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: ACCEPTANCE CAPITAL MORTGAGE CORP., d/b/a ACCEPTANCE MORTGAGE; and MICHAEL D. MARTIN, Designated Broker, Respondents.	NO. C-05-194-06-SC01 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). After conducting an investigation pursuant to RCW 19.146.210 and RCW 19.146.235, and based upon the facts available as of January 27, 2006, the Director institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. Acceptance Capital Mortgage Corp. d/b/a Acceptance Mortgage (Respondent Acceptance) was licensed by the Department of Financial Institutions of the State of Washington (Department) as a mortgage broker on October 28, 2002, and has continued to be licensed to date. Respondent Acceptance is licensed to conduct the business of a mortgage broker at twenty-one (21) locations. The main branch is located at 15812 E. Indiana Ave., Spokane Valley, WA 99216.

B. Michael D. Martin (Respondent Martin) is Designated Broker of Respondent Acceptance. Respondent Martin was named Designated Broker of Respondent Acceptance on January 21, 2005, and has continued as Designated Broker to date.

1.2 Directive. On June 13, 2005, a complaint was filed against Respondents alleging that the terms of the Borrowers' residential home loan at closing were different than the initial terms. On July 14, 2005, the Department issued a Directive and Requirement for Production of Records and Explanation (Directive) to Respondents requesting production of the following:

1. The borrower's original (initial) signed application form.
2. All disclosures required pursuant to RCW 19.146.030, RESPA, TIL, and ECOA.
3. The Final HUD1 or HUD1A closing statement.
4. The borrower's trust deposit check or receipt (if any).
5. The note, if the loan closed.
6. The appraisal order.
7. The first page of the credit report.
8. The activity log.
9. Any other documentation or explanation that will assist the Department in assessing the complaint.

Respondents were directed to provide all requested documentation and information no later than July 29, 2005. The Department received Respondents' answer to its Directive and Respondents' supporting documents on July 28, 2005.

1.3 Failure to Fully Respond to Directive: On July 28, 2005, Respondents provided documents in response to the Directive. These documents included:

1. A written explanation of the loan transaction.
2. An application for a residential mortgage loan (1003) dated February 27, 2005, for Property B.[1]
3. The first page of Borrowers' credit report, requested February 24, 2005.
4. A "Mortgage Broker Business Contract" dated February 27, 2005.
5. A "Standards and Disclosures" form dated February 27, 2005.
6. A GFE for Property B with a preparation date of March 26, 2005, dated February 27, 2005, with a disclosed interest rate of 6.5%.
7. A TIL for Property B with a preparation date of March 26, 2005, dated February 27, 2005, with a disclosed APR of 6.724%.
8. A RESPA Servicing Disclosure with a preparation date of March 26, 2005, dated February 27, 2005.
9. A "Credit Score Information Disclosure" dated February 27, 2005.
10. A "Washington Broker Application Disclosure" for Property B, dated February 27, 2005.
11. A trust funds disclosure, dated February 27, 2005.
12. An ECOA disclosure for Property A,[2] dated February 27, 2005.
13. A Fair Lending Notice for Property A, dated February 27, 2005.
14. A Privacy Protection Policy Notice, dated February 27, 2005.

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[1] E. 12th St., Spokane, WA.
[2] S. Bowman St., Spokane, WA

15. A Settlement Costs Booklet acknowledgement form, dated February 27, 2005.
16. An Affidavit of Occupancy for Property A, not dated.
17. A fax from Re/Max Spokane received by Respondents on March 22, 2005, containing the Purchase and Sale Agreement for Property B.
18. An application for a residential mortgage loan (1003) dated March 27, 2005, for Property B.
19. A GFE for Property B with a preparation date of March 26, 2005, dated March 27, 2005, with a disclosed interest rate of 6.5%.
20. A TIL for Property B with a preparation date of March 26, 2005, dated March 27, 2005, with a disclosed APR of 6.724%.
21. The loan approval from Aegis Wholesale, dated March 14, 2005, for Property A.
22. The Appraisal report for Property B, dated May 9, 2005.
23. The loan approval from Aegis Wholesale, dated May 11, 2005, for Property B.
24. The Assetwise Findings Report dated May 11, 2005.
25. The approval conditions from Aegis Wholesale, dated May 12, 2005, for Property B.
26. An application for a residential mortgage loan (1003) dated May 13, 2005, for Property B.
27. A GFE for Property B with a preparation date of March 26, 2005, dated May 13, 2005, with a disclosed interest rate of 8.5%.
28. A TIL for Property B with a preparation date of March 26, 2005, dated May 13, 2005, with a disclosed APR of 8.771%.
29. A Rate Lock disclosure and agreement, dated May 13, 2005.
30. A final HUD1 Settlement Statement for Property B, dated May 13, 2005. The HUD1 Settlement Statement contained the following fees, totaling $3,225.50, that inured to Respondent's benefit: $643.00 loan origination fee, $500.00 processing fee, $475 broker fee, and $1,607.50 yield spread premium.
31. A request for Verification of Deposit with a date that appears to be May 5, 2005.
32. A request for Verification of Deposit dated July 22, 2005.

To date, this constitutes the entirety of the documents presented by Respondents in response to the Directive.

In its written explanation, Respondents failed to address the fact that two separate properties, Property A and Property B, were involved in the application process. Additionally, Respondents did not produce a residential mortgage loan application (1003) in connection with Property A, even though several disclosures related to that application were produced.

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1.4 False Statements in Respondents' Answer to Directive:

A. Provision of Disclosures: In its letter to the Department responding to the Directive, Respondents stated the following regarding the provision of required disclosures, in pertinent part:

> The borrowers originally applied on 2/27/2005 and were presented and signed all proper disclosures reflecting a loan amount of $128,600 based on a purchase price of $124,000. The TIL clearly reflects that the loan may have a prepayment penalty.
>
> The loan was submitted for credit approval to Aegis Wholesale on 3/12/2005 and a preliminary approval was granted at 6.50% on a 30 year fixed program, matching the disclosed information provided to the client. The loan did have a condition that the loan was subject to MI coverage through UGI.
>
> Subsequent GFE and TIL disclosures supplied and dated by the borrowers on 3/27/2005, once a fully executed purchase and sales agreement was received, clearly show the exact same loan amount, purchase price and informing [sic] them that there may be a pre-payment penalty associated with their loan …
>
> … Every effort was made with the [Borrowers] to supply them with the information needed to make a sound buying decision. It is unfortunate that, due to underwriting restrictions, we were unable to offer them the loan initially discussed. It appears, however, that they were unwilling to forego the purchase of this home in order to ensure they received a satisfactory product.

During its analysis of the documentation presented, the Department discovered that two subject properties were involved, Property A and Property B. While some of the February disclosures contained the Property A address, both the February and March applications contained the address of Property B. Borrowers' signatures on the two applications appear to be identical. The dates next to the signatures on the first and second applications are February 27, 2005, and March 27, 2005, respectively. The dates on the February and March applications are written in the same handwriting next to both of the Borrowers' signatures, but the handwriting does not match that of either Borrower. Borrowers confirmed that the dates are not written in either of their handwriting, as detailed below in paragraph 1.4B.

Borrowers initially applied for a loan to purchase Property A in February 2005. When the sale of Property A fell through in early March, Borrowers executed a Purchase and Sale Agreement for Property B on March 17, 2005.

As noted above, the application dated February 27, 2005, contains the address of Property B. This is a logistical impossibility, given that: (1) the initial application was taken for Property A (as indicated on the Mortgage Broker Business Contract, ECOA disclosures, and Affidavit of Occupancy, dated in Borrowers' handwriting on February 27, 2005, which bear the Property A address), and (2) Borrowers were not aware of Property B until mid-March, after the sale of Property A fell through. The signatures on both the February and March applications appear to be identical, and both the February and March dates are written in handwriting different from that of either Borrower.

B. Altered Dates on Applications and Disclosures:

1. The application dated February 27, 2005, is an altered version of the application dated March 27, 2005.
2. The dates on the February 27, 2005, application are in neither of the Borrowers' handwriting.
3. The subject residential property identified on the February 27, 2005, application (Property B) was unknown to Borrowers until approximately the third week of March 2005.
4. The GFE dated February 27, 2005, bears the address of Property B, which was unknown to Borrowers until approximately the third week of March 2005.
5. The dates that appear next to Borrowers' signatures on the GFE dated February 27, 2005, are in neither of the Borrowers' handwriting.
6. The TIL dated February 27, 2005, bears the address of Property B, which was unknown to Borrowers until approximately the third week of March 2005.
7. The dates that appear next to Borrowers' signatures on the TIL dated February 27, 2005, are in neither of the Borrowers' handwriting.
8. The dates that appear next to Borrowers' signatures on the RESPA Servicing Disclosure dated February 27, 2005, are in neither of the Borrowers' handwriting.
9. The dates that appear next to Borrowers' signatures on the "Notice to the Home Loan Applicant Credit Score Information Disclosure," dated February 27, 2005, are in neither of the Borrowers' handwriting.
10. The dates that appear next to Borrowers' signatures on the "Washington Broker Application Disclosure," dated February 27, 2005, are in neither of the Borrowers' handwriting.
11. The dates that appear on the HUD Settlement costs booklet disclosure, dated February 27, 2005, are in neither of the Borrowers' handwriting.
12. The dates that appear next to Borrowers' signatures on the application, dated March 27, 2005, are in neither of the Borrowers' handwriting.

13. The dates that appear next to Borrowers' signatures on the GFE, dated March 27, 2005, are in neither of the Borrowers' handwriting.
14. The dates that appear next to Borrowers' signatures on the TIL, dated March 27, 2005, are in neither of the Borrowers' handwriting.
15. The Good Faith Estimate (GFE) dated February 27, 2005, bears a preparation date of March 26, 2005.
16. The Truth in Lending disclosure (TIL) dated February 27, 2005, bears a preparation date of March 26, 2005.
17. The RESPA Servicing Disclosure dated February 27, 2005, bears a preparation date of March 26, 2005.
18. Property B was not located by Borrowers until approximately the third week of March 2005.
19. The interest rate on both the February 27, 2005, and March 27, 2005, applications and disclosures is 6.5%.
20. The interest rate on the HUD1 at closing was 8.5%.

1.5 Operating Under an Unlicensed Name: On the HUD1 settlement statement for Borrowers' loan for Property B, discussed in paragraph 1.4, above, the Loan Origination Fee, Credit Report Fee, and Yield Spread Premium are each attributed to "Capital Generation DBA Accpt Cap Mtg." Respondent Acceptance is licensed with the Department to do business as a mortgage broker under the name "Acceptance Capital Mortgage Corporation" doing business as "Acceptance Mortgage." To date, Respondents have neither requested nor received the written consent of the Director to operate or advertise under the name "Capital Generation," "Capital Generation d/b/a Accpt Cap Mtg.," or "Accpt Cap Mtg."

1.6 Failure to Accurately and/or Timely Provide Required Disclosures: Although Respondents provided some initial disclosures to Borrowers for Property A (i.e. ECOA, Fair Lending Notice, and the Affidavit of Occupancy), Respondents failed to provide Borrowers with a GFE or TIL in connection with the initial application for Property A. Moreover, as discussed in paragraph 1.4 above, the February and March disclosures presented by Respondents are not authentic.

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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), (3), (6), (7), (8), (12), and (14) 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, obtaining property by fraud or misrepresentation, failing to make disclosures to loan applicants as required by RCW 19.146.030, making, 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 engaging in bait and switch advertising, 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.

2.2 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(1) 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 (3) days following receipt of a loan application or any moneys from the Borrowers.

2.3 Operating Under an Unlicensed Name: Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.250 for operating under a name other than the one under which the license is issued without obtaining the written consent of the Director.

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2.4 Authority to Revoke License: Pursuant to RCW 19.146.220(2)(b)(iii) and (iv) and WAC 208-660-160, the Director may revoke a license for failure to comply with any directive or order of the Director, or for any violation of RCW 19.146.0201(1) through (9) or (12).

2.5 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 violation of RCW 19.146.0201(1) through (9) or (12), RCW 19.146.030 through RCW 19.146.080, or for failing to comply with a directive of the Director.

2.6 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.

2.7 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) or (12), RCW 19.146.030 through RCW 19.146.080, or for failing to comply with a directive of the Director.

2.8 Authority to Collect 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.

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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 The mortgage broker license of Respondent Acceptance Capital Mortgage Corp., d/b/a Acceptance Mortgage be revoked; and

3.2 Respondent Acceptance Capital Mortgage Corp. d/b/a Acceptance Mortgage and Respondent Martin, jointly and severally, pay a fine of $20,250.00 for:
a. Violating RCW 19.146.0201(1), (2), (3), and (7), 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 19.146.250, calculated at $50 per day for 90 days; and
e. Violating RCW 19.146.235, calculated at $75 per day for 90 days; and

3.3 Respondent Acceptance Capital Mortgage Corp., d/b/a Acceptance Mortgage and Respondent Martin, jointly and severally, pay restitution to Complainants in the amount of $3,225.50 for the following fees: $643.00 loan origination fee, $500.00 processing fee, $475.00 broker fee, and $1,607.50 yield spread premium; and

3.4 Respondent Martin be prohibited in the conduct of the affairs of any licensed mortgage broker, in any manner, for a period of five (5) years; and

3.5 Respondent Acceptance Capital Mortgage Corp., d/b/a Acceptance Mortgage and Respondent Martin, jointly and severally, pay an investigation fee in the amount of $955.60 calculated at $47.78 per hour for the 20 staff hours devoted to the investigation; and

3.6 Respondent Acceptance Capital Mortgage Corp., d/b/a Acceptance Mortgage and Respondent Martin maintain records in compliance with the Act and provide the Department with the location of the books, records and other information relating to Respondent Acceptance's mortgage broker business, and the name, address and telephone number of the individual responsible for maintenance of such records in compliance with the Act.

IV. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Impose Fine, Order Restitution, Prohibit from Industry, and Collect Investigation Fee (Statement of Charges) is entered pursuant to the provisions of 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 27th day of January, 2006.

CHUCK CROSS
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

Rayne Tronset-Moore
Financial Legal Examiner

Approved by:

JAMES R. BRUSSELBACK
Enforcement Chief

DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

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: ACCEPTANCE CAPITAL MORTGAGE CORP., d/b/a ACCEPTANCE MORTGAGE; and MICHAEL D. MARTIN, Designated Broker, Respondents.	C-05-194-06-SC01 NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING

THE STATE OF WASHINGTON TO:

Acceptance Capital Mortgage Corporation
d/b/a Acceptance Mortgage;
Michael D. Martin

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. <u>YOUR APPLICATION MUST BE RECEIVED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS WITHIN TWENTY (20) DAYS FROM THE DATE YOU RECEIVED THIS NOTICE</u>. 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 27th day of January, 2006.

CHUCK CROSS
Director
Division of Consumer Services
Department of Financial Institutions