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: FIDELITY MORTGAGE CORPORATION, and NICHOLAS HAINES, Vice President and Designated Broker, and SCOTT BRITTENHAM, President, Respondents.	NO C-03-172-04-SC01 STATEMENT OF CHARGES and NOTICE OF INTENTION TO ENTER AN ORDER TO REVOKE LICENSE, COLLECT ANNUAL ASSESSMENTS, IMPOSE FINES, PAY RESTITUTION, 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 (Appendix 1). After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as of November 12, 2004 the Director institutes this proceeding and alleges as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents:

A. **Fidelity Mortgage Corporation (Respondent Fidelity)** is known to have conducted the business of a mortgage broker at the following location:

900 1st Ave. S. Ste 205A, Seattle, WA 98134

B. Nicholas Haines (Respondent Nicholas Haines) is known to be a Vice President of Respondent Fidelity. Respondent Nicholas Haines was named Designated Broker on December 22, 2001, and continues as Designated Broker as of the date of this Statement of Charges. Respondent Nick Haines is known to hold 50% ownership in Respondent Fidelity.

C. Scott Brittenham (Respondent Scott Brittenham) is known to be the President of Respondent Fidelity. Respondent Scott Brittenham is known to hold 50% ownership of Respondent Fidelity.

1.2 Licenses:

A. Main Office: 6303 E. Tanque Verde, Tucson, AZ 85715. The Department issued Respondent's Main Office Mortgage Broker License on December 22, 2001. On October 28, 2004, the Department discovered that on September 19, 2004, Respondent Fidelity informed the Arizona Division of Banks they had moved their Main Office to 7340 E. Broadway, Tucson, AZ 85710. To date, the Respondent has not notified the Department of this change of address.

B. Branch Office: 900 1st Ave. S. Ste 205A, Seattle, WA 98134. . The Department issued Respondent's Branch Office Mortgage Broker License on December 22, 2001. Respondent Fidelity, on February 20, 2004, asserted that it no longer does business in Washington State and has not done business in Washington State since the fall of 2003. However, Respondent Fidelity has failed to submit any closing documents to the Department. Respondent Fidelity's Web page, www.10dayclose.com, still lists the 900 1st Ave. S. Ste. 205A, Seattle, WA 98134 address as a branch office.

1.3 Records Location: Respondent Fidelity had an approved records storage location, as of December 21, 2001, of 900 1st Ave. S. Ste 205A, Seattle, WA 98134. Respondent Fidelity's current records storage location is unknown as of the date of this Statement of Charges.

1.4 Misleading Borrowers and Engaging in Unfair and Deceptive Practices: The Department received 14 consumer complaints in August and September of 2003 directly related to the Respondents failure to fund consumers mortgage loans. Between April 24, 2003 and June 2, 2003, eight of these consumers applied for mortgage loans with Respondent Fidelity, and entered into interest rate lock agreements with Respondent Fidelity. These eight consumers went to an escrow company and signed documents with the understanding they were closing their loans.

A. Consumer Flora Cohansedgh's (Consumer Cohansedgh). Consumer Cohansedgh's loan application and rate lock agreement were dated May 30, 2003. Consumer Cohansedgh's rate lock agreement was for 5.25% for a thirty-year fixed-rate mortgage loan. Consumer Cohansedgh went to an escrow company on June 27, 2003 and signed loan documents. Consumer Cohansedgh was under the impression her loan had closed and was told that her loan would fund in two to three days. Consumer Cohansedgh stated she was told by the Escrow Officer not to make the July 2003 mortgage payment due to her current mortgage holder because Respondent Fidelity was going to be the new mortgage holder. Shortly after closing, Consumer Cohansedgh went on a two-week vacation. Consumer Cohansedgh received a late notice from her current mortgage holder after she returned. Cohansedgh called Respondent Fidelity and was assured that everything was fine with her loan. Consumer Cohansedgh received a letter from Respondent Fidelity, signed by Respondent Brittenham, dated August 1, 2003, in which Respondent Fidelity informed Consumer Cohansedgh the loan would not be funded. After August 1, 2003, Respondent Fidelity offered Consumer Cohansedgh a thirty year fixed rate mortgage loan at 6.75%. Consumer Cohansedgh ultimately did not refinance her property because the rates had increased so much between when she locked her rate and Respondent Fidelity failed to fund the loan. Consumer Cohansedgh paid a late fee of $150 to her mortgage company and a $400 appraisal

fee to an appraiser. Respondent Fidelity promised to refund those fees to Consumer Cohansedgh and has failed to do so.

B. Consumer David Hogan (Consumer Hogan). Consumer Hogan's loan application and interest rate lock agreement were both dated June 2, 2003. Consumer Hogan's rate lock agreement was for 5.5% on a thirty-year fixed-rate mortgage. On July 28, 2003, Consumer Hogan went to an escrow company, signed loan documents, and left with the understanding that his loan had closed . Consumer Hogan stated he was told by the Escrow Officer not to make the next mortgage payment due to the current mortgage holder, as Respondent Fidelity would be purchasing the loan. Consumer Hogan had no idea there were any problems with his loan until he received a letter from Respondent Fidelity, signed by Respondent Brittenham, dated August 1, 2003, indicating his loan was not going to fund. Consumer Hogan consulted a lawyer and in October of 2003 Respondent Fidelity honored the 5.5% rate at which he had originally locked his loan. Consumer Hogan reports that he did not suffer any direct financial loss.

C. Consumer Dean Moorehead (Consumer Moorehead). Consumer Moorehead's loan application was dated June 1, 2003, and his interest rate lock agreement was dated June 4, 2003. Consumer Moorehead's interest rate lock was for 5.5% for a thirty-year fixed-rate mortgage. Consumer Moorehead went to an escrow company and signed loan documents and left with the understanding that his loan had closed. Consumer Moorehead was unaware of any problems with his loan closing until he received a letter from Respondent Fidelity, signed by Respondent Brittenham, dated August 1, 2003, indicating his loan was not going to fund. Respondent Fidelity told Consumer Moorehead they would not honor the rate at which he had locked his loan. Consumer Moorehead stated that by the time Respondent Fidelity informed him his loan was not going to fund the rates had climbed so high it no longer made financial sense to refinance his loan. Consumer Moorehead still has

the same 6.79% thirty-year-fixed rate mortgage he had when he applied for his loan with Respondent Fidelity.

D. Consumer Dan Mythens (Consumer Mythens). Consumer Mythens loan application and interest rate lock agreement were dated June 1, 2003. Consumer Mythen's interest rate lock was at 5.5% for a thirty-year fixed-rate mortgage. Consumer Mythens went to an escrow company on June 28, 2003, and signed loan documents. Consumer Mythens left the escrow company under the impression his loan had closed and would fund in a matter of days because Respondent Fidelity stressed that they would close consumer loans quickly, even using a web address of "www.10dayclose.com". Consumer Mythens contacted Respondent Fidelity after he did not receive any information in the mail about his new loan. Respondent Fidelity assured Consumer Mythens there was no problem with his loan. Consumer Mythens stated he spoke with Branch Manager Ron Greene, who told him the delay was due to capacity problems related to the volume of loans they were processing. Consumer Mythens received a letter from Respondent Fidelity, signed by Respondent Brittenham, dated August 1, 2003, indicating his loan was not going to fund. Consumer Mythens contacted Respondent Fidelity and was told they were not going to honor the interest rate in the interest rate lock agreement and that they offered him a thirty-year fixed-rate mortgage loan at 7%. Consumer Mythens continued to complain and ultimately went to a second loan closing on August 29, 2003. Respondent Fidelity funded Consumer Mythen's thirty-year fixed-mortgage loan at 6.125%.

E. Consumer Michael Schroeder (Consumer Schroeder). Consumer Schroeder's loan application and interest rate lock agreement are dated May 20, 2003. Consumer Schroeder's interest rate was locked at 5.375% for a thirty-year fixed-rate mortgage. On July 2, 2003, Consumer Schroeder went to an escrow office and signed loan documents. Consumer Schroeder left the escrow office under the impression that his loan had closed and was told his loan would fund within two days

based on the representations of the Escrow Officer. Consumer Schroeder was told by the Escrow Officer not to make the July payment to his current mortgage holder because Respondent Fidelity was going to be the new mortgage holder. Consumer Schroeder received a late notice, which included a late fee, from his current mortgage holder and called Respondent Fidelity. Respondent Fidelity assured Consumer Schroeder his loan would fund. Consumer Schroeder stated Respondent Fidelity told him the main office was backed up because business was so good. Consumer Schroeder received a letter from Respondent Fidelity, signed by Respondent Brittenham, dated August 1, 2003, informing him his loan was not going to fund. Consumer Schroeder complained to Respondent Fidelity and, on November 3, 2003, went to a second loan closing. Respondent Fidelity funded Consumer Schroeder's loan at an interest rate of 5.75% for a thirty-year fixed-rate mortgage and paid his July 2003 late fee.

F. Consumer John Donovan (Consumer Donovan). Consumer Donovan's loan application and interest rate lock agreements are dated June 3, 2003. Consumer Donovan's interest rate was locked at 5.5% for a thirty-year fixed-rate mortgage loan. On July 9, 2003, Consumer Donovan went to an escrow office and signed loan documents and left with the understanding his loan had closed. Consumer Donovan was told bythe Escrow Officer not to make the July mortgage payment to the current mortgage holder because Respondent Fidelity was going to be the new mortgage holder. Consumer Donovan received a late payment notice, which included a $79 late fee, from his mortgage holder because he missed the July payment. Respondent Fidelity assured Consumer Donovan that Respondent Fidelity would pay his late fee. Respondent Fidelity never paid Consumer Donovan for the late fee. Consumer Donovan wanted to refinance his house to lower his interest rate to eliminate the need for mortgage insurance. Consumer Donovan received a letter from Respondent Fidelity, signed by Respondent Brittenham, dated August 1, 2003, indicating that his loan was not going to fund. Consumer Donovan stated that the rates had risen so high it no longer made

financial sense to refinance his loan. Consumer Donovan complained to Respondent Fidelity, and Respondent Fidelity promised to pay Consumer Donovan's $400 appraisal fee. Respondent Fidelity has not paid Consumer Donovan for the $400 appraisal fee. Consumer Donovan is still paying an interest rate of 6.125%, which is the same rate he was paying when he applied for the loan with Respondent Fidelity.

G. Consumer Scott Hughes (Consumer Hughes). Consumer Hughes' loan application and interest rate lock agreement are dated April 24, 2003. Consumer Hughes' interest rate was locked at 5.875% for a thirty-year fixed-rate mortgage loan. Consumer Hughes went to an escrow company on July 25, 2003 and signed loan documents. Consumer Hughes left under the impression that his loan had closed. Consumer Hughes received a letter from Respondent Fidelity, signed by Respondent Brittenham, dated August 1, 2003, indicating his loan was not going to fund. Consumer Hughes looked for the best available rate and on September 16, 2003, Consumer Hughes refinanced his mortgage loan with an interest rate of 6.125%. Consumer Hughes provided documentation to the Department seeking reimbursement of $2.600.50 for out-of-pocket expenses related to Respondent Fidelity's failure to fund his loan.

H. Consumer Arthur Gaebel (Consumer Gaebel). Consumer Gaebel's loan application and interest rate lock agreement are dated May 29, 2003. Consumer Gaebel's interest rate was locked at 5.5% for a thirty-year fixed-rate mortgage. A representative from an escrow company came to Consumer Gaebel's home on June 27, 2003, and he signed loan documents. Consumer Gaebel was under the impression that his loan had closed. Respondent Fidelity sent Consumer Gaebel a letter, signed by Respondent Brittenham, dated August 1, 2003, indicating that Respondent Fidelity was not going to fund his loan. Consumer Gaebel went with another mortgage company and on September 4, 2003, refinanced his mortgage loan at an interest rate of 6%.

I. Harm to Consumers. The affected Consumers had similar experiences with Respondent Fidelity. Consumers heard radio advertisements Respondent Fidelity was airing in May and June of 2003 promising low rate, no cost mortgage refinance loans. As their closings became delayed, Respondent Fidelity assured the Consumers there were no problems with their loans and promised to extend rate locks as they expired. After closing their loans, delays in funding became apparent when Consumers received late payment notices from their current mortgage holders or the promised paperwork and payment books failed to arrive. Respondent Fidelity told Consumers that there was nothing wrong, that their loans would fund, and that Respondent Fidelity would pay any late charges. Respondent Fidelity told Consumers that the delay was a result of the volume of loans they were processing and paper work waiting to be completed. When told by Respondent Fidelity that their loans were not going to fund, Respondent Fidelity informed the Consumers that the interest rates at which they had locked were no longer available.

With some Consumers Respondent Fidelity did honor the interest rate that was promised in the rate lock, after considerable time and effort by the Consumers. Other Consumers settled with Respondent Fidelity at a higher rate than promised in the rate lock agreement in an effort to minimize their losses. Some Consumers gave up dealing with Respondent Fidelity and refinanced with another lender at a higher rate than promised in the rate lock agreement or abandoned refinancing their mortgage loan all together. If Respondent Fidelity had informed the Consumers that Respondent Fidelity was having trouble actually funding their loans, as opposed to experiencing a delay caused by the volume of loans being processed, the Consumers would have switched to another mortgage broker to take advantage of the historically low rates the market was experiencing at the time.

J. Respondents' awareness of inability to fund loans. During this same period of time, Respondent Fidelity was having trouble obtaining credit. In the course of an administrative

action before the Arizona Division of Banks, in February 2004, Respondent Fidelity produced evidence that from late April or early May, through the months of June and July, investors had frozen Respondent Fidelity's lines of credit for various lengths of time resulting in funding delays of between thirty and sixty days. (See, Appendix 2). Respondents at no time informed the consumers of the true status of their loans and the nature and extent of the Respondents' inability to fund their loans, thereby denying the consumers the opportunity to get an advantageous interest rate elsewhere.

1.5 Failure to Maintain Bond: On September 28, 2004, the Department received notice from Hartford Fire Insurance Co. that Respondent Fidelity's surety bond had been cancelled, effective August 30, 2004. To date, Respondents have failed to notify the Department of the cancellation of the surety bond and have failed to provide the required surety bond or an approved alternative.

1.6 Failure to Pay Main Office Annual Assessments: An annual assessment fee for the main office certificate is due to the Department no later than the last business day for the year then ended. To date, the Department has not received the annual assessment due from Respondents for 2004, totaling $530.86.

1.7 Failure to Pay Branch Annual Assessments: An annual assessment fee for each branch office certificate is due to the Department no later than the last business day for the year then ended. To date, the Department has not received the annual assessments due from Respondents for 2003 and 2004, totaling $1061.72.

1.8 On-Going Investigation: The Department's investigation into the alleged violations of the Act by Respondents continues to date.

II. GROUNDS FOR ENTRY OF ORDER

2.1 Unfair or Deceptive Practices: Pursuant to RCW 19.146.0201(1), (2), (3), and (7), a mortgage broker required to be licensed may not employ any scheme, device, or artifice to defraud or mislead borrowers, engage in any unfair or deceptive practice towards any person, or obtain property by fraud or misrepresentation. Based on the information contained in the Factual Allegations of paragraph 1.4 above, Respondents Fidelity, Nicholas Haines, and Scott Brittenham are in apparent violation of RCW 19.146.0201(1), (2), (3), and (7).

2.2 Authority to Revoke License: Pursuant to RCW 19.146.220(2)(b)(ii) and (iv), the Director may revoke a license for failure to pay a required fee or maintain the required bond or for a violation of RCW 19.146.0201(1), (2), (3), (6), and (7) and 19.146.205(4). Pursuant to WAC 208-660-160(1), (2), (3), (5), (6), (7), and (14), the Director may revoke a license if the Respondents: (1) have failed to pay a fee due to the state in accordance with the Mortgage Broker Practices Act; (2) have not filed the required surety bond or approved alternative or otherwise complied with RCW 19.146.205(4); (3) have 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; (5) have 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; (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; and, (14) has performed an act of misrepresentation or fraud in any aspect of the conduct of the mortgage broker business or profession. Based on the information contained in the Factual Allegations of paragraphs

above, the Respondents are in apparent violation of RCW 19.146.0201 (1), (2), (3), (6), and (7), RCW 19.146.205(4), and WAC 208-660-160(1), (2), (3), (5), (6), (7), and (14).

2.3 Authority to Impose Fine: Pursuant to RCW 19.146.220(2)(c) and WAC 208-660-165, the Director may impose fines on a licensee that violates RCW 19.146.0201(1) through (9) or (12), RCW 19.146.030 through RCW 19.146.080, RCW 19.146.200, or RCW 19.146.205(4).

2.4 Authority to Prohibit from the Industry: Pursuant to RCW 19.146.220(2)(e)(i), 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 violates RCW 19.146.0201(1) through (9) or (12), RCW 19.146.030 through RCW 19.146.080, RCW 19.146.200, or RCW 19.1465.205(4).

2.5 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.

2.6 Authority to Order Payment of Restitution: Pursuant to RCW 19.146.220(2)(d)(ii), the Director may issue an order directing a licensee, its employee or loan originator to pay restitution to an injured borrower.

2.7 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.

2.8 Disclosure 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) 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, and failing to notify the Director in writing within five days after a change in mailing address or telephone number.

III. NOTICE OF INTENTION TO ENTER ORDER

Respondents Fidelity Mortgage Corporation, Nicholas Haines, and Scott Brittenham's 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 Fidelity's license to conduct the business of a Mortgage Broker be revoked; and

3.2 Respondents Fidelity Mortgage Corporation, Nicholas Haines, and Scott Brittenham jointly and severally pay the cumulative delinquent main office Annual Assessments due through December 31, 2004 totaling $530.86, as calculated in Section 1.6. Further, Respondents Fidelity Mortgage Corporation and Nicholas Haines jointly and severally pay the cumulative branch office Annual Assessments through December 31, 2004, totaling $1061.72 as calculated in section 1.7.

3.3 Respondents Fidelity Mortgage Corporation, Nicholas Haines, and Scott Brittenham jointly and severally pay a fine of $55,500 for: eight violations of RCW 19.146.0201(1), (2), (3), and (7) calculated at $100 per day per violation per consumer from the date of application to the date of Respondent Fidelity's denial of funding, totaling $55,500;

3.4 Respondents Fidelity Mortgage Corporation, Nicholas Haines and Scott Brittenham jointly and severally pay restitution to injured borrowers that resulted from Respondents' failure to fund loans, as established at hearing.

3.5 Respondents Nicholas Haines and Scott Brittenham 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;

3.6 Respondents Fidelity Mortgage Corporation, Nicholas Haines, and Scott Brittenham jointly and severally pay an investigation fee in the amount of $2,771.24 calculated at $47.78 per hour for Fifty Eight (58) staff hours devoted to the investigation; and

3.7 Respondents Fidelity Mortgage Corporation, Nicholas Haines, and Scott Brittenham jointly and severally pay a fine of $3000, calculated at $100 per day for thirty days, for failing to maintain the required bond or approved alternative.

3.8 Respondents Fidelity Mortgage Corporation, Nicholas Haines and Scott Brittenham must file and maintain records in compliance with the Act and provide the Department with the location of the books, records and other information relating to Respondents Fidelity, Nicholas Haines and Scott Brittenham's mortgage broker business, and the name, address and telephone number of the individual responsible for maintenance of such records in compliance with the Act.

IV. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Collect Annual Assessments, Impose Fines, Prohibit From Industry, Pay Restitution, 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 License, Collect Annual Assessments, Impose Fines, Prohibit From Industry, Pay Restitution and Collect Investigation Fee.

Dated this 12th day of November, 2004.

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

Presented by:

Ned Jursek
Financial Legal Examiner

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APPENDIX 1

And

APPENDIX 2

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 19.146.0201 (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;

(10) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest or otherwise fail to comply with any requirement of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and Regulation X, 24 C.F.R. Sec. 3500, or the equal credit opportunity act, 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12, as now or hereafter amended, in any advertising of residential mortgage loans or any other mortgage brokerage activity;

(11) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;

(12) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or 19.146.040;

(13)(a) Except when complying with (b) and (c) of this subsection, to act as a mortgage broker in any transaction (i) in which the mortgage broker acts or has acted as a real estate broker or salesperson or (ii) in which another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson;

(b) Prior to providing mortgage broker services to the borrower, the mortgage broker, in addition to other disclosures required by this chapter and other laws, shall provide to the borrower the following written disclosure:

THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LICENSED MORTGAGE BROKER, AND WOULD LIKE TO PROVIDE MORTGAGE BROKERAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY. YOU ARE NOT REQUIRED TO USE ME AS A MORTGAGE BROKER IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

(c) A real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker shall carry on such mortgage brokerage business activities and shall maintain such person's mortgage brokerage business records separate and apart from the real estate brokerage activities conducted pursuant to chapter 18.85 RCW. Such activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address, so long as each business is clearly identified by a sign visible to the public, each business is physically separated within the office facility, and no deception of the public as to the separate identities of the brokerage business firms results. This subsection (13)(c) shall not require a real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker to maintain a physical separation within the office facility for the conduct of its real estate and mortgage brokerage activities where the director determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage broker and is unnecessary for the protection of the public; or

(14) Fail to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

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

RCW 19.146.030 Written disclosure of fees and costs -- Rules -- Contents -- Lock-in agreement terms -- Excess fees limited.

(1) Within three business days following receipt of a loan application or any moneys from a borrower, a mortgage broker shall provide to each borrower a full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker and other such disclosures as may be required by rule. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable. This subsection shall not be construed to require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

(2) The written disclosure shall contain the following information:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase. Disclosure in compliance with the requirements of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be deemed to comply with the disclosure requirements of this subsection;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of the real estate settlement procedures act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec. 3500, as now or hereafter amended, shall be deemed to comply with the disclosure requirements of this subsection;

(c) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change;

(d) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(e) Whether and under what conditions any lock-in fees are refundable to the borrower; and

(f) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

(3) If subsequent to the written disclosure being provided under this section, a mortgage broker enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, then no less than three business days thereafter including Saturdays, the mortgage broker shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which shall include a copy of the disclosure made under subsection (2)(c) of this section.

(4) A mortgage broker shall not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the written disclosure pursuant to this section, unless (a) the need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided and (b) the mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. However, if the borrower's closing costs, excluding prepaid escrowed costs of ownership as defined by rule, does not exceed the total closing costs in the most recent good faith estimate, no other disclosures shall be required by this subsection.

[1997 c 106 § 4; 1994 c 33 § 18; 1993 c 468 § 12; 1987 c 391 § 5.]

RCW 19.146.040 Written contract required -- Written correspondent or loan brokerage agreement required.
(1) Every contract between a mortgage broker and a borrower shall be in writing and shall contain the entire agreement of the parties.

(2) A mortgage broker shall have a written correspondent or loan brokerage agreement with a lender before any solicitation of, or contracting with, the public.

[1994 c 33 § 19; 1987 c 391 § 6.]

RCW 19.146.050 Moneys for third-party provider services deemed in trust -- Deposit of moneys in trust account -- Use of trust account -- Rules -- Tax treatment.
*** CHANGE IN 2003 *** (SEE 5758.SL) ***
All moneys received by a mortgage broker from a borrower for payment of third-party provider services shall be deemed as held in trust immediately upon receipt by the mortgage broker. A mortgage broker shall deposit, prior to the end of the third business day following receipt of such trust funds, all such trust funds in a trust account of a federally insured financial institution located in this state. All trust account funds collected under this chapter must remain on deposit in a trust account in the state of Washington until disbursement. The trust account shall be designated and maintained for the benefit of borrowers. Moneys maintained in the trust account shall be exempt from execution, attachment, or garnishment. A mortgage broker shall not in any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds. Withdrawals from the trust account shall be only for the payment of bona fide services rendered by a third-party provider or for refunds to borrowers. The director shall make rules which: (1) Direct mortgage brokers how to handle checks and other instruments that are received by the broker and that combine trust funds with other funds; and (2) permit transfer of trust funds out of the trust account for payment of other costs only when necessary and only with the prior express written permission of the borrower. Any interest earned on the trust account shall be refunded or credited to the borrowers at closing. Trust accounts that are operated in a manner consistent with this section and any rules adopted by the director, are not considered gross receipts taxable under chapter 82.04 RCW.

[1998 c 311 § 1; 1997 c 106 § 5; 1987 c 391 § 7.]

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RCW 19.146.060 Accounting requirements.
(1) A mortgage broker shall use generally accepted accounting principles.

(2) Except as otherwise provided in subsection (3) of this section, a mortgage broker shall maintain accurate and current books and records which shall be readily available at the mortgage broker's usual business location until at least twenty-five months have elapsed following the effective period to which the books and records relate.

(3) Where a mortgage broker's usual business location is outside of the state of Washington, the mortgage broker shall, as determined by the director by rule, either maintain its books and records at a location in this state, or reimburse the director for his or her expenses, including but not limited to transportation, food, and lodging expenses, relating to any examination or investigation resulting under this chapter.

(4) "Books and records" includes but is not limited to:

(a) Copies of all advertisements placed by or at the request of the mortgage broker which mention rates or fees. In the case of radio or television advertisements, or advertisements placed on a telephonic information line or other electronic source of information including but not limited to a computer data base or electronic bulletin board, a mortgage broker shall keep copies of the precise script for the advertisement. All advertisement records shall include for each advertisement the date or dates of publication and name of each periodical, broadcast station, or telephone information line which published the advertisement or, in the case of a flyer or other material distributed by the mortgage broker, the dates, methods, and areas of distribution; and

(b) Copies of all documents, notes, computer records if not stored in printed form, correspondence or memoranda relating to a borrower from whom the mortgage broker has accepted a deposit or other funds, or accepted a residential mortgage loan application or with whom the mortgage broker has entered into an agreement to assist in obtaining a residential mortgage loan.

[1997 c 106 § 6; 1994 c 33 § 20; 1987 c 391 § 8.]

RCW 19.146.070 Fee, commission, or compensation -- When permitted.
(1) Except as otherwise permitted by this section, a mortgage broker shall not receive a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed upon by the borrower and mortgage broker.

(2) A mortgage broker may:

(a) If the mortgage broker has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed upon by the borrower and the mortgage broker, and the borrower fails to close on the loan through no fault of the mortgage broker, charge a fee not to exceed three hundred dollars for services rendered, preparation of documents, or transfer of documents in the borrower's file which were prepared or paid for by the borrower if the fee is not otherwise prohibited by the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended; or

(b) Solicit or receive fees for third party provider goods or services in advance. Fees for any goods or services not provided must be refunded to the borrower and the mortgage broker may not charge more for the goods and services than the actual costs of the goods or services charged by the third party provider.

[1993 c 468 § 13; 1987 c 391 § 9.]

RCW 19.146.080 Borrowers unable to obtain loans -- Mortgage broker to provide copies of certain documents -- Conditions -- Exceptions.
Except as otherwise required by the United States Code or the Code of Federal Regulations, now or as amended, if a borrower is unable to obtain a loan for any reason and the borrower has paid for an appraisal, title report, or credit report in full, the mortgage broker shall give a copy of the appraisal, title report, or credit report to the borrower and transmit the

originals to any other mortgage broker or lender to whom the borrower directs that the documents be transmitted. Regardless of whether the borrower has obtained a loan, the mortgage broker must provide the copies or transmit the documents within five days after the borrower has made the request in writing.

[1997 c 106 § 7; 1987 c 391 § 10.]

RCW 19.146.200 License -- Required -- Independent contractor -- Suit or action as mortgage broker -- Display of license.

(1) A person may not engage in the business of a mortgage broker, except as an employee of a person licensed or exempt from licensing, without first obtaining and maintaining a license under this chapter. However, a person who independently contracts with a licensed mortgage broker need not be licensed if the licensed mortgage broker and the independent contractor have on file with the director a binding written agreement under which the licensed mortgage broker assumes responsibility for the independent contractor's violations of any provision of this chapter or rules adopted under this chapter; and if the licensed mortgage broker's bond or other security required under this chapter runs to the benefit of the state and any person who suffers loss by reason of the independent contractor's violation of any provision of this chapter or rules adopted under this chapter.

(2) A person may not bring a suit or action for the collection of compensation as a mortgage broker unless the plaintiff alleges and proves that he or she was a duly licensed mortgage broker, or exempt from the license requirement of this chapter, at the time of offering to perform or performing any such an act or service regulated by this chapter. This subsection does not apply to suits or actions for the collection or compensation for services performed prior to October 31, 1993.

(3) The license must be prominently displayed in the mortgage broker's place of business.

[1997 c 106 § 8; 1994 c 33 § 7; 1993 c 468 § 5.]

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.

(2) The director may exchange fingerprint data with the federal bureau of investigation.

(3) At the time of filing an application for a license under this chapter, each applicant shall pay to the director the appropriate application fee in an amount determined by rule of the director in accordance with RCW 43.24.086 to cover, but not exceed, the cost of processing and reviewing the application. The director shall deposit the moneys in the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case the director shall deposit the moneys in the consumer services account.

(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.

(b) In lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit, an irrevocable letter of credit, or such other instrument as approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.

(c) In lieu of the surety bond or compliance with (b) of this subsection, an applicant may obtain insurance or coverage from an association comprised of mortgage brokers that is organized as a mutual corporation for the sole purpose of insuring or self-insuring claims that may arise from a violation of this chapter. An applicant may only substitute coverage under this subsection for the requirements of (a) or (b) of this subsection if the director, with the consent of the insurance commissioner, has authorized such association to organize a mutual corporation under such terms and conditions as may be imposed by the director to ensure that the corporation is operated in a financially responsible manner to pay any claims within the financial responsibility limits specified in (a) of this subsection.

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

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;

(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 through19.146.080, 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), or19.146.265; 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 RCW19.146.005.

[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

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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 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 208-660-060 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.

(2) The monthly average number of loan originators is calculated as follows:

(a) If the applicant or licensee has not been in the mortgage broker business at any time during the preceding twelve months, the monthly average number of loan originators is determined by adding up the projected number of loan originators to be employed or engaged each month for the first twelve months during which the applicant or licensee will do business, and dividing this total by twelve. The projected number of loan originators must reflect at least the actual number of originators at the inception of business.

(b) If the applicant or licensee has not been in the mortgage broker business at least some portion of each of the preceding twelve months, the monthly average number of loan originators is calculated by adding up the number of loan originators employed or engaged each month (or part thereof) for the number of months the applicant or licensee has been in business during the twelve-month period, and the projected number of loan originators to be employed or engaged each month for any additional months necessary to comprise a total of twelve months (or part thereof), and dividing this total by twelve.

(c) Otherwise, the monthly average number of loan originators as calculated by adding up the number of loan originators employed or engaged each month (or part thereof) for the previous twelve months, and dividing this total by twelve.

(3) Based upon the monthly average number of loan originators, the required surety bond amount is indicated by the following table:

Monthly Average Number of Loan Originators	Minimum Required Bond Amount
up to 3.0	$20,000
more than 3.0, up to 6.0	$30,000
more than 6.0, up to 9.0	$40,000
more than 9.0, up to 15.0	$50,000
more than 15.0	$60,000

When calculating the required bond amount, an applicant or licensee shall use the worksheet form approved by the director.

(4) At least forty-five days prior to each anniversary of the issuance of the surety bond or approved alternative, each licensee shall calculate its required bond amount in accordance with subsections (2) and (3) of this section. If the required

surety bond amount has changed, then the licensee shall within thirty days of the date of the calculation, file a new surety bond or approved alternative in the required amount or file documentation showing a change in the amount of the existing bond or alternative to the required amount.

(5) Each licensee shall use the bond form, assignment of certificate of deposit form, or irrevocable letter of credit form approved by the director.

[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

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(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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