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: SILVER LAKE MORTGAGE, INC., dba HOMETOWN LENDING or CAPITAL DIRECT or ADVANTAGE HOME MORTGAGE, LLC or J & F MORTGAGE or LEGACY FINANCIAL or LIBERTY LAKE MORTGAGE, and CURTIS P. LILLIBRIDGE, President, Owner and Designated Broker, Respondents.	NO. C-04-166-05-SC02 **AMENDED** STATEMENT OF CHARGES and NOTICE OF INTENTION TO ENTER AN ORDER TO REVOKE LICENSE, 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 Revoke License, Impose Fine, Order Restitution, Prohibit from Industry, and Collect Investigation Fee C-04-166-04-SC01 (Statement of Charges SC01) on August 19, 2004. Respondents Silver Lake Mortgage Inc. and Curtis P. Lillibridge were 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 June 13, 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 Revoke License, Impose Fine, Order Restitution, Prohibit from Industry, and Collect Investigation Fee C-04-166-05-SC02, which includes the following modifications: naming additional independent contractors in paragraph 1.3;

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increasing the residential mortgage loans and loan originators discussed in paragraph 1.4; adding Factual Allegations in Paragraphs 1.5 through 1.8; 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.

I. FACTUAL ALLEGATIONS

1.1 Respondents:

A. **Silver Lake Mortgage, Inc. dba Hometown Lending or Capital Direct or Advantage Home Mortgage, LLC or J & F Mortgage or Legacy Financial or Liberty Lake Mortgage (Respondent Silver Lake)** was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Mortgage Broker on February 7, 1997, and has continued to be licensed to date.

B. **Curtis P. Lillibridge (Respondent Lillibridge)** is known to be Owner and President of Respondent Silver Lake. Respondent Lillibridge was named Designated Broker on February 7, 1997, and has continued as Designated Broker to date.

1.2 Licensed Locations: Respondent Silver Lake is licensed to conduct the business of a mortgage broker at twelve (12) locations.

1.3 Unlicensed Location: In or around March 2004, Dameon V. Sims (Sims) became an independent contractor with Respondent Silver Lake. In or around April 2004, Bobby Jennings (Jennings), Vernon Sackie (Sackie) and Charley Jones (Jones) became independent contractors with Respondent Silver Lake. Sims, Jennings, Sackie and Jones are known to have conducted the business of a mortgage broker from the following location:

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

To date, Respondent Silver Lake has never applied for, or received, a license from the Department to conduct the business of a mortgage broker from this location.

1.4 Unlicensed Activity: During a visit by Department personnel on June 29, 2004 to the address listed in paragraph 1.3 above, Sims provided Department personnel with a business card listing himself as "Branch Manager" for "Hometown Lending" at the address listed in paragraph 1.3 above. Between March 1, 2004 and

December 9, 2004, Sims, Jennings, Sackie and Jones assisted at least seventeen (17) borrowers in applying to obtain residential mortgage loans on property located in the State of Washington from the unlicensed location discussed in paragraph 1.3. Sims, Jennings, Sackie and Jones assisted at least thirteen (13) of these borrowers in obtaining residential mortgage loans. The borrowers involved in these residential mortgage loans paid fees to Respondent Silver Lake totaling at least sixty-six thousand three hundred thirty-two dollars and twenty cents ($66,332.20).

1.5 Prohibited Acts:

A. In at least one (1) of the residential mortgage loans discussed in paragraph 1.4, originated by Sims, 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, originated by Sims, 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 Sims and at least five thousand six hundred dollars ($5,600.00) of these fees to the seller.

B. In at least one (1) of the residential mortgage loans discussed in paragraph 1.4, originated by Sims, the purchase price was fraudulently inflated so that the sellers paid at least nine thousand nine hundred dollars ($9,900.00) at closing to Sackie's sole proprietorship, which was doing business as VS Investments.

C. In at least two (2) of the residential mortgage loans discussed in paragraph 1.4, one (1) originated by Sims and one (1) originated by Jennings, attempts were made to fraudulently inflate the purchase prices and have the sellers pay a total of at least twenty-two thousand eight hundred seventy-five dollars ($22,875.00) at closing for non-existent property improvements. These fees were to be paid to fraudulent improvement providers who were actually the spouses of the borrowers.

D. In at least four (4) of the residential mortgage loans discussed in paragraph 1.4, originated by Sims, borrower income was fraudulently overstated.

1.6 Failure to Disclose Affiliated Business Arrangements: In certain residential mortgage loans involving Affiliated Business Arrangements (AfBAs), Respondent Silver Lake failed to provide borrowers with written disclosures of the nature of the relationship (explaining the ownership and financial interest) between a provider of settlement services (or business incident thereto) and Respondents and of an estimated charge or range of charges generally made by such provider, on a separate piece of paper no later than the time of each referral.

A. Respondents have an AfBA with Silverlake Escrow L.L.C. (Silverlake Escrow). At least two (2) residential mortgage loan files, provided to the Department by Respondent Silver Lake pursuant to Directives, do not contain documentation that this AfBA was disclosed to the borrowers. In these two (2) residential mortgage loans, a loan officer for Respondent Silver Lake originated the loans and Silverlake Escrow closed the loans and received a total of one thousand four hundred thirty-three dollars and eighty-five cents ($1,433.85) in fees at closing.

B. Respondents have an AfBA with CT Reconveyance Services L.L.C. (CT Reconveyance). At least eight (8) residential mortgage loan files, provided to the Department by Respondent Silver Lake pursuant to Directives, do not contain documentation that this AfBA was disclosed to the borrowers. In these eight (8) residential mortgage loans, a loan officer for Respondent Silver Lake originated the loans, Silverlake Escrow closed the loans, and CT Reconveyance received a total of one thousand three hundred dollars ($1,300.00) in fees at closing.

1.7 Failure to Accurately and/or Timely Disclose Residential Mortgage Loan Fees: Respondent Silver Lake failed to provide some borrowers with full written disclosures, containing an itemization and explanation of all fees and costs that the borrowers were required to pay in connection with obtaining a residential mortgage loan, within three days following receipt of a loan application or any moneys from the borrowers.

A. At least eight (8) residential mortgage loan files, provided to the Department by Respondent Silver Lake pursuant to Directives, do not contain documentation that the fees to be paid to Silverlake Escrow were accurately disclosed to the borrowers within the time period required. In these eight (8) residential

mortgage loans, a loan officer for Respondent Silver Lake originated the loans, Silverlake Escrow closed the loans and received at least one thousand three hundred four dollars and twenty cents ($1,304.20) in fees in excess of the fees disclosed to the borrowers within the required time period.

B. At least seven (7) residential mortgage loan files, provided to the Department by Respondent Silver Lake pursuant to Directives, do not contain documentation that the fees to be paid to CT Reconveyance were accurately disclosed to the borrowers within the time period required. In these seven (7) residential mortgage loans, a loan officer for Respondent Silver Lake originated the loans, Silverlake Escrow closed the loans, and CT Reconveyance received at least nine hundred fifteen dollars ($915.00) in fees in excess of the fees disclosed to borrowers within the required time period.

1.8 Failure to Respond Timely and Completely to Directives: On July 6, 2004, the Department issued Directive C-04-075-04-SD-08, which directed Respondents to produce, within fifteen (15) days of the date of the Directive, any and all records, documents or information regarding any residential mortgage loans originated by Sims for Respondent Silver Lake, whether or not the specific loan closed. On July 29, 2004, Respondents provided the Department with six (6) residential mortgage loan files in response to this Directive. On October 19, 2004, the Department issued Directive C-04-075-04-SD-09, which directed Respondents to produce, within fifteen (15) days of the date of the Directive, any and all records, documents or information regarding any residential mortgage loans originated by Sims for Respondent Silver Lake, whether or not the specific loan closed, and all information related to any funds paid to Sims. On November 1, 2004, Respondents provided the Department with two (2) additional residential mortgage loan files in response to this Directive. On December 9, 2004, the Department issued Directive C-04-075-04-SD-13, which directed Respondents to produce, within fifteen (15) days of the date of the Directive, any and all records, documents or information regarding any residential mortgage loans originated by Sims for Respondent Silver Lake, whether or not the specific loan closed. On January 4, 2005, Respondents provided the Department with two (2) additional residential mortgage loan files, neither of which had closed, in response to this Directive.

In at least three (3) instances, Respondents failed to respond timely and completely to these Directives:

A. A residential mortgage loan for borrower EM was originated by Sims in or around March 2004 and closed on or around May 5, 2004 by Silverlake Escrow. Respondents did not provide the Department with the loan file for this residential mortgage loan until January 4, 2005.

B. A residential mortgage loan for borrowers L&RP was originated by Sims and Sackie in or around July 2004 and closed on or around July 22, 2004 by Silverlake Escrow. Respondents did not provide the Department with the loan file for this residential mortgage loan until January 4, 2005. Sims received one thousand seven hundred thirty dollars and twenty-nine cents ($1,730.29) from Respondent Silver Lake for his role in originating this residential mortgage loan. To date, Respondents have failed to provide the Department with all information related to this payment of funds to Sims.

C. One of the unclosed residential mortgage loan files Respondents provided to the Department on January 4, 2005, in response to Directive C-04-075-04-SD13, was for borrower DC. On January 18, 2005, after borrower DC's residential mortgage loan had closed, Department personnel requested the final loan file for borrower DC from Respondents. On January 24, 2005, Respondents provided the Department with a loan file for borrower DC. On February 10, 2005, Department personnel identified deficiencies in the previous responses and Respondent Lillibridge assured the Department that he would provide all of the documents related to borrower DC. On February 17, 2005, Respondents provided the Department with a loan file for borrower DC. To date, Respondents have failed to provide all records, documents and information regarding any residential mortgage loans for borrower DC originated by Sims for Respondent Silver Lake, whether or not the specific loan closed.

II. GROUNDS FOR ENTRY OF ORDER

2.1 Definition of Borrower: Pursuant to RCW 19.146.010(2), a "Borrower" is defined as any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

2.2 Responsibility for Independent Contractor's Violations: Pursuant to RCW 19.146.200(1) and WAC 208-660-120, 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 the Act.

2.3 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.

2.4 Requirement to Disclose Affiliated Business Arrangements: Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.0201(6) for failing to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law. Pursuant to the Real Estate Settlement Procedures Act, 12 U.S.C. 2602(7), the term "affiliated business arrangement" means an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider. Pursuant to the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2607(a), no person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person. Pursuant to RESPA, 12 U.S.C. 2607(b), no person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. Pursuant to RESPA, 12 U.S.C. 2607(c)(4) and Regulation X, 24 C.F.R. Sec

3500.15b(1), an affiliated business arrangement is not a violation of 12 U.S.C. 2607 if the person making each referral provides borrowers with written disclosures of the nature of the relationship (explaining the ownership and financial interest) between a provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider, on a separate piece of paper no later than the time of each referral.

2.5 Requirement to Disclose Residential Mortgage Loan Fees: Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.030 for failing to provide borrowers with full written disclosures, containing an itemization and explanation of all fees and costs that the borrowers were required to pay in connection with obtaining a residential mortgage loan, within three days following receipt of a loan application or any moneys from the borrowers.

2.6 Requirement to Obtain and Maintain Branch License: Based on the Factual Allegations set forth in Section I above, Respondents are 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.

2.7 Authority to Revoke License: Pursuant to RCW 19.146.220(2)(b)(iii) and (iv), and WAC 208-660-160(7), (10), (13) and (14), the Director may revoke a license for failure to comply with any directive or order of the director, any violation of RCW 19.146.0201(1) through (9), or any violation of RCW 19.146.265.

2.8 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, 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), RCW 19.146.030, or RCW 19.146.265, or for failure to comply with any directive or order of the director.

2.9 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.

2.10 Authority to Prohibit from the Industry: Pursuant to RCW 19.146.220(2)(e)(i) and (iv), the Director may prohibit from participation in the conduct of the affairs of a licensed mortgage broker, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9), RCW 19.146.030, or RCW 19.146.265, or for failure to comply with any directive or order of the director.

2.11 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

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

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

3.2 Respondents Silver Lake Mortgage, Inc. and Curtis Lillibridge jointly and severally pay a fine of $60,500.00 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 19.146.0201(6), calculated at $100.00 per day for 30 days; and
c. Violating RCW 19.146.030, 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
e. Failing to comply with a Directive, calculated at $100.00 per day for 30 days; and

3.3 Respondents Silver Lake Mortgage, Inc. and Curtis Lillibridge jointly and severally pay restitution to all injured borrowers for loan fees paid for residential mortgage loans originated without a license, including at least $66,332.20 to the injured borrowers discussed in paragraph 1.4; and

3.4 Respondents Silver Lake Mortgage, Inc. and Curtis Lillibridge jointly and severally pay restitution to all injured borrowers for fees paid to entities with affiliated businesses arrangements with Respondents which were not accurately or timely disclosed to the borrowers, including at least $2,733.85 to the injured borrowers discussed in paragraph 1.6; and

3.5 Respondents Silver Lake Mortgage, Inc. and Curtis Lillibridge jointly and severally pay restitution to all injured borrowers for residential mortgage loan fees which were not accurately or timely disclosed to the borrowers, including at least $2,219.20 to the injured borrowers discussed in paragraph 1.7; and

3.6 Respondent Curtis Lillibridge be removed as Designated Broker and President of Respondent Silver Lake Mortgage, Inc. and be prohibited from participation in the conduct of the affairs of any licensed mortgage broker, in any manner, for a period of five (5) years; and

3.7 Respondents Silver Lake Mortgage, Inc. and Curtis Lillibridge jointly and severally pay an investigation fee in the amount of $7,644.80 calculated at $47.78 per hour for one hundred sixty (160) staff hours devoted to the investigation; and

3.8 Respondents Silver Lake Mortgage, Inc. and Curtis Lillibridge maintain records in compliance with the Act and provide the Department with the location of the books, records and other information relating to Respondent Silver Lake Mortgage, Inc.'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.

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IV. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Impose Fine, Order Restitution, Prohibit from Industry and Collect Investigation Fee is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Impose Fine, Order Restitution, Prohibit from Industry and Collect Investigation Fee.

Dated this 13th day of June, 2005.

CHUCK CROSS
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

Mark Olson
Financial Examiner

RCW 19.146.010 Definitions.
Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.
...
(2) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a 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;
...
[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

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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.

...

[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

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(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.]

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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.]

RESPA 12 USC 2602 Definitions.
For the purposes of this chapter--
...
(7) the term "affiliated business arrangement" means an arrangement in which
(A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.
...

[Pub. L. 93-533, Sec. 3, Dec. 22, 1974, 88 Stat. 1724; Pub. L. 94-205, Sec. 2, Jan. 2, 1976, 89 Stat. 1157; Pub. L. 98-181, title IV, Sec. 461(a), Nov. 30, 1983, 97 Stat. 1230; Pub. L. 102-550, title IX, Sec. 908(a), (b), Oct. 28, 1992, 106 Stat. 3873, 3874; Pub. L. 104-208, div. A, title II, Sec. 2103(c)(1), Sept. 30, 1996, 110 Stat. 3009-400.]

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RESPA 12 USC 2607 Prohibition against kickbacks and unearned fees.

(a) Business referrals

No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

(b) Splitting charges

No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

(c) Fees, salaries, compensation, or other payments

Nothing in this section shall be construed as prohibiting…

(4) affiliated business arrangements so long as

(A) a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with such referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred

(i) in the case of a face-to-face referral or a referral made in writing or by electronic media, at or before the time of the referral (and compliance with this requirement in such case may be evidenced by a notation in a written, electronic, or similar system of records maintained in the regular course of business);

(ii) in the case of a referral made by telephone, within 3 business days after the referral by telephone, (and in such case an abbreviated verbal disclosure of the existence of the arrangement and the fact that a written disclosure will be provided within 3 business days shall be made to the person being referred during the telephone referral); or

(iii) in the case of a referral by a lender (including a referral by a lender to an affiliated lender), at the time the estimates required under section 2604(c) of this title are provided (notwithstanding clause (i) or (ii)); and any required written receipt of such disclosure (without regard to the manner of the disclosure under clause (i), (ii), or (iii)) may be obtained at the closing or settlement (except that a person making a face-to-face referral who provides the written disclosure at or before the time of the referral shall attempt to obtain any required written receipt of such disclosure at such time and if the person being referred chooses not to acknowledge the receipt of the disclosure at that time, that fact shall be noted in the written, electronic, or similar system of records maintained in the regular course of business by the person making the referral),

(B) such person is not required to use any particular provider of settlement services, and

(C) the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship

…

[Pub. L. 93-533, Sec. 8, Dec. 22, 1974, 88 Stat. 1727; Pub. L. 94-205, Sec. 7, Jan. 2, 1976, 89 Stat. 1158; Pub. L. 98-181, title IV, Sec. 461(b), (c), Nov. 30, 1983, 97 Stat. 1231; Pub. L. 100-242, title V, Sec. 570(g), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 102-54, Sec. 13(d)(4), June 13, 1991, 105 Stat. 275; Pub. L. 104-208, div. A, title II, Sec. 2103(c)(2), (d), Sept. 30, 1996, 110 Stat. 3009-400.]

Regulation X, 24 C.F.R. Sec 3500.15 Affiliated business arrangements.

…

(b) **Violation and exemption.** An affiliated business arrangement is not a violation of section 8 of RESPA (12 U.S.C. 2607) and of Sec. 3500.14 if the conditions set forth in this section are satisfied. Paragraph (b)(1) of this section shall not apply to the extent it is inconsistent with section 8(c)(4)(A) of RESPA (12 U.S.C. 2607(c)(4)(A)).

(1) The person making each referral has provided to each person whose business is referred a written disclosure, in the format of the Affiliated Business Arrangement Disclosure Statement set forth in appendix D of this part, of the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as section L of the HUD-1 settlement statement). The disclosures must be provided on a separate piece of paper no later than the time of each referral…

[61 FR 13233, Mar. 26, 1996, as amended at 61 FR 29252, June 7, 1996; 61 FR 58476, Nov. 15, 1996]

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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 208-660-120 Employees and independent contractors of licensees.

RCW 19.146.200 prohibits a person from engaging in the business of a mortgage broker without first obtaining and maintaining a license, except as an employee or independent contractor of a licensee or mortgage broker described in WAC 50-60-020 (2)(b) and (c).

[96-04-028, recodified as § 208-660-120, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-120, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-120, filed 1/7/94, effective 2/7/94.]

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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:

...

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

...

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

...

(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;

...

[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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