31.04.027(8) and WAC 208-620-550(5).

5.11 Based on the respondent's false answer and her past history of non-disclosure and noncompliance with the Department, the respondent has not demonstrated the character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the chapter, as required by RCW 31.04.247(1)(e) and WAC 208-620-710.

5.12 Based on the foregoing, the director properly denied the respondent's mortgage loan originator license application pursuant to RCW 31.04.247(2) because the respondent has not met the conditions of RCW 31.04.247(1), subsections (b), (e) and (i).

Prohibition from Industry

5.13 RCW 31.04.093 provides

(6) The director may issue an order removing from office or prohibiting from participation in the affairs of any licensee, or both, any officer, principal, employee or loan originator, or any person subject to this chapter for:

(a) False statements or omission of material information from an application for a license that, if known, would have allowed the director to deny the original application for a license;

(b) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony;

(c) Suspension or revocation of a license to engage in lending or residential mortgage loan servicing, or perform a settlement service related to lending or residential mortgage loan servicing, in this state or another state;

(d) Failure to comply with any order or subpoena issued under this chapter; or

(e) A violation of RCW 31.04.027.

5.14 Under RCW 31.04.093, the director may prohibit from the industry any person who makes false statements or omissions on the applications for mortgage broker and/or loan originator. The director may also prohibit from the industry persons who violate RCW 31.04.027. Under the facts of this case, the respondent may be prohibited from the industry for either reason.

5.15 The Department intends to prohibit the respondent from the industry for a period of seven years. The statute does not address a length of time for the prohibition from the industry, nor has the Department written any regulation so specifying. Therefore, the Department has discretion to set the term of prohibition.

5.16 The undersigned is unaware of any statute, regulation or policy that permits an administrative law judge to challenge the Department's decisions regarding sanctions, if the decisions are not arbitrary and capricious. The Department's decision regarding the prohibition from participation in the industry is not arbitrary and capricious.

5.17 Neither the Department's Statement of Charges nor the Amended Statement of Charges specifies when the prohibition period should begin. Therefore, the undersigned must establish the effective dates of the prohibition.

5.18 The respondent has not been allowed to participate in the industry during the pendency of this action. If the prohibition were imposed from the date of this order, the prohibition period would be nearly eight years. Therefore, the undersigned has determined that the prohibition period should begin on December 15, 2010, the date that the original Statement of Charges was issued. Based on the foregoing, the respondent is prohibited from participation in the conduct of the affairs of any mortgage loan originator subject to licensure by the Director under Chapter 31.04 RCW and Chapter 19.146, in any manner until December 15, 2017.

Costs of Investigation

5.19 RCW 31.04.145(3) grants the director the authority to impose investigative costs on "[e]very *licensee* examined or investigated by the director or the director's designee. . .". [Emphasis added]. The term "licensee" is defined in RCW 31.04.015(10) as ". . . a person to whom one or more licenses have been issued."

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5.20 In the present case, the respondent has not been issued a license under the act.¹ Therefore, she does not fall within the definition of “licensee”. The respondent would more properly be characterized as an “applicant”, defined as, “a person applying for a license under this chapter.” RCW 31.04.015(2)

5.21 Because the respondent is an “applicant” and not a “licensee”, the Department lacks the authority to impose investigation costs under the RCW 31.04.145(3). Based on the foregoing, the respondent is not required to pay examination and investigative fees in the amount of \$1,725.25.

VI. ORDER

The undersigned resolves the issues presented as follows:

6.1 The Department properly denied respondent’s application for a mortgage loan originator license.

6.2 The respondent is prohibited from participation in the conduct of the affairs of any mortgage loan originator subject to licensure by the Director under Chapter 31.04 RCW and Chapter 19.146, in any manner until December 15, 2017, which is seven years from the date that the original Statement of Charges was issued.

6.3 The respondent is ***not required to pay*** examination and investigation fees pursuant to RCW 31.04.145(3) in the amount of \$1,725.25.

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¹ The respondent previously held a license as a Designated Escrow Officer under the provisions of the Escrow Agent Registration Act, Chapter 18.44 RCW. However, during the hearing, the Department made clear the fact that it is not seeking any costs of investigation or enforcement incurred under the respondent’s escrow license.

SERVED on the date of mailing.



Jason H. Grover
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO PARTIES

Fines, Costs and Fees

Payment is due upon receipt of this decision. To pay the fines, costs and fees, send your payment for the amount ordered to:

Department of Financial Institutions
Division of Consumer Services
PO Box 41200
Olympia, WA 98504-1200

Further appeal rights: Pursuant to RCW 34.05.464 and WAC 10-08-211, any party to this proceeding may file a petition for review of this initial order. You must file your petition for review with the Director of the Department of Financial Institutions, PO Box 41200, Olympia, WA 98504-1200, or Department of Financial Institutions, 150 Israel Rd. SW, Tumwater, WA 98501. The petition for review must be filed within twenty (20) days from the date this initial order was mailed to you. A copy of the petition for review must be sent to all parties of record. Your petition for review must specify the portions of the initial order with which you disagree, and must refer to the evidence in the record which supports your position.

Any party to this proceeding may file a reply to a petition for review. The reply must be filed with the Director of the Department of Financial Institutions at the address above within ten (10) days from the date the petition for review was mailed.

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

IN THE MATTER OF INVESTIGATING
the Mortgage Loan Originator License
Application under the Consumer Loan Act
of Washington by:

DELIA ANN DUNN,

Respondent.

NO. C-10-425-11-SC02

AMENDED STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO DENY LICENSE
APPLICATION, PROHIBIT FROM
INDUSTRY, AND COLLECT COSTS OF
INVESTIGATION

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INTRODUCTION

Pursuant to RCW 31.04.165 and RCW 31.04.168, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act)¹. After having conducted an investigation pursuant to RCW 31.04.055 and 31.04.145, and based upon the facts available as of 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:

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I. FACTUAL ALLEGATIONS

1.1 Respondent Delia Ann Dunn (Respondent Dunn) submitted an application to the Department of Financial Institutions of the State of Washington (Department) for a mortgage loan originator license under Brightgreen Home Loans, Inc., a consumer loan company licensed under the Act. The application was submitted via the Nationwide Mortgage Licensing System (NMLS) and received by the Department on or about October 1, 2010.

1.2 Response to Application Question. The "Regulatory Action" disclosure section of the Uniform Individual Mortgage License/Registration & Consent form (Form MU4) consists of eight

¹ RCW 31.04 (Amended 2009; Effective January 1, 2010)

1 questions. The required New Application Checklist includes the following instruction: "If the answer
2 to any of the following is "YES", provide complete details of all events or proceedings and send to the
3 jurisdiction where you are licensed/registered or requesting licensure/registration." Respondent Dunn
4 answered "no" to the following question on the "Regulatory Action" disclosure section of her Form
5 MU4:

- 6 • I-Has any State or federal regulatory agency or foreign financial regulatory authority
7 ever:
8 (4) entered an order against you in connection with a financial services-related activity?

9 Respondent Dunn was obligated by statute to answer questions on the Form MU4 truthfully and to
10 provide the Department with complete details of all events or proceedings. Additionally, Respondent
11 Dunn attested under penalty of perjury, to the accuracy and completeness of the Form MU4.

12 However, on or about February 14, 2003, the Department entered Temporary Order to Cease and
13 Desist No. C-02-177-03-TO01 against Respondent Dunn in connection with Respondent Dunn's
14 escrow agent license issued by the Department. The Temporary Order to Cease and Desist was served
15 on Respondent Dunn on or about February 18, 2003, by U.S. Mail and certified mail. Respondent
16 Dunn did not disclose the entry of this Order and did not provide the complete details.

17 **1.4 Character and General Fitness.**

18 A. Respondent Dunn has not demonstrated character and general fitness as evidenced by the
19 false statement of material fact Respondent provided on her form MU4.

20 B. On or about August 8, 1999, Respondent Dunn was licensed by the Department as the
21 Designated Escrow Officer for Dunn & Cage Real Estate Services, Inc., dba Escrow by Delia (Escrow
22 by Delia). Pursuant to its authority under the Escrow Agent Registration Act, Chapter 18.44 RCW, on
23 at least three occasions in January 2003 the Department attempted to conduct an examination of the
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1 books and records of Respondent Dunn and Escrow by Delia but was unsuccessful in obtaining the
2 Respondent's cooperation.

3 On February 6, 2003, the Department issued a Subpoena Duces Tecum (Subpoena) to
4 Respondent Dunn requiring her to provide the records of Escrow by Delia to the Department by
5 February 24, 2003. The Subpoena was served on Respondent Dunn on or about February 11, 2003,
6 but no records were provided by the due date.

7 On February 14, 2003, the Department issued a Temporary Order to Cease and Desist (TCD)
8 to Respondent Dunn. The TCD was served on Respondent Dunn on or about February 19, 2003, and
9 Respondent Dunn acknowledged receipt of the TCD on March 3, 2003, by filing an Application for
10 Adjudicative Hearing.¹ The TCD included an Order requiring Respondent Dunn to "immediately
11 return all records for Dunn & Cage Real Estate Services, Inc., dba Escrow by Delia to the State of
12 Washington and make these records available for the Department's inspection." Respondent Dunn,
13 however, did not comply with this Order.

14 On March 14, 2003, a Prehearing Conference was held related to the TCD. At that time,
15 Respondent Dunn, through her attorney, agreed to make the records of Escrow by Delia available to
16 the Department by 5:00 p.m. on March 19, 2003. The records, however, were not made available.
17 Instead, Respondent Dunn, through her Attorney, notified the Department's attorney that Escrow by
18 Delia had closed on March 18, 2003, and, therefore, would not be making the records available.
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20 On or about March 20, 2003, Respondent Dunn withdrew her request for a hearing related to
21 the TCD and Respondent Dunn's appeal of the TCD was dismissed. Also on March 20, 2003, the
22 attorney for the Department notified the attorney for Respondent Dunn that, irrespective of the closure
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¹ Respondent Dunn's attorney entered his Notice of Appearance for the TCD on March 4, 2003.

1 of Escrow by Delia and the withdrawal of the hearing request, the Department still demanded access
2 to the records of Escrow by Delia. The records, however, were not provided.

3 On March 21, 2003, the Department filed a Petition for Appointment of Temporary Receiver in
4 the Pierce County Superior Court naming Escrow by Delia and Respondent Dunn as Defendants. The
5 Receiver subsequently obtained the records the Department had subpoenaed, and the Department
6 finally received the subpoenaed records of Escrow by Delia through the Receiver on or about August
7 8, 2003.

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

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10 **2.1 Requirement to Demonstrate Character and General Fitness.** Based on the Factual
11 Allegations set forth in Section I above, Respondent Dunn fails to meet the requirements of RCW
12 31.04.247(1)(e) and WAC 208-620-710(4)(a) by failing to demonstrate character and general fitness
13 such as to command the confidence of the community and to warrant a belief that the business will be
14 operated honestly, fairly, and efficiently within the purposes of the Act.

15 **2.2 Requirement to Provide Information on License Application.** Based on the Factual
16 Allegations set forth in Section I above, Respondent Dunn fails to meet the requirements of RCW
17 31.04.234 and RCW 31.04.241(2) and is in violation of RCW 31.04.027(8) and WAC 208-620-550(5)
18 by failing to provide an accurate license application in the form prescribed by the Director.

19 **III. AUTHORITY TO IMPOSE SANCTIONS**

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21 **3.1 Authority to Deny Application for Loan Originator License.** Pursuant to RCW
22 31.04.247(2), the Director may deny licenses to applicants. Pursuant to RCW 31.04.247(2), the
23 Director shall not issue a license if the conditions of RCW 31.04.247(1) have not been met by the
24 applicant, and shall notify the applicant of the denial.

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1 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 31.04.093(6), the Director may issue
2 orders prohibiting from participation in the conduct of the affairs of any licensee, any person subject to
3 the Act for false statements or omission of material information from an application for a license that,
4 if known, would have allowed the director to deny the original application for a license or a violation
5 of RCW 31.04.027.

6 **3.3 Authority to Collect Investigation Fee.** Pursuant to RCW 31.04.145(3) and WAC 208-620-
7 590, every licensee investigated by the Director or the Director's designee shall pay for the cost of the
8 investigation, calculated at the rate of sixty-nine dollars and one cent (\$69.01) per staff hour devoted
9 to the investigation.
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11 **IV. NOTICE OF INTENTION TO ENTER ORDER**

12 Respondent's violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as
13 set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
14 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.055, RCW 31.04.093, RCW
15 31.04.165, RCW 31.04.168, and 31.04.247. Therefore, it is the Director's intention to ORDER that:

- 16 **4.1** Respondent Delia Ann Dunn's application for a mortgage loan originator license be denied.
17 **4.2** Respondent Delia Ann Dunn be prohibited from participation in the conduct of the affairs of
18 any mortgage loan originator subject to licensure by the Director under chapter 31.04 and
19 chapter 19.146, in any manner, for seven years.
20 **4.3** Respondent Delia Ann Dunn pay an investigation fee which at the time of these charges totals
\$1,725.25, calculated at \$69.01 per hour for 25 hours devoted to the investigation.

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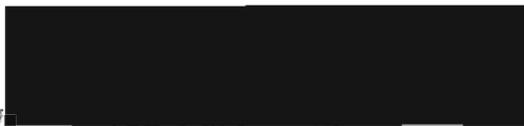
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1 **V. AUTHORITY AND PROCEDURE**

2 This Amended Statement of Charges and Notice of Intention to Enter an Order to Deny
3 License Application, Prohibit from Industry, and Collect Investigation Fee (Amended Statement of
4 Charges) is entered pursuant to the provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.168,
5 and RCW 31.04.202, and is subject to the provisions of chapter 34.05 RCW (The Administrative
6 Procedure Act). Hearing dates and schedules presently set will not be affected by the Amended
7 Statement of Charges.
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9 Dated this 28th day of February, 2011.



11 DEBORAH BORTNER
12 Director
13 Division of Consumer Services
14 Department of Financial Institutions



15 Presented by:



16 STEVEN C. SHERMAN
17 Financial Legal Examiner

18 Approved by:



19 JAMES R. BRUSSELBACK
20 Enforcement Chief