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: DAMEON V. SIMS, Respondent.	NO. C-04-075-05-SC02 **AMENDED** STATEMENT OF CHARGES and NOTICE OF INTENTION TO ENTER AN ORDER TO IMPOSE FINE, ORDER 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.

After conducting an investigation pursuant to RCW 19.146.235, and based upon the facts available as of August 19, 2004, the Director issued Statement of Charges and Notice of Intention to Enter an Order to Impose Fine, Prohibit from Industry, and Collect Investigation Fee C-04-075-04-SC01 (Statement of Charges SC01) on August 19, 2004. Respondent Dameon V. Sims was served with Statement of Charges SC01 on August 20, 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 August 9, 2005, 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 Impose Fine, Order Restitution, Prohibit from Industry, and Collect Investigation Fee C-04-075-05-SC02, which includes the following modifications: increasing the residential mortgage loans discussed in paragraph 1.3; adding Factual Allegations in Paragraphs 1.4 and 1.5; and modifying the Grounds for Entry of Order (Section II) and Notice of Intention to Enter Order (Section III) pursuant to the modifications to the Factual Allegations in Section I.

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I. FACTUAL ALLEGATIONS

1.1 Respondent: Dameon V. Sims is known to have conducted the business of a mortgage broker at the following location:

10900 NE 4th Street, Ste 2300
Bellevue, WA 98004

1.2 License: To date, Respondent has never applied for, or received, a license from the Department of Financial Institutions of the State of Washington (Department) to conduct the business of a mortgage broker.

1.3 Unlicensed Activity:

A. Beginning in or around January 2003, Respondent began holding himself out to the public as a loan originator for America One Finance, Inc. (America One) at the address listed in paragraph 1.1 above. The Respondent and America One have never had an independent contractor agreement on file with the Department, as required under RCW 19.146.200 for such a relationship to be a valid exception to licensure. The Department has no evidence that such an agreement ever existed, and America One denies ever having had an employment relationship with Respondent. America One is currently licensed by the Department to conduct the business of a mortgage broker, however to date, America One has never applied for, or received, a license from the Department to conduct the business of a mortgage broker at the address listed in paragraph 1.1 above.

On or around January 26, 2004, Respondent interviewed Carol A. Connor (Connor) in Respondent's office at the address listed in paragraph 1.1 above, completed a Uniform Residential Loan Application form on her behalf, obtained her credit report, and provided her with a Good Faith Estimate statement and Truth In Lending Disclosure statement. On or around March 11, 2004, Connor signed closing documents in Respondent's office at the address listed in paragraph 1.1 above. Respondent forwarded these documents to the settlement agent, Lawyers Title Agency of Washington (Lawyers Title). On or around March 16, 2004, Lawyers Title closed the residential mortgage loan originated by Respondent for Connor. America One received a loan origination fee of two thousand five hundred seventeen dollars and fifty cents ($2,517.50) for this loan. Lawyers Title forwarded Connor's proceeds, and America One's origination fee, to Respondent's attention at the address listed in paragraph 1.1 above.

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B. In or around March 2004, Respondent became an independent contractor with Silver Lake Mortgage, Inc. dba Hometown Lending (Silver Lake). During a visit by Department personnel on June 29, 2004 to the address listed in paragraph 1.1 above, Respondent provided Department personnel with a business card listing Respondent as "Branch Manager" for "Hometown Lending" at the address listed in paragraph 1.1 above. Silver Lake is currently licensed by the Department to conduct the business of a mortgage broker, however to date, Silver Lake has never applied for, or received, a license from the Department to conduct the business of a mortgage broker at the address listed in paragraph 1.1 above.

Between March 1, 2004 and December 9, 2004, Respondent assisted at least fourteen (14) borrowers in applying to obtain residential mortgage loans on property located in the State of Washington from the unlicensed location discussed in paragraph 1.1. Respondent assisted at least eleven (11) of these borrowers in obtaining residential mortgage loans. The borrowers involved in these residential mortgage loans paid fees to Silver Lake totaling at least fifty-one thousand six hundred forty-five dollars ($51,645.00).

1.4 Prohibited Acts:

A. The following events transpired in relation to the Connor residential mortgage loan discussed in paragraph 1.3A above.

1. On or around March 5, 2004, Respondent provided Lawyers Title with a twenty-three thousand five hundred eighty dollar and fifty-four cent ($23,580.54) invoice from "NC Services" to be paid out of the proceeds from the Connor loan. The invoice was dated February 18, 2004, listed "Description of Fees" as "Consulting and Management Fee," listed "Remit Payment to" address as "677 120th Ave NE, Ste 237, Bellevue, WA 98055", and listed "Fax:" as "206-203-3206."
2. On March 16, 2004, Lawyers Title attempted to deliver a check to the address listed on the NC Services invoice, but the courier was unable to deliver it, noting that the address appeared to be a Post Net store. On March 17, 2004, Lawyers Title contacted Connor to obtain alternate delivery instructions, and was informed by Connor that she had no

knowledge of the invoice. On March 18, 2004, Connor signed a letter on Lawyers Title letterhead stating that she had no knowledge of the NC Services invoice submitted to Lawyers Title by Respondent.

3. On June 29, 2004, Respondent provided a sworn statement to Department personnel declaring that Respondent originated the NC Services invoice and provided it to Lawyers Title in an attempt to get money for living expenses and to pay back a borrower from a previous transaction, Respondent provided no services to Connor to support the invoice, and Connor had no knowledge of the invoice.

4. Respondent pled guilty to one felony count of Attempted Theft in the First Degree related to the Connor loan, and on May 6, 2005, Respondent was sentenced in King County Superior Court, Cause No. 05-1-04346-2 SEA, for this criminal charge.

B. The following events transpired in relation to the residential mortgage loans discussed in paragraph 1.3B above.

1. In at least one (1) of the residential mortgage loans discussed in paragraph 1.3B, the purchase price was fraudulently inflated so that the seller paid at least forty-two thousand four hundred fifty-five dollars ($42,455.00) at closing for non-existent property improvements. These fees were paid to a fraudulent improvement provider who originally applied as a co-borrower on the loan and who later obtained a residential mortgage loan, also originated by Respondent, claiming to be a flight attendant. The fraudulent improvement provider subsequently paid at least twelve thousand four hundred fifty-five dollars ($12,455.00) of these fees to Respondent for "consultant fees" and at least five thousand six hundred dollars ($5,600.00) of these fees to the seller.

2. In at least one (1) of the residential mortgage loans discussed in paragraph 1.3B, the purchase price was fraudulently inflated so that the sellers paid at least nine thousand nine hundred dollars ($9,900.00) at closing to a mortgage broker working with Respondent at

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the unlicensed location discussed in paragraph 1.1. The payment was made to the mortgage broker's sole proprietorship, which was doing business under a fictitious name or "dba."

3. In at least one (1) of the residential mortgage loans discussed in paragraph 1.3B, an attempt was made to fraudulently inflate the purchase price and have the sellers pay at least seventeen thousand eight hundred seventy-five dollars ($17,875.00) at closing for non-existent property improvements. These fees were to be paid to a fraudulent improvement provider who was actually the spouse of the borrower and who appears to be a professional opera singer.

4. In at least four (4) of the residential mortgage loans discussed in paragraph 1.3B, borrower income was fraudulently overstated.

1.5 Prohibited Fees:

A. As stated in paragraph 1.3A above, Respondent provided a Good Faith Estimate to Connor on or around January 26, 2004. This Good Faith Estimate disclosed five thousand five hundred twenty-five dollars ($5,525.00) in total fees inuring to the benefit of the mortgage brokers involved. The Final Settlement Statement (HUD-1) listed twenty-nine thousand three hundred fifteen dollars and fifty-four cents ($29,315.54) in total fees inuring to the benefit of the mortgage brokers involved, including the twenty-three thousand five hundred eighty dollar and fifty-four cent ($23,580.54) NC Services invoice submitted by Respondent discussed in paragraph 1.4 above. Respondent provided Connor with no written explanation of the fees exceeding those disclosed in the initial Good Faith Estimate.

B. In the course of originating the residential mortgage loan discussed in paragraph 1.4B1, Respondent provided a Good Faith Estimate to the borrower on or around May 27, 2004. This Good Faith Estimate disclosed eleven thousand forty-five dollars ($11,045.00) in total fees inuring to the benefit of the mortgage brokers involved. The Final HUD-1 listed twenty-three thousand seven hundred seventy dollars ($23,770.00) in total fees inuring to the benefit of the mortgage brokers involved, including the twelve thousand

four hundred fifty-five dollars ($12,455.00) that was subsequently paid to Respondent out of the forty-two thousand four hundred fifty-five dollar ($42,455.00) invoice submitted by the fraudulent improvement provider, as discussed in paragraph 1.4B1. Respondent provided this borrower with no written explanation of the fees exceeding those disclosed in the initial Good Faith Estimate.

C. In the course of originating the residential mortgage loan discussed in paragraph 1.4B2, Respondent provided a Good Faith Estimate to the borrowers on or around May 20, 2004. This Good Faith Estimate disclosed four hundred eighty-five dollars ($485.00) in total fees inuring to the benefit of the mortgage brokers involved. The HUD-1 listed eleven thousand six hundred dollars and fifty cents ($11,600.50) in total fees inuring to the benefit of the mortgage brokers involved, including nine thousand nine hundred dollars ($9,900.00) paid to the sole proprietorship of a mortgage broker who was doing business under a fictitious name or "dba" with Respondent from the unlicensed location discussed in paragraph 1.1, as discussed in paragraph 1.4B1. Respondent provided these borrowers with no written explanation of the fees exceeding those disclosed in the initial Good Faith Estimate.

II. GROUNDS FOR ENTRY OF ORDER

2.1 Definition of Mortgage Broker: Pursuant to RCW 19.146.010(12) and WAC 208-660-010(29), "Mortgage Broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan.

2.2 Prohibited Acts: Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.0201(1), (2), (3), (6), (12) and (14) for directly or indirectly employing a scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud any person, engaging in unfair or deceptive practices toward any person, obtaining property by fraud or misrepresentation, failing to make disclosures to loan applicant as required by RCW 19.146.030, charging, attempting to collect, and collecting a fee prohibited by RCW 19.146.030, and failing to comply with any provision of RCW 19.146.030.

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2.3 Prohibited Fees: Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.030(4) for charging a fee inuring to the benefit of a mortgage broker exceeding the fee disclosed on the initial written disclosures without providing the borrower, at least 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.

2.4 Requirement to Obtain and Maintain License: Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.200 for engaging in the business of a mortgage broker without first obtaining and maintaining a license under the Act.

2.5 Requirement to Obtain and Maintain Branch License: Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.265 for engaging in the business of a mortgage broker from a fixed physical location without first obtaining and maintaining a branch license for that fixed physical location under the Act.

2.6 Authority to Impose Fine: Pursuant to RCW 19.146.220(2)(c)(i) and WAC 208-660-165, the Director may impose fines on a licensee, employee or loan originator of the licensee, or other person subject to the Act for any violation of RCW 19.146.0201(1) through (9) or (12), RCW 19.146.030, RCW 19.146.200 or RCW 19.146.265.

2.7 Authority to Order Restitution: Pursuant to RCW 19.146.220(d)(ii), the Director may issue orders directing a licensee, its employee or loan originator, or other person subject to the Act to pay restitution to an injured borrower.

2.8 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 for any violation of RCW 19.146.0201(1) through (9) or (12), RCW 19.146.030, RCW 19.146.200 or RCW 19.146.265.

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2.9 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 or other person subject to the Act, the Department will furnish to the licensee or other person subject to the Act 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.

III. NOTICE OF INTENTION TO ENTER ORDER

Respondent'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 Dameon V. Sims pay a fine of $57,500.00 for
- a. Eight (8) violations of RCW 19.146.0201(1), (2) and (3), each calculated at $100.00 per day for 30 days; and
- b. Violating RCW 19.146.030, calculated at $100.00 per day for 30 days; and
- c. Violating RCW 19.146.200, calculated at $100.00 per day for 30 days; and
- d. Violating RCW 19.146.265, calculated at $100.00 per day for 275 days; and

3.2 Respondent Dameon V. Sims be prohibited from participation in the conduct of the affairs of any licensed mortgage broker, in any manner, for a period of ten (10) years; and

3.3 Respondent Dameon V. Sims pay restitution to all borrowers injured by Respondent's violations of the Act, including at least $22,355.00 to the borrowers discussed in paragraphs 1.4B1 & 2 and 1.5B & C for undisclosed loan fees inuring to the benefit of a mortgage broker; and

3.4 Respondent Dameon V. Sims pay an investigation fee in the amount of $5,972.50 calculated at $47.78 per hour for one hundred twenty-five (125) 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 Impose Fine, Prohibit from Industry and Collect Investigation Fee (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondent may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

Dated this 8th day of August, 2005.

CHUCK CROSS
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

Mark Olson
Financial Examiner

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RCW 19.146.010 Definitions.
Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

...

(12) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan.

...

[1997 c 106 § 1; 1994 c 33 § 3; 1993 c 468 § 2; 1987 c 391 § 3.]

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;

(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;

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(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 19.146.070;

(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 19.146.200 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 19.146.220 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 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 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.]

RCW 19.146.265 Branch offices -- Fee -- Licenses -- Rules.
A licensed mortgage broker may apply to the director for authority to establish one or more branch offices under the same or different name as the main office upon the payment of a fee as prescribed by the director by rule. Provided that the applicant is in good standing with the department, as defined in rule by the director, the director shall promptly issue a duplicate license for each of the branch offices showing the location of the main office and the particular branch. Each duplicate license shall be prominently displayed in the office for which it is issued.

[1997 c 106 § 19; 1994 c 33 § 24; 1993 c 468 § 18.]

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WAC 208-660-010 Definitions.
As used in this chapter, the following definitions apply, unless the context otherwise requires:

...

(29) "Mortgage broker" means any person that for compensation or gain, or in the expectation of compensation or gain:
- Makes a residential mortgage loan or assists a person in obtaining a residential mortgage loan; or
- Holds himself or herself out as being able to do so.

...

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-010, filed 5/29/01, effective 7/1/01. Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-010, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-010, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-010, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-010, filed 1/7/94, effective 2/7/94.]

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 208-660-165 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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