STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION

IN THE MATTER OF DETERMINING Whether there has been a violation of the Mortgage Broker Practices Act of Washington by: MGM Financial Services, Inc., and Geoffrey S. Huetten, Vice President and Owner, and Lois A. Jackson (fka Lois A. Huetten), Secretary and former Designated Broker, and Patrick K. McKeehan, President, and Randall L. Maine, Chairman of the Board of Directors, Respondents.	NO. C-02-197-04-SC02 **AMENDED** STATEMENT OF CHARGES and NOTICE OF INTENTION TO ENTER AN ORDER TO REVOKE LICENSES, COLLECT ANNUAL ASSESSMENTS, IMPOSE FINE, PROHIBIT FROM INDUSTRY, AND COLLECT INVESTIGATION FEE

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). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part.

After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as of February 6, 2004, the Director issued Statement of Charges and Notice of Intent to Revoke Licenses, Impose Fines, and Prohibit from Participation in the Mortgage Broker Industry C-02-197-04-SC01, hereinafter referred to as Statement of Charges SC01, on March 2, 2004. Respondents Geoffrey S. Huetten and Lois A. Jackson (fka Lois A. Huetten) were served with Statement of Charges SC01 on March 4, 2004. After the issuance of Statement of Charges SC01, certain information came to the attention of the Director that requires the amendment of Statement of Charges SC01. Based upon the facts available as of July 26, 2004, the Director now proceeds to amend Statement of Charges SC01 by issuing Amended Statement of Charges and Notice of Intention to Enter an Order to Revoke Licenses, Collect Annual Assessments, Impose Fine, Prohibit from Industry, and Collect Investigation Fee C-02-197-04-SC02, which includes the following modifications: modifying the title of Respondent Geoffrey S.

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Huetten in Paragraph 1.1 B below; modifying the name and title of Respondent Lois A. Jackson (fka Lois A. Huetten) in Paragraph 1.1 C below; adding Respondent Patrick K. McKeehan in Paragraph 1.1 D below; adding Respondent Randall L. Maine in Paragraph 1.1 E below; modifying Main Office and Branch Office Annual Assessments due in Paragraph 1.4 and Paragraph 1.5, respectively, below; and adding Factual Allegations in Paragraph 1.10 below.

I. FACTUAL ALLEGATIONS

1.1 Respondents:

A. **MGM Financial Services, Inc. (Respondent MGM)** is known to have conducted the business of a mortgage broker at the following location:

802 39th Avenue SW
Puyallup, WA 98373

B. **Geoffrey S. Huetten (Respondent Huetten)** is known to be Vice President and Owner of Respondent MGM.

C. **Lois A. Jackson (fka Lois A. Huetten) (Respondent Jackson)** is known to be Secretary of Respondent MGM. Respondent Jackson was named Designated Broker for Respondent MGM on March 22, 1999. By letter dated March 30, 2001, Respondent Jackson submitted her resignation as Designated Broker for Respondent MGM.

D. **Patrick K. McKeehan (Respondent McKeehan)** is known to be President of Respondent MGM.

E. **Randall L. Maine (Respondent Maine)** is known to be Chairman of the Board of Directors of Respondent MGM.

1.2 Licenses:

A. **Main Office:** Respondent MGM's main office, at 802 39th Avenue SW, Puyallup Washington 98373, was licensed by the Department of Financial Institutions of the State of Washington

(Department) to conduct business as a mortgage broker on March 22, 1999, and has continued to be licensed to date.

B. **Branch Office:** Respondent MGM's Lacey branch office, at 4305 Lacey Boulevard SE, Lacey Washington 98503, was licensed by the Department to conduct business as a mortgage broker on March 22, 1999, and has continued to be licensed to date.

1.3 Operation Without a Designated Broker: Respondent Jackson resigned as Designated Broker for Respondent MGM effective March 30, 2001. To date, Respondent MGM has not appointed a replacement Designated Broker.

1.4 Failure to Pay Main Office Annual Assessments: Payment of the main office annual assessment is due to the Department no later than the last business day of March. To date, the Department has not received the following annual assessments due from Respondents for its main office, totaling $2,575.67:

A. Payment of the annual assessment of $500.00 for the years 1999-2000 and 2000-2001 was due to the Department no later than the last business day of March of each year.

B. Payment of the annual assessment of $513.95 for the year 2001-2002 was due to the Department no later than the last business day of March 2002.

C. Payment of the annual assessment of $530.86 for the years 2002-2003 and 2003-2004 was due to the Department no later than the last business day of March of each year.

D. Payment of the annual assessment of $530.86 for the year 2004-2005 will be due to the Department no later than the last business day of March 2005.

1.5 Lacey Branch Annual Assessments: Payment of the branch annual assessment is due to the Department no later than the last business day of March. To date, the Department has not received the following annual assessments due from Respondents for the Lacey branch, totaling $2,075.67:

A. Payment of the branch annual assessment of $500.00 for the year 2000-2001 was due to the Department no later than the last business day of March 2001.

B. Payment of the branch annual assessment of $513.95 for the year 2001-2002 was due to the Department no later than the last business day of March 2002.

C. Payment of the branch annual assessment of $530.86 for the years 2002-2003 and 2003-2004 was due to the Department no later than the last business day of March of each year.

D. Payment of the branch annual assessment of $530.86 for the year 2004-2005 will be due to the Department no later than the last business day of March 2005.

1.6 Failure to Maintain Bond: On March 15, 2002, the Department received notice from Near North Insurance Brokerage, Inc. that Respondent MGM's surety bond was cancelled effective January 4, 2001. Respondent MGM failed to notify the Department that its surety bond had been cancelled, nor did Respondents replace Respondent MGM's surety bond.

1.7 Failure to Submit Continuing Education Certificates: A certificate of satisfactory completion of an approved continuing education course was due to the Department no later than March 31, 2000, and March 31, 2001. To date, the Department has not received the required certificates due from Respondent Jackson.

1.8 Failure to Respond to Directive Requirement: On September 23, 2003, the Department issued a directive to Respondents requiring payment of the main office and Lacey branch annual assessments, replacement of Respondent MGM's bond, and submittal of certificates of completion of continuing education. (The Directive stated that the annual assessment for the main office is due on May 31. The actual due date is March 31, and the May 31 date occurred as a result of a clerical error.) To date, the Department has not received a response to its directive.

On May 30, 2001, the Department received a Complaint against Respondent MGM. The Department sent Respondent requests for information and records regarding the complaint on June 13, 2001, July 11, 2001, and August 14, 2001. (The Department also made several other attempts to contact Respondent regarding this complaint, however those requests were returned as undeliverable.) To date, the Department has not received any response to its requests for information and records.

1.9 Failure to Notify DFI of Significant Developments:

A. As stated in 1.6 above, to date, Respondents have not notified the Department of the cancellation of Respondent MGM's surety bond.

B. Respondent MGM's corporate license, maintained with the office of the Secretary of State, expired on July 31, 2001. To date, Respondents have not notified the Department of this

change in Respondent MGM's status with the Secretary of State, nor has Respondent MGM renewed its corporate license.

C. Respondent MGM's Master Business License account with the Washington State Department of Licensing was dissolved on October 22, 2001. To date, Respondents have not notified the Department of this change in Respondent MGM's Master Business License.

1.10 Omission of Material Information in Respondent MGM's License Application: On February 3, 1999, the Department received initial Mortgage Broker license application documents for Respondent MGM, signed by Geoff Huetten as Vice President and dated December 30, 1998. Addendum A to the application form, received by the Department February 3, 1999, identifies Geoff Huetten as the 100% owner of Respondent MGM and states that "OFFICER AND OWNER" control Respondent MGM. On March 4, 1999 the Department received a letter, signed by Lois Huetten as Branch Manager and dated March 1, 1999, in response to the Department's request for additional information regarding Respondent MGM's Mortgage Broker license application. This letter states, in part, "OWNERSHIP (ADDENDUM A(4): THE OFFICERS WHO CONTROL THE COMPANY ARE: PATRICK K. MCKEEHAN—PRESIDENT GEOFFREY S. HUETTEN—VICE-PRESIDENT." Respondent Maine is not listed in any of Respondent MGM's Mortgage Broker license application documents.

Respondent MGM's Corporation Renewal and Annual Report filed with State of Washington Department of Licensing Master License Service, signed by Lois Huetten as Secretary and dated September 14, 2000, lists Respondent Maine as the Chairman of the Board of Directors of Respondent MGM. Further, Respondent Huetten and Respondent Jackson allege that Respondent Maine controlled almost every aspect of Respondent MGM's operations from its inception.

II. GROUNDS FOR ENTRY OF ORDER

2.1 Requirement to Pay Annual Assessments: Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.228(1), WAC 208-660-060(3) and WAC 208-

660-061 for failing to pay to the Director an annual assessment fee no later than the last business day of the month in which the anniversary date of the issuance of the mortgage broker's license occurs.

2.2 Requirement to Maintain Surety Bond: Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.205(4)(a) and WAC 208-660-080(1) for failing to file and maintain a surety bond or approved alternative with the Department.

2.3 Requirement to Submit Certificate of Completion of Continuing Education: Based on the Factual Allegations set forth in Section I above, Respondent Jackson is in apparent violation of RCW 19.146.215 and WAC 208-660-042 for failing to complete the annual continuing education requirement and file a certificate of satisfactory completion no later than the last business day of the month in which the anniversary date of the issuance of the licensee's license occurs.

2.4 Requirement to Notify Department of Significant Developments: Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of WAC 208-660-150(1)(e), WAC 208-660-150(2), and WAC 208-660-150(3)(b), (e) and (f) for failing to notify the Director in writing within thirty days after receipt of notification of cancellation of the licensee's surety bond, failing to notify the Director in writing ten days prior to a change of the location of the licensee's principal place of business or any of its branch offices, and failing to notify the Director in writing within five days after a change in mailing address or telephone number or State master business license or standing with the state of Washington Secretary of State.

2.5 Prohibited Acts: Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.0201(8) for knowingly and willfully omitting material information in connection with Respondent MGM's application for a Mortgage Broker license from the Department.

2.6 Requirement to Provide Information on License Application: Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.205(1) and WAC 208-660-030(1) for omitting material information about an officer, director, registered agent or principal stockholder for Respondent MGM on the application for a Mortgage Broker license from the Department.

2.7 Authority to Revoke License: Pursuant to RCW 19.146.220(2)(b)(i), (ii), (iii) and (iv), and WAC 208-660-160(1), (2), (6), (8) and (13), the Director may revoke a license if a licensee omits material facts in obtaining a license which, if known, would have allowed the Director to deny the application for the license, fails to pay a fee required by the Director, fails to maintain the required bond, commits any violation of RCW 19.146.0201(1)-(9) or fails to comply with any directive or order of the Director.

2.8 Authority to Impose Fine: Pursuant to RCW 19.146.220(2)(c)(i) and (ii) and WAC 208-660-165, the Director may impose fines on a licensee that fails to maintain the required bond, commits any violation of RCW 19.146.0201(1)-(9) or fails to comply with any directive or order of the Director.

2.9 Authority to Prohibit from the Industry: Pursuant to RCW 19.146.220(2)(e)(i), (ii) and (iv), the Director may prohibit from participation in the conduct of the affairs of a licensed mortgage broker, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under the Act that fails to maintain the required bond, commits any violation of RCW 19.146.0201(1)-(9), omits material facts in obtaining a license which, if known, would have allowed the Director to deny the application for the license, or fails to comply with any directive or order of the Director.

2.10 Authority to Charge Investigation Fee: Pursuant to RCW 19.146.228(2), WAC 208-660-060(4) and WAC 208-660-061, 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 the investigation. The investigation charge will be calculated at the rate of forty-seven dollars and seventy-eight cents ($47.78) per hour that each staff person devoted to the investigation.

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III. NOTICE OF INTENTION TO ENTER ORDER

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

3.1 Respondent MGM Financial Service, Inc.'s license to conduct the business of a Mortgage Broker be revoked; and

3.2 Respondent MGM Financial Service, Inc.'s branch office license for the branch at 4305 Lacey Boulevard SE, Lacey Washington 98503, be revoked; and

3.3 Respondents jointly and severally pay the cumulative delinquent main office Annual Assessments due through March 31, 2004 totaling $2,575.67, as calculated in Paragraph 1.4 above. Additionally, Respondents jointly and severally pay the $530.86 main office Annual Assessment for the year ending March 31, 2005 no later than the last business day of March, 2005; and

3.4 Respondents jointly and severally pay the cumulative delinquent Lacey Washington branch office Annual Assessments due through March 31, 2004 totaling $2,075.67, as calculated in Paragraph 1.5 above. Additionally, Respondents jointly and severally pay the $530.86 branch office Annual Assessment for the year ending March 31, 2005 no later than the last business day of March, 2005; and

3.5 Respondents jointly and severally pay a fine of $9,000.00 for
a. Failure to maintain the required bond, calculated at $100.00 per day for 30 days; and
b. Violation of RCW 19.146.0201(8), calculated at $100.00 per day for 30 days; and
c. Failure to comply with a directive, calculated at $100.00 per day for 30 days; and

3.6 Respondent Geoffrey S. Huetten be prohibited from participation in the conduct of the affairs of any licensed mortgage broker, in any manner, for a period of five (5) years; and

3.7 Respondent Lois A. Jackson (fka Lois A. Huetten) be prohibited from participation in the conduct of the affairs of any licensed mortgage broker, in any manner, for a period of five (5) years; and

3.8 Respondent Patrick K. McKeehan be prohibited from participation in the conduct of the affairs of any licensed mortgage broker, in any manner, for a period of five (5) years; and

3.9 Respondent Randall L. Maine be prohibited from participation in the conduct of the affairs of any licensed mortgage broker, in any manner, for a period of five (5) years; and

3.10 Respondents jointly and severally pay an investigation fee in the amount of $955.60 calculated at $47.78 per hour for twenty (20) staff hours devoted to the investigation.

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IV. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Revoke Licenses, Collect Annual Assessments, Impose Fine, Prohibit from Industry, and Collect Investigation Fee 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). Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges and Notice of Intention to Enter an Order to Revoke Licenses, Collect Annual Assessments, Impose Fine, Prohibit from Industry, and Collect Investigation Fee.

Dated this 26th day of July, 2004.

CHUCK CROSS
Director and Enforcement Chief
Division of Consumer Services
Department of Financial Institutions

Presented by:

Mark T. Olson
Financial Examiner

RCW 19.146.0201 Loan originator, mortgage broker -- Prohibitions -- Requirements.
It is a violation of this chapter for a loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1) (d) or (f) in connection with a residential mortgage loan to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a person exempt from licensing under RCW 19.146.020(1) (f) or (g) or a lender with whom the mortgage broker maintains a written correspondent or loan brokerage agreement under RCW 19.146.040;

(6) Fail to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law;

(7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

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

(9) Make any payment, directly or indirectly, 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;
. . .

[1997 c 106 § 3; 1994 c 33 § 6; 1993 c 468 § 4.]

RCW 19.146.205 License -- Application -- Exchange of fingerprint data with federal bureau of investigation -- Fee -- Bond or alternative.
(1) Application for a mortgage broker license under this chapter shall be in writing and in the form prescribed by the director. The application shall contain at least the following information:

(a) The name, address, date of birth, and social security number of the applicant, and any other names, dates of birth, or social security numbers previously used by the applicant, unless waived by the director;

(b) If the applicant is a partnership or association, the name, address, date of birth, and social security number of each general partner or principal of the association, and any other names, dates of birth, or social security numbers previously used by the members, unless waived by the director;

(c) If the applicant is a corporation, the name, address, date of birth, and social security number of each officer, director, registered agent, and each principal stockholder, and any other names, dates of birth, or social security numbers previously used by the officers, directors, registered agents, and principal stockholders unless waived by the director;

(d) The street address, county, and municipality where the principal business office is to be located;

(e) The name, address, date of birth, and social security number of the applicant's designated broker, and any other names, dates of birth, or social security numbers previously used by the designated broker and a complete set of the designated broker's fingerprints taken by an authorized law enforcement officer; and

(f) Such other information regarding the applicant's or designated broker's background, financial responsibility, experience, character, and general fitness as the director may require by rule.

. . .

(4)(a) Each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount of not greater than sixty thousand dollars nor less than twenty thousand dollars which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety. The bonding requirement as established by the director may take the form of a uniform bond amount for all licensees or the director may establish by rule a schedule establishing a range of bond amounts which shall vary according to the annual average number of loan originators or independent contractors of a licensee. The bond shall run to the state of Washington as obligee, and shall run first to the benefit of the borrower and then to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this chapter or rules adopted under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. Borrowers shall be given priority over the state and other persons. The state and other third parties shall be allowed to receive distribution pursuant to a valid claim against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if the arrangement provides at least as much coverage as is required under this subsection.

. . .

[2001 c 177 § 4; 1997 c 106 § 9; 1994 c 33 § 8; 1993 c 468 § 6.]

RCW 19.146.215 Continuing education -- Rules.
The designated broker of every licensee shall complete an annual continuing education requirement, which the director shall define by rule.

[1997 c 106 § 11; 1994 c 33 § 11.]

RCW 19.146.220 Director -- Powers and duties -- Violations as separate violations -- Rules.
(1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

(2) The director may impose the following sanctions:

(a) Deny applications for licenses for: (i) Violations of orders, including cease and desist orders issued under this chapter; or (ii) any violation of RCW 19.146.050 or 19.146.0201 (1) through (9);

(b) Suspend or revoke licenses for:

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

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(ii) Failure to pay a fee required by the director or maintain the required bond;

(iii) Failure to comply with any directive or order of the director; or

(iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265;

(c) Impose fines on the licensee, employee or loan originator of the licensee, or other person subject to this chapter for:

(i) Any violations of RCW 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

(ii) Failure to comply with any directive or order of the director;

(d) Issue orders directing a licensee, its employee or loan originator, or other person subject to this chapter to:

(i) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter; or

(ii) Pay restitution to an injured borrower; or

(e) Issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

(i) Any violation of 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

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

(iii) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or

(iv) Failure to comply with any directive or order of the director.

(3) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

(4) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions.

(5) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

[1997 c 106 § 12; 1997 c 58 § 879; 1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

RCW 19.146.221 Action by director -- Hearing -- Sanction.
The director may, at his or her discretion and as provided for in *RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If

the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.

[1994 c 33 § 13.]

RCW 19.146.223 Director -- Administration and interpretation.
The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005.

[1994 c 33 § 2.]

RCW 19.146.228 Fees -- Rules -- Exception.
The director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

(1) An annual assessment paid by each licensee on or before a date specified by rule;

(2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter; and

(3) An application fee to cover the costs of processing applications made to the director under this chapter.

Mortgage brokers shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of this chapter occurred or when the mortgage broker provides a remedy satisfactory to the complainant and the director and no order of the director is issued. All moneys, fees, and penalties collected under the authority of this chapter shall be deposited into the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under this chapter shall be deposited in the consumer services account.

[2001 c 177 § 5; 1997 c 106 § 13; 1994 c 33 § 9.]

RCW 19.146.230 Administrative procedure act application.
The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies issued pursuant to this chapter and any appeal therefrom or review thereof shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW.

[1994 c 33 § 16; 1993 c 468 § 10.]

RCW 19.146.235 Director -- Investigation powers -- Duties of person subject to examination or investigation.
For the purposes of investigating complaints arising under this chapter, the director may at any time, either personally or by a designee, examine the business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person shall act or claim to act under or without the authority of this chapter. For that purpose the director and designated representatives shall have access during regular business hours to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons.

The director or designated person may direct or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct or order such person to produce books, accounts, records, files, and any other documents the director or designated person deems relevant to the inquiry. If a person who receives such a directive or order does not attend and testify, or does not produce the requested books, records, files, or other documents within the time period established in the directive or order, then the director or designated person may issue a subpoena requiring attendance or compelling production of books, records, files, or other documents. No person subject to examination or investigation under this chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

Once during the first two years of licensing, the director may visit, either personally or by designee, the licensee's place or places of business to conduct a compliance examination. The director may examine, either personally or by designee, a sample of the licensee's loan files, interview the licensee or other designated employee or independent contractor, and

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undertake such other activities as necessary to ensure that the licensee is in compliance with the provisions of this chapter. For those licensees issued licenses prior to March 21, 1994, the cost of such an examination shall be considered to have been prepaid in their license fee. After this one visit within the two-year period subsequent to issuance of a license, the director or a designee may visit the licensee's place or places of business only to ensure that corrective action has been taken or to investigate a complaint.

[1997 c 106 § 14; 1994 c 33 § 17; 1993 c 468 § 11.]

WAC 208-660-030 Application procedure for mortgage broker license.

(1) Each person required to have a license must apply to the director by filing the following:

(a) An application in the form prescribed by the director, including without limit the information required by RCW 19.146.205 (1)(a) through (d).

(b) A surety bond and related power of attorney, or approved alternative to the bond, in accordance with RCW 19.146.205(3) and WAC 208-660-080 and 208-660-08010.

(c) The application deposit.

(d) In regard to each principal and designated broker of the applicant:

(i) Biographical information including complete and accurate employment history and a description of any material litigation involving the person;

(ii) An independent credit report obtained from a recognized credit reporting agency;

(iii) A signed authorization for a background investigation on a form provided by the department;

(iv) Completed fingerprint cards accepted by the Washington state patrol;

(v) A signed authorization for verification of the existence of a trust account on a form provided by the department;

(vi) A certificate of passing an approved examination (this requirement does not apply to principals); and

(vii) A certificate of satisfactory completion of an approved licensing course, or satisfactory proof of at least two years of experience in accordance with WAC 208-660-040 (this requirement does not apply to principals).

(e) A signed certificate of compliance and authorization to examine trust accounts on a form provided by the department;

(f) Information to support any required branch office certificate, as required by WAC 208-660-070.

(g) Information in regard to each independent contractor retained by the applicant, in accordance with RCW 19.146.200(1).

(h) A copy of any written agreement with a lender or licensee, in accordance with RCW 19.146.040(2).

(i) A copy of any form to be approved by the director in accordance with WAC 208-660-130(2).

(j) If the applicant's principal office is located out-of-state, information in regard to the applicant's registered agent, in accordance with RCW 19.146.220(3).

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[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-030, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-030, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-030, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-030, filed 1/7/94, effective 2/7/94.]

WAC 208-660-042 Continuing education requirement.

(1) The principal or designated broker of a licensee must satisfactorily complete an approved continuing education course annually. Each licensee must file annually a certificate of satisfactory completion of an approved continuing education course by the licensee's principal or designated broker no later than the last business day of the month in which the anniversary date of the issuance of the licensee's license occurs.

(2) This section applies to each licensee beginning on the first anniversary date of the issuance of the licensee's license which occurs after December 31, 1995. (For example, if a licensee's license was issued on January 10, 1994, then the licensee must submit its first certificate of satisfactory completion of an approved continuing education course no later than the last business day of January 1996.)

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-042, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-042, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-042, filed 6/21/95, effective 7/22/95.]

WAC 208-660-060 Department's fees and assessments.
(1) Upon completion of processing and reviewing an application for a license or branch office certificate, the department will prepare a billing, regardless of whether a license or certificate has been issued, calculated at the rate of $35.98 per hour that each staff person devoted to processing and reviewing the application. The application deposit will be applied against this bill. Any amount left owing to the department will be billed to and paid promptly by the applicant, while any balance remaining from the deposit will be refunded promptly to the applicant.

(2) Upon completion of any examination of the books and records of a licensee, the department will furnish to the licensee a billing to cover the cost of the examination. The examination charge will be calculated at the rate of $46.26 per hour that each staff person devoted to the examination. The examination billing will be paid by the licensee promptly upon receipt. Licensees that were issued licenses prior to March 21, 1994, have prepaid in their initial license fee the cost of the first compliance examination of the licensee conducted by the department during the first two years after the date of issuance of the license.

(3) Each licensee shall pay to the director an annual assessment of $513.95 for each license, and $513.95 for each branch office certificate. The annual assessment(s) will be due no later than the last business day of the month in which the anniversary date of the issuance of the broker's license occurs.

(4) Upon completion of any investigation of the books and records of a mortgage broker other than a licensee, the department will furnish to the broker a billing to cover the cost of the investigation. The investigation charge will be calculated at the rate of $46.26 per hour that each staff person devoted to the investigation. The investigation billing will be paid by the mortgage broker promptly upon receipt.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-060, filed 5/29/01, effective 7/1/01; 96-04-028, recodified as § 208-660-060, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-060, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-060, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-060, filed 1/7/94, effective 2/7/94.]

WAC 208-660-061 Fee increase.
The division intends to increase its fee and assessment rates each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2001-03 biennium.

(1) On July 1, 2002, the fee and assessment rates under WAC 208-660-060, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-061, filed 5/29/01, effective 7/1/01.]

WAC 208-660-080 Surety bond and approved alternatives -- General requirements.
(1) Each applicant for a license and licensee must file and maintain on file with the director:
(a) A surety bond in the required amount and related power of attorney issued by a bonding company or insurance company authorized to do business in this state; or

(b) An approved alternative to a surety bond in the required amount in accordance with WAC 208-660-08010. The required amount of the surety bond or approved alternative ranges from twenty thousand dollars to sixty thousand dollars and is based on the applicant's or licensee's monthly average number of loan originators calculated in accordance with subsection (2) of this section. The surety bond or approved alternative is subject to claims in accordance with RCW 19.146.205 and 19.146.240. Borrowers shall be given priority over the state and other persons who file claims against the bond or approved alternative. The state and other persons shall not receive distributions from the remainder of the bond or approved alternative pursuant to valid claims prior to one hundred eighty days following the date a claim is made against the bond.

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[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-080, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-080, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-080, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-080, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-080, filed 1/7/94, effective 2/7/94.]

WAC 208-660-150 Disclosure of significant developments.

(1) A licensee must notify the director in writing within thirty days after the occurrence of any of the following developments:

(a) Licensee's filing for bankruptcy or reorganization.

(b) Receipt of notification of license revocation procedures in any state against the licensee.

(c) The filing of a felony indictment or information related to mortgage brokering activities of the licensee, or any officer, director, principal, or designated broker of the licensee.

(d) The licensee, or any officer, director, principal, or designated broker of the licensee being convicted of a felony.

(e) Receipt of notification of cancellation of the licensee's surety bond or approved alternative, or any significant decline in value of an approved alternative held by the director.

(f) The filing of any material litigation against the licensee.

(2) A licensee must notify the director in writing ten days prior to a change of the location of the licensee's principal place of business or any of its branch offices.

(3) A licensee must notify the director in writing within five days after a change in the licensee's:

(a) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(b) Mailing address or telephone number;

(c) President, partner, designated broker, or branch office manager;

(d) Trust account (e.g., change in the status, location, or account number);

(e) State master business license; or

(f) Standing with the state of Washington secretary of state.

[96-04-028, recodified as § 208-660-150, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-150, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-150, filed 1/7/94, effective 2/7/94.]

WAC 208-660-160 License application denial or condition; license suspension or revocation.

The director may deny or condition approval of a license application, or suspend or revoke a license if the applicant or licensee, or any principal or designated broker of the applicant or licensee:

(1) Has failed to pay a fee due to the state in accordance with the Mortgage Broker Practices Act;

(2) Has not filed the required surety bond or approved alternative or otherwise complied with RCW 19.146.205;

(3) Has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years;

(4) Has within the prior seven years been convicted of a felony, or a gross misdemeanor involving dishonesty or financial misconduct;

(5) Has failed to demonstrate financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the

purposes of the Mortgage Broker Practices Act. The director may find that the person has failed to make the demonstration if, among other things:

(a) The person is or has been subject to an injunction issued pursuant to the Mortgage Broker Practices Act or the Consumer Protection Act; or

(b) An independent credit report issued by a recognized credit reporting agency indicates that the person has a substantial history of unpaid debts;

(6) Has omitted, misrepresented, or concealed material facts in obtaining a license or in obtaining reinstatement thereof;

(7) Has violated the provisions of the Mortgage Broker Practices Act, or the Consumer Protection Act;

(8) Has had its surety bond, approved alternative, or equivalent form of business insurance, canceled or revoked for cause;

(9) Has allowed the licensed mortgage broker business to deteriorate into a condition which would result in denial of a new application for a license;

(10) Has aided or abetted an unlicensed person to practice in violation of the Mortgage Broker Practices Act;

(11) Has demonstrated incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(12) Is insolvent in the sense that the value of the applicant's or licensee's liabilities exceed its assets or in the sense that the applicant or licensee cannot meet its obligations as they mature;

(13) Has failed to comply with an order, directive, or requirement of the director, or his or her designee, or with an assurance of discontinuance entered into with the director, or his or her designee;

(14) Has performed an act of misrepresentation or fraud in any aspect of the conduct of the mortgage broker business or profession;

(15) Has failed to cooperate with the director, or his or her designee, including without limitation by:

(a) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation for disciplinary actions or denial, suspension, or revocation of a license; or

(b) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation into a complaint against the licensee filed with the department, or providing a full and complete written explanation of the circumstances of the complaint upon request by the director;

(16) Has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action;

(17) Has failed to provide a required certificate of passing an approved examination;

(18) Has failed to provide a required certificate of satisfactory completion of an approved licensing course or, in the alternative, satisfactory proof of two years' experience in accordance with WAC 208-660-040; or

(19) Has failed to provide a required certificate of satisfactory completion of an approved continuing education course.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-160, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-160, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-160, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-160, filed 1/7/94, effective 2/7/94.]

WAC 208-660-165 Fines and penalties for violation of the Mortgage Broker Practices Act.

Each mortgage broker and each of its principals, designated brokers, officers, employees, independent contractors, and agents shall comply with the applicable provisions of the Mortgage Broker Practices Act. Each violation of any applicable provision of the Mortgage Broker Practices Act, or of any order, directive, or requirement of the director may, at the discretion of the director, subject the violator to a fine of up to one hundred dollars for each offense. Each day's continuance of the violation is a separate and distinct offense. In addition, the director in his or her discretion may by order assess other penalties for a violation of the Mortgage Broker Practices Act.

[96-04-028, recodified as § 208-660-165, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-165, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-165, filed 11/8/94, effective 12/9/94.]

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