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: MONEY TREE MORTGAGE, INC., and RANDY A. WEBSTER, President and Designated Broker, Respondents.	NO. C-04-099-04-SC01 STATEMENT OF CHARGES and NOTICE OF INTENTION TO ENTER AN ORDER TO REVOKE LICENSE, IMPOSE FINE, PROHIBIT FROM INDUSTRY, ORDER RESTITUTION AND COLLECT INVESTIGATION FEE

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation, and based upon the facts available as of June 25, 2004, the Director institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents:

A. **Money Tree Mortgage, Inc. (Money Tree)** is known to have conducted the business of a mortgage broker at:

665 Molly Lane, Suite 130
Woodstock, Georgia 30189

B. **Randy A. Webster (R. Webster)** is known to be an owner of Respondent Money Tree. R. Webster was named designated broker on July 9, 2002.

1.2 License: Respondent Money Tree was licensed by the Department of Financial Institutions (Department) to conduct business as a mortgage broker on July 9, 2002, and has continued to be licensed to date.

1.3 Trust Monies: As part of the application process, Respondent Money Tree submitted a Mortgage Broker Trust Monies Alternative Certificate of Compliance (Certificate). In this Certificate, Respondent R. Webster swore that Respondent Money Tree would not, at any time, accept monies from a borrower for the purposes of payment for services provided by third parties.

1.4 Taking of Advance Fees from Borrowers: On at least five occasions, Respondents have required that borrowers submit an initial fee, variously called an application or process fee, prior to the processing of the borrowers' loan applications. Respondents did not place these fees into a trust account. The loans did not fund, and Respondents have failed to return the borrowers' money.

1.5 Failure to Provide Required Disclosures: On at least five occasions, Respondents have failed to provide borrowers with any written disclosures regarding their loan applications, including but not limited to: Good Faith Estimates, Truth in Lending Disclosures, rate lock agreements, statements regarding funds to be held in trust, and statements regarding providing third party reports.

1.6 Failure to Respond to Directive Requirement: On December 11, 2003, the Department issued a directive to Respondents by regular mail to Respondent Money Tree's last known address, requiring a response to a complaint filed by Laura Porras, Complaint #13515. To date, the Directive has not been returned by the U.S. Post Office, nor has the Department received a response to its Directive.

1.7 Revocation of Licenses:

A. Effective June 19, 2003, the State of Rhode Island Department of Business Regulation issued an Order Revoking Lender License(s) revoking Respondent Money Tree's lender license. Respondents have not notified the Department of the revocation procedures by the State of Rhode Island.

B. Effective November 26, 2003, the State of Kansas issued an Emergency Order to Revoke Supervised Lender Licenses, to Cease and Desist, and to Pay Fine revoking Respondent Money Tree's supervised lender license. Respondents have not notified the Department of the revocation procedures by the State of Kansas.

1.8 Failure to Notify DFI of Significant Developments:

A. As stated in 1.7 above, to date, Respondents have not notified the Department of the revocation of its licenses by the States of Rhode Island and Kansas.

B. Respondent Money Tree's corporate license, maintained with the office of the Secretary of State, expired on or about May 31, 2004. To date, Respondents have not notified the Department of this change in Respondent Money Tree's status with the Secretary of State, nor has Respondent Money Tree renewed its corporate license.

C. On April 23, 2004, the Department sent a notice to Respondent Money Tree at its last known address, 665 Molly Lane, Suite 130, Woodstock Georgia 30189. That notice was returned by the U.S. Postal Service with the notation that the new mailing address for Respondent Money Tree is PO Box 219, Woodstock, Georgia 30186. To date, Respondents have not notified the Department of this change in mailing address.

1.9 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 Prohibited Acts: Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.0201(1), (2) and (3) for directly or indirectly employing a scheme, device or artifice to defraud or mislead borrowers, engaging in an unfair or deceptive practice toward any person, and obtaining property by fraud or misrepresentation.

2.2 Requirement to Deposit Funds In Trust Account: Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.0201(14), RCW 19.146.050, and WAC 208-660-08010 for failing to deposit monies deemed to have been held in trust into a trust account.

2.3 Charge or Collection of Impermissible Fee: Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.0201(12) and (14), and RCW 19.146.070 for charging an impermissible fee when it collected a fee for the brokering of loans when the borrowers did not

actually obtain a loan from a lender on the terms and conditions agreed upon by the borrower and mortgage broker.

2.4 Requirement to Provided Written Disclosures: Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.030(1) and RCW 19.146.0201(6), (10) and (14) for failing to provide the required written disclosures within three business days following receipt of a loan application.

2.5 Requirement to Notify 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) for failing to notify the Director in writing within thirty days after the receipt of notification of license revocation procedures against Respondents by the States of Rhode Island and Kansas. Respondents are also in apparent violation of WAC 208-660-150(3) for failing to notify the Director in writing five days after a change in standing with the state of Washington Secretary of State or a change in mailing address.

2.6 Authority to Revoke License: Pursuant to RCW 19.146.220(2)(b)(i), (iii) and (iv) and RCW 19.146.220(3), and WAC 208-660-160(3), (7), (13) and (15), the Director may revoke a license for violations of RCW 19.146.0201(1) through (9), for failure to comply with any directive or order of the Director, failure to cooperate with the Department, revocation of Respondent's license to do lender business in the any other state, and violations of the provisions of the Act.

2.7 Authority to Impose Fine: Pursuant to RCW 19.146.220(2)(c)(i) and (ii), the Director may impose a fine for violation of RCW 19.146.0201(1) through (9), RCW 19.146.030 through RCW 19. 146.080 and for failure to comply with any directive.

2.8 Authority to Prohibit from the Industry: Pursuant to RCW 19.146.220(2)(e)(i), (ii) and (iv), the Director may prohibit a covered individual from participation in the conduct of the affairs of a licensed mortgage broker for violations of RCW 19.146.0201(1) through (9), for false statement or omission of material information on an application and for failure to comply with any directive or order of the Director.

2.9 Authority to Require Restitution: Pursuant to RCW 19.146.220(2)(d), the Director may issue an order directing a licensee, employee, loan originator or other person subject to the Act to pay restitution to an injured borrower.

2.10 Authority to Collect Investigation Fee: Pursuant to RCW 19.146.228(2), WAC 208-660-060(2) 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 INTENT TO ENTER ORDER

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

3.1 The mortgage broker license held by Respondent Money Tree Mortgage, Inc. be revoked; and

3.2 Respondent Randy A. Webster be prohibited from participation in the conduct of the affairs of any licensed mortgage broker for a period of ten (10) years; and

3.3 Respondents, jointly and severally, pay a fine in the amount of $30,000.00, calculated as follows:

- $5000.00 - $100 for 100 days for each of five violations of RCW 19.146.0201(1);
- $5000.00 - $100 for 100 days for each of five violations of RCW 19.146.0201(2);
- $5000.00 - $100 for 100 days for each of five violations of RCW 19.146.0201(3);
- $5000.00 - $100 for 100 days for each of five violations of RCW 19.146.030(1);
- $5000.00 - $100 for 100 days for each of five violations of RCW 19.146.050;
- $5000.00 - $100 for 100 days for each of five violations of RCW 19.146.070; and

3.4 Respondents, jointly and severally, pay restitution to injured borrowers for loan fees paid in violation of the Act, based on currently identified injured borrowers, calculated at $1200.00 as follows:

- $200.00 for Porras;
- $200.00 for Stowe;
- $300.00 for Woods;
- $300.00 for Mueller;
- $200.00 for Smith; and

3.5 Respondents, jointly and severally, pay an investigation fee in the amount of $573.36, calculated at $47.78 per hour for twelve (12) staff hours devoted to the investigation; and

3.6 Respondents maintain records in compliance with the Act and provide the Department with the location of the books, records and other information relating to Respondents' 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 is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221 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 Intent to Revoke Licenses, Impose Fines and Prohibit from Participation in the Mortgage Broker Industry.

Dated this 29th day of June, 2004.

CHUCK CROSS, DIRECTOR
DIVISION OF CONSUMER SERVICES
DEPARTMENT OF FINANCIAL INSTITUTIONS

Presented by:

Victoria W. Sheldon, Financial Legal Examiner

RCW 19.146.0201 Loan originator, mortgage broker -- Prohibitions -- Requirements.

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

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

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

(3) Obtain property by fraud or misrepresentation;

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

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

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

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

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

(9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(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 19.146.070;

(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.

. . . .

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

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.

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.]

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 19.146.220 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.]

Reviser's note: *(1) 197 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court –ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

(2) This section was amended by 1997 c 58 879 and by 1997 c 106 § 12, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability – 1997 c 106: See note following RCW 19.146.010.

Short title – Part headings, captions, table of contents not law – Exemptions and waivers from federal law – Conflict with federal requirements – Severability – 1997 c 58: See notes following RCW 74.20A.320.

Effective dates – Intent – 1997 c 58: See notes following RCW 74.20A.320.

Effective date – 1996 c 103: "This act shall take effect July 1, 1996." [1996 c 103 § 2.]

Adoption of rules – Severability – 1993 c 468: See notes following RCW 19.146.0201.

Effective dates – 1993 c 468: See note following RCW 19.146.200.

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; . . . . [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.]

WAC 208-660-060 Department's fees and assessments.

. . .

(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 208-660-08010 Establishment of trust account for borrower funds to pay third-party providers.

Each mortgage broker shall as trustee hold all funds received from borrowers for payment to third-party providers. The funds may not be used for the benefit of the mortgage broker or any person not entitled to such benefit, except as may be expressly permitted by the Mortgage Broker Practices Act. Each mortgage broker shall establish a trust account(s) for the funds in a financial institution's branch located in this state. Each mortgage broker is responsible for depositing, holding, disbursing, accounting for, and otherwise dealing with the funds, in accordance with the act.

[96-04-028, recodified as 208-660-08010, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08010, filed 6/21/95, effective 7/22/95.]

WAC 208-660-150 Disclosure of significant developments. (1) A licensee must notify the director in writing within thirty days after the occurrence of any of the following developments:

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

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

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

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

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

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

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

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

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

(b) Mailing address or telephone number;

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

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

(e) State master business license; or

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

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

WAC 208-660-160 License application denial or condition; license suspension or revocation. The director may deny or condition approval of a license application, or suspend or revoke a license if the applicant or licensee, or any principal or designated broker of the applicant or licensee:

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

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

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

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

(5) Has failed to demonstrate financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of the Mortgage Broker Practices Act. The director may find that the person has failed to make the demonstration if, among other things:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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