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: 5 STAR FINANCE AND MORTGAGE, INC., and JOHN L. CROSS, President and Owner, and LOUIS L. CROSS, Vice President and Designated Broker, Respondents.	NO. C-05-163-06-SC01 STATEMENT OF CHARGES and NOTICE OF INTENTION TO ENTER AN ORDER TO DENY LICENSE APPLICATION, IMPOSE FINE, ORDER RESTITUTION, PROHIBIT FROM INDUSTRY, AND COLLECT LICENSE APPLICATION 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). After having conducted an investigation pursuant to RCW 19.146.210 and RCW 19.146.235, and based upon the facts available as of January 26, 2006, the Director institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. **5 Star Finance and Mortgage, Inc. (Respondent 5 Star)** submitted an application to the Department of Financial Institutions of the State of Washington (Department) for licenses to conduct business as a mortgage broker at the following locations:

Spokane Office 221 W. Main, Ste 200 Spokane, WA 99201	Polson Office 110 Main Street, Ste 7 Polson, MT 59860

The application was received by the Department in August 2005.

B. **John L. Cross, aka Jack Cross (Respondent J. Cross)** is listed as President and Owner of Respondent 5 Star in the application.

C. **Louis L. Cross (Respondent L. Cross)** is listed as Vice President and Designated Broker of Respondent 5 Star in the application.

1.2 Incomplete Application. Respondent 5 Star's application is inadequate or incomplete in the following areas:

A. Respondents failed to provide a completed Mortgage Broker Applicant Individual Background Form (IBF)[1] for all Directors of Respondent 5 Star, as instructed at the top of the IBF under the heading "Corporation." LeiAnn Cross, Lucas Cross and Jordan Cross are listed as Directors of Respondent 5 Star on Addendum A-Ownership, but Respondents failed to provide IBFs for these individuals. Respondents' failure to provide this information fails to satisfy the requirements described on the application form under Addendum R-Individual Information[2].

B. Respondent L. Cross provided W-2 forms for 2003 and 2004, and a resumé indicating he has worked for Respondent 5 Star since April 2003. This evidence fails to satisfy the requirement for acceptable support of two years of experience in the residential mortgage loan industry, as described on the application form under Addendum K-Designated Broker[3].

1.3 Unlicensed Activity.

A. All Fund, Inc. (All Fund) is currently licensed by the Department to conduct the business of a mortgage broker. On or about April 19, 2005, the Department issued a mortgage broker branch license to All Fund to conduct the business of a mortgage broker from the Spokane location listed in paragraph 1.1A under the trade name "All Fund Mortgage." On August 22, 2005, the Department received an office closure form from All Fund for this branch location, effective August 22, 2005.

B. To date, the Department has not issued a license to Respondents to conduct the business of a mortgage broker from any location, including the locations listed in paragraph 1.1A. To date, the Department

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[1] As of January 19, 2006, the IBF has been replaced by Form MU2 Control Persons Information.
[2] As of January 19, 2006, "Addendum R-Individual Information" has been replaced by "Item 7-Control Persons" on Form MU-1 Uniform Mortgage Lender/Mortgage Broker Application.
[3] As of January 19, 2006, "Addendum K-Designated Broker" has been replaced by "Item 6-Designated Broker" on Form MU-1 Uniform Mortgage Lender/Mortgage Broker Application.

has not issued a license to any person to conduct the business of a mortgage broker under the trade names "5 Star Finance & Mortgage" or "5 Star Finance."

C. On or about August 16, 2005, the Department, posing as a prospective borrower, placed a telephone call to the Spokane location listed in paragraph 1.1A. The individual answering the telephone confirmed that the caller had reached "5 Star Finance." The caller asked if the office could complete a refinance loan. The individual stated she would transfer the call to a loan officer. Another individual then picked up the call and identified himself as a loan officer and confirmed that he was located at the Spokane location listed in paragraph 1.1A. This loan officer then indicated that he could bring his laptop to the caller's home to originate a loan.

D. On or about August 29, 2005, Department licensing staff had a telephone conversation with Respondent J. Cross. During this conversation, Respondent J. Cross stated that the Spokane office was currently operating under All Fund's mortgage broker branch license, but that arrangement could end at any time.

E. On or about September 4, 2005, the Department observed and photographed a sign hanging from a second floor balcony at the Spokane location listed in paragraph 1.1A which read "Home Loans."

F. From at least August 9, 2005 through September 13, 2005, at least three (3) individuals, listed on Addendum B-Personnel in Respondent 5 Star's application as W-2 employees working from the locations listed in paragraph 1.1A, ordered credit reports[4] on at least fifteen (15) individuals residing in the State of Washington through Respondent 5 Star's account with a credit reporting agency.

G. On or about December 9, 2005, the Department, posing as a prospective borrower, placed a telephone call to the Spokane location listed in paragraph 1.1A. An individual answered the telephone "5 Star Finance." The caller asked if the office could complete a refinance loan. The individual stated he could and

[4] Per the Department's Interpretive Letter No. 98-02MB: "A loan application is received when the mortgage broker accepts from the borrower in person, or by mail, telephone or some other medium, financial information in anticipation of a credit decision. Note that it is not a requirement that a borrower complete a FNMA 1003 form or similar form in order for an application to be received."

asked the caller for her name, address and Social Security Number. The caller asked the individual if he could provide a first and second mortgage. The individual stated he could.

1.4 Response to Directive.

A. **Directive Requirement:** On September 13, 2005, the Department issued Directive to Produce Records C-05-163-05-SD04 (Directive) to Respondent 5 Star. The Directive required Respondent 5 Star to provide any and all records, documents, or information regarding any residential mortgage loans originated on property located in the State of Washington, whether or not the specific loan had closed, and any and all records, documents, or information regarding all employees and independent contractors involved or in any way related to those loans.

B. **Directive Response:** On September 14, 2005, the Department received the following response to the Directive, signed by Respondent J. Cross:

> "This is in response to your directive. 5 Star Finance and Mortgage, Inc. has never solicited, started, or closed a residential loan in the State of Washington. We do not have any employees either W-2 or independent contractors that have solicited, started, or closed a loan in Washington State while they were in our employment.
>
> I.A. We have no records or documents of any kind to forward you on residential loans in the state of Washington. We have not originated any residential loans in the state of Washington. We have not taken any residential loan applications for the state of Washington.
>
> I.B. Since we have not done anything in paragraph A, we have no information to forward you about any employee or independent contractors."

C. **Failure to Fully Respond:** Respondents failed to provide any records, documents, or information related to any of the loan originations discussed in paragraph 1.3F, or any other loan originations that occurred.

D. **False Statement or Omission of Material Fact:** Respondent J. Cross stated that no loans had been originated in the State of Washington by any employee or independent contractor of Respondent 5 Star. Given the factual allegations in paragraph 1.3, this is a false statement or omission of material fact.

1.5 Failure to Provide Disclosures on Residential Mortgage Loans. Given the factual allegations in paragraph 1.3 and Respondent J. Cross's Directive response discussed in paragraph 1.4, Respondents failed to provide borrowers with disclosures as required by state or federal law, including 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 and specifying the fee or fees which inured to the benefit of Respondents, within three days following receipt of a loan application or any moneys from the borrowers.

1.6 Failure to Maintain Accurate and Current Books and Records. Given the factual allegations in paragraph 1.3 and Respondent J. Cross's Directive response discussed in paragraph 1.4, Respondents failed to make accurate and current books and records readily available to the Department until at least twenty-five (25) months had elapsed following the effective period to which the books and records related.

1.7 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 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 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.

2.3 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), (3), (6), (8), and (14) for directly or indirectly employing a scheme, device or artifice to defraud or mislead borrowers or lenders or any person, engaging in an unfair or deceptive practice toward any person, obtaining property by fraud or misrepresentation, 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, negligently making a false statement or knowingly and willfully making an omission of material fact in connection with any reports filed by a mortgage broker or in connection with an investigation conducted by the Department, and failing to comply with any provision of RCW 19.146.030.

2.4 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.

2.5 Requirement to Maintain Accurate and Current Books and Records. Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.060 and WAC 208-660-140 for failing to make accurate and current books and records readily available to the Department until at least twenty-five months have elapsed following the effective period to which the books and records relate.

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

2.7 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.

2.8 Requirement to Provide Information on License Application. Based on the Factual Allegations set forth in Section I above, Respondents have failed to meet the requirements of RCW 19.146.205(1), RCW 19.146.210(1), WAC 208-660-030(1) and WAC 208-660-040 by failing to provide an accurate and complete written license application in the form prescribed by the Director.

2.9 Requirement to Demonstrate Financial Responsibility, Character and General Fitness. Based on the Factual Allegations set forth in Section I above, Respondents have failed to meet the requirements of RCW 19.146.210(1) and WAC 208-660-160(5) by failing 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 Act.

2.10 Authority to Deny Application for License. Pursuant to RCW 19.146.210(2), the Director shall not issue a license to an applicant if the conditions of RCW 19.146.210(1) have not been met by the applicant. Pursuant to RCW 19.146.220(1), RCW 19.146.220(2)(a) and WAC 208-660-160, the Director may deny applications for licenses for violations of orders, including cease and desist orders issued under the Act, or any violation of RCW 19.146.0201(1) through (9).

2.11 Authority to Impose Fine. Pursuant to RCW 19.146.220(2)(c)(i) and (ii) and WAC 208-660-165, the Director may impose fines on a licensee, employee or loan originator of the licensee, or other person subject to the Act for any violations of RCW 19.146.0201(1) through (9) or (12), RCW 19.146.030 through RCW 19.146.080, RCW 19.146.200, or RCW 19.146.265, or failure to comply with a directive or order of the Director.

2.12 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.

2.13 Authority to Prohibit from the Industry. Pursuant to RCW 19.146.220(2)(e)(i) and (iv), the Director may 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 the Act for any violation of RCW 19.146.0201(1) through (9) or (12), RCW 19.146.030 through RCW 19.146.080, RCW 19.146.200, or RCW 19.146.265, or failure to comply with a directive or order of the Director.

2.14 Authority to Collect License Application Fee. Pursuant to RCW 19.146.210(2), RCW 19.146.228(3), WAC 208-660-060(1) and WAC 208-660-061, upon completion of processing and reviewing an application for a license, the Department will prepare a billing, regardless of whether a license has been issued, calculated at the rate of thirty-seven dollars and sixteen cents ($37.16) 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.

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 19.146.210, 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 5 Star Finance and Mortgage, Inc.'s application for a license to conduct the business of a mortgage broker be denied; and

3.2 Respondents 5 Star Finance and Mortgage, Inc. and John L. Cross and Louis L. Cross jointly and severally pay a fine of $18,600 for:

- **a.** Violating RCW 19.146.0201(1), (2), and (3), calculated at $100 per day for 30 days; and
- **b.** Violating RCW 19.146.0201(6) and RCW 19.146.030, calculated at $100 per day for 30 days; and
- **c.** Violating RCW 19.146.0201(8), calculated at $100 per day for 30 days; and
- **d.** Violating RCW 19.146.060, calculated at $100 per day for 30 days; and
- **e.** Violating RCW 19.146.200 and RCW 19.146.265, calculated at $100 per day for 36 days; and
- **f.** Failing to comply with a directive of the director, calculated at $100 per day for 30 days; and

3.3 Respondents 5 Star Finance and Mortgage, Inc., John L. Cross and Louis L. Cross jointly and severally pay restitution to any borrowers injured by Respondents' illegal practices of originating residential mortgage loans without a license and/or failing to provide proper residential mortgage loan disclosures to borrowers; and

3.4 Respondent 5 Star Finance and Mortgage, Inc. be prohibited from participation in the conduct of the affairs of any mortgage broker subject to licensure by the Director, in any manner, for a period of five (5) years; and

3.5 Respondent John L. Cross be prohibited from participation in the conduct of the affairs of any mortgage broker subject to licensure by the Director, in any manner, for a period of five (5) years; and

3.6 Respondent Louis L. Cross be prohibited from participation in the conduct of the affairs of any mortgage broker subject to licensure by the Director, in any manner, for a period of five (5) years; and

3.7 Respondents 5 Star Finance and Mortgage, Inc., John L. Cross and Louis L. Cross jointly and severally pay a license application fee in the amount of $1,821.64, calculated at $37.16 per hour for the sixty-four (64) staff hours devoted to the investigation, less Respondents' $556.60 application deposit.

3.8 Respondents maintain records in compliance with the Act and provide the Department with the location of the books, records and other information relating to Respondent 5 Star Finance and 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 Deny License Application, Impose Fine, Order Restitution, Prohibit from Industry, and Collect License Application 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 26th day of January, 2006.

CHUCK CROSS
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

Richard St. Onge
Financial Examiner

Mark T. Olson
Financial Examiner

Approved by:

James R. Brusselback
Enforcement Chief

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

IN THE MATTER OF DETERMINING: Whether there has been a violation of the Mortgage Broker Practices Act of Washington by:	C-05-163-06-SC01
5 STAR FINANCE AND MORTGAGE, INC., and JOHN L. CROSS, President and Owner, and LOUIS L. CROSS, Vice President and Designated Broker, Respondents.	NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING

THE STATE OF WASHINGTON TO:

5 Star Finance and Mortgage, Inc.
John L. Cross
Louis L. Cross

YOU ARE HEREBY NOTIFIED that a STATEMENT OF CHARGES has been filed by the Department of Financial Institutions, a true and correct copy of which is attached and made a part hereof.

YOU ARE HEREBY NOTIFIED that you may file an application for an adjudicative hearing before the Washington State Department of Financial Institutions on the Statement of Charges. Service of this notice is deemed complete upon deposit in the United States mail. YOUR APPLICATION MUST BE RECEIVED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS WITHIN TWENTY (20) DAYS FROM THE DATE YOU RECEIVED THIS NOTICE. If you demand a hearing, you will be notified of the time and place for the hearing at least seven (7) days in advance of the hearing date.

At the hearing, you may appear personally, and by counsel, if you desire. The hearing will be as informal as is practical within the requirements of the Administrative Procedure Act (see chapter 34.05 RCW). The hearing will be recorded. The primary concern will be getting to the truth of the matter insofar as the Statement of Charges is concerned. Technical rules of evidence will not be binding at the hearing except for the rules of privilege recognized by law. You have the right to present evidence and witnesses in your own behalf, and to cross-examine those witnesses presented in support of the Statement of Charges. You may require the attendance of witnesses by subpoena. If you are limited English- speaking or hearing impaired, you have the right to have an interpreter appointed at no cost to you, as discussed below.

INTERPRETER AVAILABILITY. If you or a witness for you is a person who, because of non-English-speaking cultural background, cannot readily speak or understand the English language, or if you or a witness for you is a person who, because of a hearing impairment or speech defect, cannot readily understand or communicate in spoken language, including persons who are deaf, deaf and blind, or hard of hearing, AND YOU NEED AN INTERPRETER, then a qualified interpreter will be appointed at no cost to you or to the witness. You may request the appointment of a qualified interpreter by indicating your request on the attached Application for Adjudicative Hearing form.

YOU ARE FURTHER NOTIFIED that if the Department of Financial Institutions does not RECEIVE the Application for Adjudicative Hearing form within twenty (20) days from the date you received this notice, this will constitute a waiver of your right to a hearing and the Director will find that you do not contest the allegations of the Statement of Charges. Upon such a finding by the Director a final order will be immediately entered disposing of this matter as described in the Statement of Charges. If you desire a hearing in this matter, please return the attached Application for Adjudicative Hearing to:

Department of Financial Institutions, Division of Consumer Services
Attn: Steven C. Sherman
PO Box 41200
Olympia, Washington 98504-1200

Dated this 24th day of January, 2006.

CHUCK CROSS
Director
Division of Consumer Services
Department of Financial Institutions