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**SENATE BILL 5299**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Benton, Mullet, Fain, Darneille, Hobbs, Angel, and Conway; by request of Department of Financial Institutions

AN ACT Relating to updating, clarifying, and strengthening department of financial institutions' enforcement, licensing, and examination statutes relating to residential mortgage lending, and enhancing the crime of mortgage fraud in the residential mortgage lending process; amending RCW 18.44.021, 19.144.010, 19.144.080, 19.144.090, 19.146.010, 19.146.020, 19.146.0201, 19.146.030, 19.146.040, 19.146.070, 19.146.205, 19.146.220, 19.146.221, 19.146.227, 19.146.228, 19.146.265, 19.146.300, 19.146.390, 31.04.015, 31.04.027, 31.04.045, 31.04.075, 31.04.093, 31.04.102, 31.04.105, 31.04.145, 31.04.205, 31.04.221, 31.04.224, 31.04.247, 31.04.277, 31.04.290, and 31.04.520; reenacting and amending RCW 31.04.025; adding new sections to chapter 31.04 RCW; repealing RCW 19.146.290 and 19.146.330; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 18.44.021 and 2012 c 124 s 1 are each amended to read as follows:

It shall be unlawful for any person to engage in business as an escrow agent by performing escrows or any of the functions of an escrow agent as described in RCW 18.44.011(7) within this state or with respect to transactions that involve personal property or real property located in this state unless such person possesses a valid license issued by the director pursuant to this chapter. The licensing requirements of this chapter shall not apply to:

(1) Any person doing business under the law of this state or the United States relating to banks, trust companies, mutual savings banks, savings and loan associations, credit unions, insurance companies, or any federally approved agency or lending institution under the national housing act (12 U.S.C. Sec. 1703).

(2) Any person licensed to practice law in this state if:

(a) All escrow transactions are performed by the lawyer while engaged in the practice of law, or by employees of the law practice under the direct supervision of the lawyer while engaged in the practice of law;

(b) All escrow transactions are performed under a legal entity publicly identified and operated as a law practice; and

(c) All escrow funds are deposited to, maintained in, and disbursed from a trust account in compliance with rules enacted by the Washington supreme court regulating the conduct of lawyers.

(3) Any real estate company, broker, or agent subject to the jurisdiction of the director of licensing while performing acts in the course of or incidental to sales or purchases of real or personal property handled or negotiated by such real estate company, broker, or agent: PROVIDED, That no compensation is received for escrow services.

(4) Any transaction in which money or other property is paid to, deposited with, or transferred to a joint control agent for disbursal or use in payment of the cost of labor, material, services, permits, fees, or other items of expense incurred in the construction of improvements upon real property.

(5) Any receiver, trustee in bankruptcy, executor, administrator, guardian, or other person acting under the supervision or order of any superior court of this state or of any federal court.

(6) Title insurance companies having a valid certificate of authority issued by the insurance commissioner of this state and title insurance agents having a valid license as a title insurance agent issued by the insurance commissioner of this state.

(7) The director may at his or her discretion waive applicability of the licensing provisions of this chapter if the director determines it necessary to facilitate commerce or protect consumers. The director may adopt rules interpreting this section.

**Sec.**  RCW 19.144.010 and 2008 c 108 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adjustable rate mortgage" or "ARM" means a payment option ARM or a hybrid ARM (commonly known as a 2/28 or 3/27 loan).

(2) "Application" means the same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500, as used in an application for a residential mortgage loan.

(3) "Borrower" means any person who consults with or retains a person subject to this chapter in an effort to seek information about obtaining a residential mortgage loan, regardless of whether that person actually obtains such a loan.

(4) "Department" means the department of financial institutions.

(5) "Director" means the director of the department of financial institutions.

(6) "Financial institution" means commercial banks and alien banks subject to regulation under \*Title 30 RCW, savings banks subject to regulation under Title 32 RCW, savings associations subject to regulation under Title 33 RCW, credit unions subject to regulation under chapter 31.12 RCW, consumer loan companies subject to regulation under chapter 31.04 RCW, and mortgage brokers and lenders subject to regulation under chapter 19.146 RCW.

(7) "Fully indexed rate" means the index rate prevailing at the time a residential mortgage loan is made, plus the margin that will apply after the expiration of an introductory interest rate.

(8) "Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan or residential mortgage loan modification including, but not limited to, solicitation, application, or origination; negotiation of terms; third-party provider services; underwriting; signing and closing; and funding of the loan. Documents involved in the mortgage lending process include, but shall not be limited to, uniform residential loan applications or other loan applications, appraisal reports, settlement statements, supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, payroll stubs, and any required disclosures.

(9) "Negative amortization" means an increase in the principal balance of a loan caused when the loan agreement allows the borrower to make payments less than the amount needed to pay all the interest that has accrued on the loan. The unpaid interest is added to the loan balance and becomes part of the principal.

((~~(9)~~))(10) "Person" means individuals, partnerships, associations, limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.

((~~(10)~~))(11) "Residential mortgage loan" means an extension of credit secured by residential real property located in this state upon which is constructed or intended to be constructed, a single-family dwelling or multiple-family dwelling of four or less units. It does not include a reverse mortgage or a borrower credit transaction that is secured by rental property. It does not include a bridge loan. It does not include loans to individuals making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment. For purposes of this subsection, a "bridge loan" is any temporary loan, having a maturity of one year or less, for the purpose of acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

((~~(11)~~))(12) "Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include, but are not limited to, forbearances; repayment plans; changes in interest rates, loan terms, or loan types; capitalizations of arrearages; or principal reductions.

(13) "The interagency guidance on nontraditional mortgage product risks" means the guidance document issued in September 2006 by the office of the comptroller of the currency, the board of governors of the federal reserve system, the federal deposit insurance corporation, the office of thrift supervision, and the national credit union administration, and the guidance on nontraditional mortgage product risks released in November 2006 by the conference of state bank supervisors and the American association of residential mortgage regulators.

((~~(12)~~))(14) "The statement on subprime mortgage lending" means the guidance document issued in June 2007 by the office of the comptroller of the currency, the board of governors of the federal reserve system, the federal deposit insurance corporation, the office of thrift supervision, and the national credit union administration, and the statement on subprime mortgage lending released in July 2007 by the conference of state bank supervisors, the American association of residential mortgage regulators, and the national association of consumer credit administrators.

**Sec.**  RCW 19.144.080 and 2010 c 35 s 12 are each amended to read as follows:

(1) It is unlawful for any person in connection with ((~~making, brokering, obtaining, or modifying a residential~~))the mortgage ((~~loan~~))lending process to directly or indirectly:

((~~(1)~~))(a)(i) Employ any scheme, device, or artifice to defraud or materially mislead any borrower during the lending process; ((~~(b)~~))(ii) defraud or materially mislead any lender, defraud or materially mislead any person, or engage in any unfair or deceptive practice toward any person ((~~in~~))related to the mortgage lending process; or ((~~(c)~~))(iii) obtain property by fraud or material misrepresentation ((~~in~~))during the mortgage lending process;

((~~(2)~~))(b) Knowingly make any misstatement, misrepresentation, or omission ((~~during~~))related to the mortgage lending process knowing that it may be relied on by a mortgage lender, borrower, or any other party related to the mortgage lending process;

((~~(3)~~))(c) Use or facilitate the use of any misstatement, misrepresentation, or omission, knowing the same to contain a misstatement, misrepresentation, or omission, ((~~during~~))related to the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party related to the mortgage lending process; ((~~or~~

~~(4)~~))(d) Receive any proceeds or anything of value in connection with a residential mortgage closing that such person knew resulted from a violation of subsection (1), (2), or (3) of this section;

(e) File or cause to be filed with the county recorder or the official registrar of deeds of any county of this state any document such person knows to contain a material misstatement, misrepresentation, or omission;

(f) Violate RCW 31.04.297(3); or

(g) Knowingly alter, destroy, shred, mutilate, or conceal a record, document, or other object, or attempt to do so, with the intent to impair the investigation and prosecution of this crime. A person who violates this subsection (1)(g) is guilty of a class B felony punishable under RCW 9A.20.021(1)(b).

(2) Each crime prosecuted under this section shall be punished separately under chapter 9.94 RCW, unless it is the same criminal conduct as any other crime under RCW 9.94A.589.

(3) Every person who, in the commission of mortgage fraud as described in this section, commits any other crime may be punished for that other crime in addition to mortgage fraud, and may be prosecuted for each crime separately.

**Sec.**  RCW 19.144.090 and 2008 c 108 s 10 are each amended to read as follows:

(1) Any person who knowingly violates RCW 19.144.080 or who knowingly aids or abets in the violation of RCW 19.144.080 is guilty of a class B felony punishable under RCW 9A.20.021(1)(b). Mortgage fraud is a serious level III offense per chapter 9.94A RCW.

(2) ((~~Any person who knowingly alters, destroys, shreds, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the investigation and prosecution of this crime is guilty of a class B felony punishable under RCW 9A.20.021(1)(b).~~

~~(3)~~)) No information may be returned more than (a) five years after the violation, or (b) three years after the actual discovery of the violation, whichever date of limitation is later.

(3) For purposes of venue under this chapter, any violation of RCW 19.144.080 and 31.04.297(3), is considered to have been committed: (a) In the county in which the residential property for which a residential mortgage loan is being sought is located; (b) in any county in which any act was performed in furtherance of the violation; or (c) in any county in which a document containing a misstatement, misrepresentation, or omission of a material fact is filed with the county recorder or the official registrar of deeds.

(4) Any person who violates this chapter is subject to civil forfeiture statutes.

(5) Any person who violates RCW 19.144.080 or 31.04.297(3) is liable for civil damages of five thousand dollars or actual damages, whichever is greater, including costs to repair the victim's credit record and quiet title on the residential property that is involved in the prosecution, and reasonable attorneys' fees as determined by the court.

(6) In a proceeding under RCW 19.144.080 in which there has been a conviction, the sentencing court may issue such orders as necessary to correct a public record that contains false information resulting from a violation of the referenced sections.

**Sec.**  RCW 19.146.010 and 2013 c 30 s 1 are each amended to read as follows:

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

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(2) ((~~"Application" means the same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500.~~

~~(3)~~)) "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, or a residential mortgage loan modification, for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

((~~(4)~~))(3) "Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

((~~(5)~~))(4) "Department" means the state department of financial institutions.

((~~(6)~~))(5) "Designated broker" means ((~~a natural person~~))an individual designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210(1)(e).

((~~(7)~~))(6) "Director" means the director of financial institutions.

((~~(8)~~))(7) "Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

((~~(9)~~))(8) "Federal banking agencies" means the board of governors of the federal reserve system, comptroller of the currency, director of the office of thrift supervision, national credit union administration, and federal deposit insurance corporation.

((~~(10) "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.~~

~~(11)~~))(9) "License" means a single license issued under the authority of this chapter.

(10) "Licensee" means a person to whom one or more licenses have been issued. "Licensee" also means any person, whether located within or outside of this state, who fails to obtain a license required by this chapter.

(11)(a) "Loan originator" means ((~~a natural person~~))an individual who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain (i) takes a residential mortgage loan application ((~~for a mortgage broker~~)), or (ii) offers or negotiates terms of a residential mortgage loan. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a residential mortgage loan. A person who holds himself or herself out to the public as able to obtain a residential mortgage loan is not performing administrative or clerical tasks.

(b) "Loan originator" also includes ((~~a natural person~~))an individual who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

(c) "Loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction;

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in (c)(i) through (iv) of this subsection.

(d) "Loan originator" does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

(e) This subsection does not apply to employees of a housing counseling agency approved by the United States department of housing and urban development unless the employees of a housing counseling agency are required under federal law to be licensed individually as loan originators.

(12) "Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.

(13) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a residential mortgage loan available to that borrower.

(14) "Mortgage broker" means any person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or performs residential mortgage loan modification services or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan or provide residential mortgage loan modification services.

(15) "Mortgage loan originator" has the same meaning as "loan originator."

(16) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors ((~~and the American association of residential mortgage regulators for the~~))for licensing and registration ((~~of mortgage loan originators~~)).

(17) "Person" means ((~~a natural person~~))an individual, corporation, company, limited liability ((~~corporation~~))company, partnership, ((~~or~~)) association, and all other legal entities.

(18) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, ((~~or~~)) corporation, limited liability company, and the owner of a sole proprietorship.

(19) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage ((~~or~~)), deed of trust ((~~on~~))or other consensual security interest on a dwelling as defined in the truth in lending act, or residential real estate upon which is constructed or intended to be constructed a ((~~single-family~~)) dwelling ((~~or multiple-family dwelling of four or less units~~)).

(20) "Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include but are not limited to forbearances; repayment plans; changes in interest rates, loan terms, or loan types; capitalizations of arrearages; or principal reductions.

(21) "Residential mortgage loan modification services" includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a residential mortgage loan modification. "Residential mortgage loan modification services" also includes the collection of data for submission to any entity performing mortgage loan modification services.

(22) "S.A.F.E. act" means the secure and fair enforcement for mortgage licensing act of 2008, or Title V of the housing and economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008, codified at 12 U.S.C. Sec. 5101 et seq.

(23) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's residential mortgage loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

(24) "Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

(25) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

**Sec.**  RCW 19.146.020 and 2013 c 30 s 2 are each amended to read as follows:

(1) The following are exempt from all provisions of this chapter:

(a) Any person doing business under the laws of the state of Washington or the United States, and any federally insured depository institution doing business under the laws of any other state, relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof;

(b) Any person doing business under the consumer loan act is exempt from this chapter only for that business conducted under the authority and coverage of the consumer loan act;

(c) An attorney licensed to practice law in this state. However, (i) all mortgage broker or loan originator services must be performed by the attorney while engaged in the practice of law; (ii) all mortgage broker or loan originator services must be performed under a business that is publicly identified and operated as a law practice; and (iii) all funds associated with the transaction and received by the attorney must be deposited in, maintained in, and disbursed from a trust account to the extent required by rules enacted by the Washington supreme court regulating the conduct of attorneys;

(d) Any person doing any act under order of any court, except for a person subject to an injunction to comply with any provision of this chapter or any order of the director issued under this chapter;

(e) A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction;

(f) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (1)(f);

(g) A real estate broker who provides only information regarding rates, terms, and lenders in connection with a CLI system, who receives a fee for providing such information, who conforms to all rules of the director with respect to the providing of such service, and who discloses on a form approved by the director that to obtain a loan the borrower must deal directly with a mortgage broker or lender. However, a real estate broker shall not be exempt if he or she does any of the following:

(i) Holds himself or herself out as able to obtain a loan from a lender;

(ii) Accepts a loan application, or submits a loan application to a lender;

(iii) Accepts any deposit for third-party services or any loan fees from a borrower, whether such fees are paid before, upon, or after the closing of the loan;

(iv) Negotiates rates or terms with a lender on behalf of a borrower; or

(v) Provides the disclosure required by RCW 19.146.030(1);

(h) Registered mortgage loan originators, or any individual required to be registered; ((~~and~~))

(i) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the transaction; and

(j) Nonprofit housing organizations brokering residential mortgage loans under housing programs that are funded in whole or in part by federal or state programs if the primary purpose of the programs is to assist low-income borrowers with purchasing, repairing, or otherwise providing housing for low-income Washington state residents.

(2) Any person otherwise exempted from the licensing provisions of this chapter may voluntarily submit an application to the director for a mortgage broker's license. The director shall review such application and may grant or deny licenses to such applicants upon the same grounds and with the same fees as may be applicable to persons required to be licensed under this chapter.

(a) Upon receipt of a license under this subsection, the licensee is required to continue to maintain a valid license, is subject to all provisions of this chapter, and has no further right to claim exemption from the provisions of this chapter except as provided in (b) of this subsection.

(b) Any licensee under this subsection who would otherwise be exempted from the requirements of licensing by this section may apply to the director for exemption from licensing. The director shall adopt rules for reviewing such applications and shall grant exemptions from licensing to applications which are consistent with those rules and consistent with the other provisions of this chapter.

**Sec.**  RCW 19.146.0201 and 2013 c 30 s 3 are each amended to read as follows:

It is a violation of this chapter for ((~~a~~)) loan originators((~~or~~)), mortgage brokers,((~~required to be licensed under~~))officers, directors, employees, independent contractors, or any other person subject to this chapter to:

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

(2) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(3) Directly or indirectly 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 a lender with whom the mortgage broker maintains a written correspondent or loan broker 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~~))licensee or in connection with any investigation conducted by the department;

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

(10) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest;

(11) Fail to comply with state and federal laws applicable to the activities governed by this chapter;

(12) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;

(13) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or 19.146.070;

(14)(a) Except when complying with (b) and (c) of this subsection, act as a loan originator in any transaction (i) in which the loan originator acts or has acted as a real estate broker or salesperson or (ii) in which another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson;

(b) Prior to providing mortgage services to the borrower, a loan originator, in addition to other disclosures required by this chapter and other laws, ((~~shall~~))must provide to the borrower the following written disclosure:

THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR, AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

(c) A real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker ((~~shall~~))must carry on such mortgage broker business activities and ((~~shall~~))must maintain such person's mortgage broker business records separate and apart from the real estate broker activities conducted pursuant to chapter 18.85 RCW. Such activities ((~~shall be deemed~~))are separate and apart even if they are conducted at an office location with a common entrance and mailing address, so long as each business is clearly identified by a sign visible to the public, each business is physically separated within the office facility, and no deception of the public as to the separate identities of the broker business firms results. This subsection (14)(c) ((~~shall~~))does not require a real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker to maintain a physical separation within the office facility for the conduct of its real estate and mortgage broker activities where the director determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage broker and is unnecessary for the protection of the public; ((~~or~~))

(15) Fail to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections;

(16) Originate loans from any unlicensed location;

(17) Solicit or accept from any borrower at or near the time a loan application is taken, and in advance of any foreclosure of the borrower's existing residential mortgage loan or loans, any instrument of conveyance of any interest in the borrower's primary dwelling that is the subject of the residential mortgage loan or loans; or

(18) Make a residential mortgage loan unless the loan is table funded.

**Sec.**  RCW 19.146.030 and 2006 c 19 s 5 are each amended to read as follows:

(1) Within three business days following receipt of a loan application ((~~or any moneys~~)) from a borrower, a mortgage broker or loan originator ((~~on behalf of the mortgage broker shall~~))must provide to ((~~each~~))the 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~~))must 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~~))must 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~~))Part 1026, as now or hereafter amended, ((~~shall be deemed to comply~~))is in compliance 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~~))Part 1024, as now or hereafter amended, ((~~shall be deemed to comply~~))is in compliance 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) If applicable, 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 or loan originator 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 or loan originator ((~~shall~~))must deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which ((~~shall~~))must include a copy of the disclosure made under subsection (2)(c) of this section.

(4) A mortgage broker or loan originator on behalf of a mortgage broker ((~~shall~~))must 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 or loan originator on behalf of a 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 on the final settlement statement, excluding prepaid escrowed costs of ownership as defined by rule, does not exceed the total closing costs in the most recent good faith estimate, excluding prepaid escrowed costs of ownership as defined by rule, no other disclosures ((~~shall be~~))are required by this subsection.

**Sec.**  RCW 19.146.040 and 2006 c 19 s 6 are each amended to read as follows:

(1) Every contract between a mortgage broker, or a loan originator, and a borrower ((~~shall~~))must be in writing and ((~~shall~~)) contain the entire agreement of the parties.

(2) Any contract under this section entered by a loan originator ((~~shall be~~))is binding on the mortgage broker.

(3) A mortgage broker ((~~shall~~))must have a written ((~~correspondent or~~)) loan broker agreement with a lender before any solicitation of, or contracting with, the public.

**Sec.**  RCW 19.146.070 and 2006 c 19 s 8 are each amended to read as follows:

(1) Except as otherwise permitted by this section, a mortgage broker ((~~shall~~))must not receive a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed upon by the borrower and mortgage broker. A loan originator may not accept a fee, commission, or compensation of any kind from borrowers in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

(2) A mortgage broker may:

(a) If the mortgage broker has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed upon by the borrower and the mortgage broker, and the borrower fails to close on the loan through no fault of the mortgage broker, charge a fee not to exceed three hundred dollars for services rendered, preparation of documents, or transfer of documents in the borrower's file which were prepared or paid for by the borrower if the fee is not otherwise prohibited by the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, and Regulation Z, 12 C.F.R. ((~~Sec. 226~~))Part 1026, as now or hereafter amended; or

(b) Solicit or receive fees for third party provider goods or services in advance. Fees for any goods or services not provided must be refunded to the borrower and the mortgage broker may not charge more for the goods and services than the actual costs of the goods or services charged by the third party provider.

(3) A loan originator may not solicit or receive fees for a third-party provider of goods or services except that a loan originator may transfer funds from a borrower to a licensed mortgage broker, exempt mortgage broker, or third-party provider, if the loan originator does not deposit, hold, retain, or use the funds for any purpose other than the payment of bona fide fees to third-party providers.

**Sec.**  RCW 19.146.205 and 2009 c 528 s 4 are each amended to read as follows:

(1) Application for a mortgage broker license under this chapter must be made to the nationwide mortgage licensing system and registry and in the form prescribed by the director. The application ((~~shall~~))must contain at least the following information:

(a) The name, address, date of birth, and social security number of the applicant, and any other names, dates of birth, or social security numbers previously used by the applicant, unless waived by the director;

(b) If the applicant is a partnership ((~~or~~)), association, or limited liability company the name, address, date of birth, and social security number of each general partner ((~~or~~)), principal, or member of the association, and any other names, dates of birth, or social security numbers previously used by the members, unless waived by the director;

(c) If the applicant is a corporation, the name, address, date of birth, and social security number of each officer, director, registered agent, and each principal stockholder, and any other names, dates of birth, or social security numbers previously used by the officers, directors, registered agents, and principal stockholders unless waived by the director;

(d) The street address, county, and municipality where the principal business office is to be located;

(e) The name, address, date of birth, and social security number of the applicant's designated broker, and any other names, dates of birth, or social security numbers previously used by the designated broker and a complete set of the designated broker's fingerprints taken by an authorized law enforcement officer; and

(f)(i) Such other information regarding the applicant's or designated broker's background, financial responsibility, experience, character, and general fitness as the director may require by rule.

(ii) The director may waive one or more requirements of this section or permit an applicant to submit other information in lieu of the required information.

(2) As a part of or in connection with an application for any license under this section, or periodically upon license renewal, the applicant ((~~shall~~))must furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30A, 32, and 33 RCW.

(3) In order to reduce the points of contact which the federal bureau of investigation may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(4) In order to reduce the points of contact which the director may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(5) At the time of filing an application for a license under this chapter, each applicant ((~~shall~~))must pay to the director through the nationwide mortgage licensing system and registry the appropriate application fee in an amount determined by rule of the director in accordance with RCW 43.24.086 to cover, but not exceed, the cost of processing and reviewing the application. The director ((~~shall~~))must deposit the moneys in the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case the director ((~~shall~~))must deposit the moneys in the consumer services account.

(6)(a) Except as provided in (b) of this subsection, each applicant for a mortgage broker's license ((~~shall~~))must file and maintain a surety bond, in an amount which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety. The bonding requirement as established by the director ((~~shall~~))must take the form of a range of bond amounts which ((~~shall~~)) vary according to the annual loan origination volume of the licensee. The bond ((~~shall~~))must run to the state of Washington as obligee, and ((~~shall~~))must run first to the benefit of the borrower and then to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this chapter or rules adopted under this chapter. The bond ((~~shall~~))must be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and ((~~shall~~))must reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. Borrowers ((~~shall~~))must be given priority over the state and other persons. The state and other third parties ((~~shall~~))must be allowed to receive distribution pursuant to a valid claim against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. The bond ((~~shall~~))must be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation ((~~shall~~))must be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it ((~~shall be~~))is considered one continuous obligation, and the surety upon the bond ((~~shall not be~~))is not liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event ((~~shall~~))is the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond ((~~shall~~))is not be liable for any penalties imposed on the licensee, including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if the arrangement provides at least as much coverage as is required under this subsection.

(b) If the director determines that the bond required in (a) of this subsection is not reasonably available, the director ((~~shall~~))must waive the requirements for such a bond. The mortgage recovery fund account is created in the custody of the state treasurer. The director is authorized to charge fees to fund the account. All fees charged under this section, except those retained by the director for administration of the ((~~fund [account]~~))account, must be deposited into the mortgage recovery fund account. Expenditures from the account may be used only for the same purposes as the surety bond as described in (a) of this subsection. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. A person entitled to receive payment from the mortgage recovery ((~~fund [account]~~))account may only receive reimbursement after a court of competent jurisdiction has determined the actual damages caused by the licensee. The director may determine by rule the procedure for recovery; the amount each mortgage broker must pay through the nationwide mortgage licensing system and registry for deposit in the mortgage recovery ((~~fund [account]~~))account; and the amount necessary to administer the ((~~fund [account]~~))account.

**Sec.**  RCW 19.146.220 and 2014 c 36 s 2 are each amended to read as follows:

(1) The director may enforce all laws and rules relating to the licensing of mortgage brokers and loan originators, grant or deny licenses to mortgage brokers and loan originators, and hold hearings.

(2) The director may impose fines ((~~or~~))and order restitution and refunds against licensees ((~~or~~)), employees, independent contractors, agents of licensees, and other persons subject to this chapter, ((~~or~~))and may deny, condition, suspend, decline to renew, decline to reactivate, or revoke licenses for:

(a) Violations of orders, including cease and desist orders;

(b) 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;

(c) Failure to pay a fee required by the director or maintain the required bond;

(d) Failure to comply with any directive, order, or subpoena of the director; or

(e) Any violation of this chapter.

(3) ((~~The director may impose fines on an employee, loan originator, independent contractor, or agent of the licensee, or other person subject to this chapter for:~~

~~(a) Any violations of this chapter; or~~

~~(b) Failure to comply with any directive or order of the director.~~

~~(4)~~)) The director may issue orders directing a licensee, its employee, loan originator, independent contractor, agent, or other person subject to this chapter to cease and desist from conducting business or take such other affirmative action as is necessary to comply with this chapter.

((~~(5)~~))(4) 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 this chapter for:

(a) Any violation of this chapter;

(b) 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;

(c) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or

(d) Failure to comply with any directive or order of the director.

((~~(6)~~))(5) 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.

((~~(7)~~))(6) The statute of limitations on actions not subject to RCW 4.16.160 that are brought under this chapter by the director is five years.

((~~(8)~~))(7) The director ((~~shall~~))must establish by rule standards for licensure of applicants licensed in other jurisdictions.

((~~(9)~~))(8) The director ((~~shall~~))must 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. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate ((~~shall be~~))is 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.

**Sec.**  RCW 19.146.221 and 1994 c 33 s 13 are each amended to read as follows:

(1) 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)~~))as provided for in this chapter to enforce this chapter. 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.

(2) The director may recover the state's costs and expenses for prosecuting violations of this chapter including staff time spent preparing for and attending administrative hearings and reasonable attorneys' fees, unless, after a hearing, the director determines no violation occurred.

**Sec.**  RCW 19.146.227 and 1994 c 33 s 14 are each amended to read as follows:

Whenever the director determines that the public is likely to be substantially injured by delay in issuing a cease and desist order, the director may immediately issue a temporary cease and desist order. The order may direct the licensee to discontinue any violation of this chapter and take such affirmative action as is necessary to comply with this chapter, may include a summary suspension of the licensee's license, and may order the licensee to immediately cease the conduct of business under this chapter. The order ((~~shall~~)) becomes effective at the time specified in the order. Every temporary cease and desist order ((~~shall~~))must include a provision that a hearing will be held, within fourteen days unless otherwise specified in chapter 34.05 RCW, upon request to determine whether the order will become permanent.

If it appears that a person has engaged in an act or practice constituting a violation of a provision of this chapter, or a rule or order under this chapter, the director, with or without prior administrative proceedings, may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon proper showing, injunctive relief or temporary restraining orders ((~~shall~~))must be granted. The director ((~~shall not be~~))is not required to post a bond in any court proceedings.

**Sec.**  RCW 19.146.228 and 2009 c 528 s 5 are each amended to read as follows:

The director ((~~shall~~))must establish fees 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 ((~~and~~)), loan originators ((~~shall~~)), and any person subject to licensing under this chapter must 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 or loan originator 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~~))must 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~~))must be deposited in the consumer services account.

**Sec.**  RCW 19.146.265 and 1997 c 106 s 19 are each amended to read as follows:

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~~))must be in good standing with the department, as defined in rule by the director, and the director ((~~shall~~))must 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.~~))

**Sec.**  RCW 19.146.300 and 2009 c 528 s 9 are each amended to read as follows:

(1) Application for a loan originator license under this chapter must be made to the nationwide mortgage licensing system and registry and in the form prescribed by the director. The application ((~~shall~~))must contain at least the following information:

(a) The name, address, date of birth, and social security number of the loan originator applicant, and any other names, dates of birth, or social security numbers previously used by the loan originator applicant, unless waived by the director; and

(b) Such other information regarding the loan originator applicant's background, experience, character, and general fitness as the director may require by rule or as deemed necessary by the nationwide mortgage licensing system and registry.

(2)(a) As part of or in connection with an application for any license under this section, or periodically upon license renewal, the loan originator applicant ((~~shall~~))must furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30A, 32, and 33 RCW.

(b) In order to reduce the points of contact which the federal bureau of investigation may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(c) In order to reduce the points of contact which the director may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(d) As part of or in connection with an application for a license under this section, the loan originator applicant must furnish to the nationwide mortgage licensing system and registry personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the director to obtain:

(i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the federal fair credit reporting act; and

(ii) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) At the time of filing an application for a license under this chapter, each loan originator applicant ((~~shall~~))must pay to the director the appropriate application fee in an amount determined by rule of the director in accordance with RCW 19.146.228 to cover the cost of processing and reviewing the application. The director ((~~shall~~))must deposit the moneys in the financial services regulation fund.

(4) The director must establish by rule procedures for accepting and processing incomplete applications.

**Sec.**  RCW 19.146.390 and 2009 c 528 s 17 are each amended to read as follows:

Each mortgage broker licensee ((~~shall~~))must submit ((~~to~~))call reports through the nationwide mortgage licensing system and registry ((~~reports of condition, which must be in the~~))in a form and ((~~must contain~~))containing the information as prescribed by the director or as deemed necessary by the nationwide mortgage licensing system and registry ((~~may require~~)).

**Sec.**  RCW 31.04.015 and 2013 c 29 s 1 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

(1) "Add-on method" means the method of precomputing interest payable on a loan whereby the interest to be earned is added to the principal balance and the total plus any charges allowed under this chapter is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(2) "Applicant" means a person applying for a license under this chapter.

(3) "Borrower" means any person who consults with or retains a licensee or person subject to this chapter in an effort to obtain, or who seeks information about obtaining a loan, regardless of whether that person actually obtains such a loan. "Borrower" includes a person who consults with or retains a licensee or person subject to this chapter in an effort to obtain, or who seeks information about obtaining a residential mortgage loan modification, regardless of whether that person actually obtains a residential mortgage loan modification.

(4) "Depository institution" has the same meaning as in section 3 of the federal deposit insurance act on July 26, 2009, and includes credit unions.

(5) "Director" means the director of financial institutions.

(6) "Federal banking agencies" means the board of governors of the federal reserve system, comptroller of the currency, director of the office of thrift supervision, national credit union administration, and federal deposit insurance corporation.

(7) "Individual servicing a mortgage loan" means a person on behalf of a lender or servicer licensed by this state, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.

(8) "Insurance" means life insurance, disability insurance, property insurance, involuntary unemployment insurance, and such other insurance as may be authorized by the insurance commissioner.

(9) "License" means a single license issued under the authority of this chapter ((~~with respect to a single place of business~~)).

(10) "Licensee" means a person to whom one or more licenses have been issued. "Licensee" also means any person, whether located within or outside of this state, who fails to obtain a license required by this chapter.

(11) "Loan" means a transfer of a sum of money ((~~lent at interest or for a fee or other charge~~))with an expectation of repayment of an amount in excess of the amount transferred and includes both open‑end and closed‑end loan transactions.

(12) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.

(13) "Making a loan" means advancing, offering to advance, or making a commitment to advance funds to a borrower for a loan.

(14) "Mortgage broker" means the same as defined in RCW 19.146.010, except that for purposes of this chapter, a licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a consumer loan licensee acting as the mortgage broker in the same loan transaction.

(15)(a) "Mortgage loan originator" means an individual who for compensation or gain (i) takes a residential mortgage loan application, or (ii) offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" also includes individuals who hold themselves out to the public as able to perform any of these activities. "Mortgage loan originator" does not include any individual who performs purely administrative or clerical tasks; and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code. For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan.

(b) "Mortgage loan originator" also includes an individual who for direct or indirect compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

(c) "Mortgage loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For the purposes of chapter 120, Laws of 2009, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction;

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in (c)(i) through (iv) of this subsection.

(d) This subsection does not apply to employees of a housing counseling agency approved by the United States department of housing and urban development unless the employees of a housing counseling agency are required under federal law to be individually licensed as mortgage loan originators.

(16) "Nationwide ((~~multistate~~))mortgage licensing system" means a licensing system developed and maintained by the conference of state bank supervisors ((~~and the American association of residential mortgage regulators for the~~))for licensing and registration ((~~of mortgage loan originators and other licensing types~~)).

(17) "Officer" means an official appointed by the company for the purpose of making business decisions or corporate decisions.

(18) "Person" includes individuals, partnerships, associations, limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.

(19) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership; company; association or corporation; or a limited liability company, and the owner of a sole proprietorship.

(20) "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of a depository institution; a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or an institution regulated by the farm credit administration and is registered with, and maintains a unique identifier through, the nationwide ((~~multistate~~))mortgage licensing system.

(21) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other ((~~equivalent~~)) consensual security interest on a dwelling, as defined in ((~~section 103(v) of~~)) the truth in lending act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

(22) "Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include but are not limited to forbearances; repayment plans; changes in interest rates, loan terms, or loan types; capitalizations of arrearages; or principal reductions.

(23) "Residential mortgage loan modification services" includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a residential mortgage loan modification for compensation or gain. "Residential mortgage loan modification services" also includes the collection of data for submission to an entity performing mortgage loan modification services.

(24) "S.A.F.E. act" means the secure and fair enforcement for mortgage licensing act of 2008, Title V of the housing and economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008.

(25) "Senior officer" means an officer of a licensee at the vice president level or above.

(26) "Service or servicing a loan" means on behalf of the lender or investor of a residential mortgage loan: (a) Collecting or receiving payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due; (b) collecting fees due to the servicer; (c) working with the borrower and the licensed lender or servicer to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently; (d) otherwise finalizing collection through the foreclosure process; or (e) servicing a reverse mortgage loan.

(27) "Service or servicing a reverse mortgage loan" means, pursuant to an agreement with the owner of a reverse mortgage loan: Calculating, collecting, or receiving payments of interest or other amounts due; administering advances to the borrower; and providing account statements to the borrower or lender.

(28) "Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balances of the principal of the loan outstanding for the time outstanding.

(a) On a nonresidential loan each payment is applied first to any unpaid penalties, fees, or charges, then to accumulated interest, and the remainder of the payment applied to the unpaid balance of the principal until paid in full. In using such method, interest ((~~shall~~))must not be payable in advance nor compounded. The prohibition on compounding interest does not apply to reverse mortgage loans made in accordance with the Washington state reverse mortgage act. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(b) On a residential mortgage loan payments are applied as determined in the security instrument.

(29) "Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

(30) "Third-party service provider" means any person other than the licensee or a mortgage broker who provides goods or services to the licensee or borrower in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, real estate brokers or salespersons, title insurance companies and agents, appraisers, structural and pest inspectors, or escrow companies.

(31) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide ((~~multistate~~))mortgage licensing system.

(32) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(33) "Department" means the state department of financial institutions.

**Sec.**  RCW 31.04.025 and 2013 c 64 s 2 and 2013 c 29 s 2 are each reenacted and amended to read as follows:

(1) Each loan made to a resident of this state by a licensee, or persons subject to this chapter, is subject to the authority and restrictions of this chapter.

(2) This chapter does not apply to the following:

(a) Any person doing business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions;

(b) Entities making loans under chapter 19.60 RCW (pawnbroking);

(c) Entities conducting transactions under chapter 63.14 RCW (retail installment sales of goods and services), unless credit is extended to purchase merchandise certificates, coupons, open or closed loop stored value, or other similar items issued and redeemable by a retail seller other than the retail seller extending the credit;

(d) Entities making loans under chapter 31.45 RCW (check cashers and sellers);

(e) Any person making a loan primarily for business, commercial, or agricultural purposes unless the loan is secured by a lien on the borrower's primary ((~~residence~~))dwelling;

(f) Any person selling property owned by that person who provides financing for the sale when the property does not contain a dwelling and when the property serves as security for the financing. This exemption is available for five or fewer transactions in a calendar year. This exemption is not available to individuals subject to the federal S.A.F.E. act or any person in the business of constructing or acting as a contractor for the construction of residential dwellings.

(g) Any person making loans made to government or government agencies or instrumentalities or making loans to organizations as defined in the federal truth in lending act;

((~~(g)~~))(h) Entities making loans under chapter 43.185 RCW (housing trust fund);

((~~(h)~~))(i) Entities making loans under programs of the United States department of agriculture, department of housing and urban development, or other federal government program that provides funding or access to funding for single-family housing developments or grants to low-income individuals for the purchase or repair of single-family housing;

((~~(i)~~))(j) Nonprofit housing organizations making loans, or loans made, under housing programs that are funded in whole or in part by federal or state programs if the primary purpose of the programs is to assist low-income borrowers with purchasing or repairing housing or the development of housing for low-income Washington state residents;

((~~(j)~~))(k) Entities making loans which are not residential mortgage loans under a credit card plan;

((~~(k)~~))(l) Individuals employed by a licensed residential mortgage loan servicing company engaging in activities related to servicing, unless ((~~so~~))licensing is required by federal law or regulation; and

((~~(l)~~))(m) Entities licensed under chapter 18.44 RCW that process payments on seller-financed loans secured by liens on real or personal property.

(3) The director may, at his or her discretion, waive applicability of the consumer loan company licensing provisions of this chapter to other persons, not including individuals subject to the S.A.F.E. act, making or servicing loans when the director determines it necessary to facilitate commerce and protect consumers. ((~~The director may adopt rules interpreting this section.~~))

(4) The burden of proving the application for an exemption or exception from a definition, or a preemption of a provision of this chapter, is upon the person claiming the exemption, exception, or preemption.

(5) The director may adopt rules interpreting this section.

**Sec.**  RCW 31.04.027 and 2013 c 29 s 3 are each amended to read as follows:

It is a violation of this chapter for a licensee, its officers, directors, employees, or independent contractors, or any other person subject to this chapter to:

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

(2) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(3) Directly or indirectly obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the consumer loan company may earn a fee or commission through the consumer loan company'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;

(6) Fail to make disclosures to loan applicants as required by RCW 31.04.102 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 with the department by a licensee or in connection with any investigation conducted by the department;

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

(10) Accept from any borrower at or near the time a loan is made and in advance of any default an execution of, or induce any borrower to execute, any instrument of conveyance, not including a mortgage or deed of trust, to the lender of any ownership interest in the borrower's primary ((~~residence~~))dwelling that is the security for the borrower's loan;

(11) Obtain at the time of closing a release of future damages for usury or other damages or penalties provided by law or a waiver of the provisions of this chapter;

(12) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by that rate of interest;

(13) Violate any applicable state or federal law relating to the activities governed by this chapter; or

(14) Make or originate loans from any unlicensed location.

**Sec.**  RCW 31.04.045 and 2014 c 36 s 5 are each amended to read as follows:

(1) Application for a license under this chapter must be made to the nationwide mortgage licensing system and registry or in the form prescribed by the director. The application must contain at least the following information:

(a) The name and the business addresses of the applicant;

(b) If the applicant is a partnership, limited liability company, or association, the name of every member;

(c) If the applicant is a corporation, the name, residence address, and telephone number of each officer and director;

(d) The street address, county, and municipality from which business is to be conducted; and

(e) Such other information as the director may require by rule.

(2) As part of or in connection with an application for any license under this section, or periodically upon license renewal, each officer, director, and owner applicant ((~~shall~~))must furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30A, 32, and 33 RCW.

(3) At the time of filing an application for a license under this chapter, each applicant shall pay to the director or through the nationwide mortgage licensing system and registry an investigation fee and the license fee in an amount determined by rule of the director to be sufficient to cover the director's costs in administering this chapter.

(4) Each applicant ((~~shall~~))must file and maintain a surety bond, approved by the director, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, whose liability as such surety ((~~shall~~))must not exceed in the aggregate the penal sum of the bond. The penal sum of the bond ((~~shall~~))must be a minimum of thirty thousand dollars and based on the annual dollar amount of loans originated or residential mortgage loans serviced. The bond ((~~shall~~))must run to the state of Washington as obligee for the use and benefit of the state and of any person or persons who may have a cause of action against the obligor under this chapter. The bond ((~~shall~~))must be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all the rules adopted under this chapter. The bond will pay to the state and any person or persons having a cause of action against the obligor all moneys that may become due and owing to the state and those persons under and by virtue of this chapter. The bond must be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation is effective forty-five days after the notice is received by the director. In lieu of a surety bond, if the applicant is a Washington business corporation, the applicant may maintain unimpaired capital, surplus, and long-term subordinated debt in an amount that at any time its outstanding promissory notes or other evidences of debt (other than long-term subordinated debt) in an aggregate sum do not exceed three times the aggregate amount of its unimpaired capital, surplus, and long-term subordinated debt. The director may define qualifying "long-term subordinated debt" for purposes of this section.

(5) The director may waive one or more requirements of this section or permit an applicant to submit other information in lieu of the required information.

**Sec.**  RCW 31.04.075 and 2001 c 81 s 6 are each amended to read as follows:

The licensee may not maintain more than one place of business under the same license, but the director may issue more than one license to the same licensee upon application by the licensee in a form and manner established by the director.

Whenever a licensee wishes to change the place of business to a street address other than that ((~~designated in the license~~))reported in the nationwide mortgage licensing system and registry, the licensee ((~~shall~~))must give prior written notice to the director ((~~as required by rule~~)), pay the ((~~license~~)) fee, and obtain the director's approval.

**Sec.**  RCW 31.04.093 and 2014 c 36 s 6 are each amended to read as follows:

(1) The director ((~~shall~~))must enforce all laws and rules relating to the licensing and regulation of licensees and persons subject to this chapter.

(2) The director may deny applications for licenses for:

(a) Failure of the applicant to demonstrate within its application for a license that it meets the requirements for licensing in RCW 31.04.045 and 31.04.055;

(b) Violation of an order issued by the director under this chapter or another chapter administered by the director, including but not limited to cease and desist orders and temporary cease and desist orders;

(c) Revocation or suspension of a license to conduct lending or residential mortgage loan servicing, or to provide settlement services associated with lending or residential mortgage loan servicing, by this state, another state, or by the federal government within five years of the date of submittal of a complete application for a license; or

(d) Filing an incomplete application when that incomplete application has been filed with the department for sixty or more days, provided that the director has given notice to the licensee that the application is incomplete, informed the applicant why the application is incomplete, and allowed at least twenty days for the applicant to complete the application.

(3) The director may condition, suspend, or revoke a license issued under this chapter if the director finds that:

(a) The licensee has failed to pay any fee due the state of Washington, has failed to maintain in effect the bond or permitted substitute required under this chapter, or has failed to comply with any specific order or demand of the director lawfully made and directed to the licensee in accordance with this chapter;

(b) The licensee, either knowingly or without the exercise of due care, has violated any provision of this chapter or any rule adopted under this chapter; ((~~or~~))

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, clearly would have allowed the director to deny the application for the original license((~~. The director may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist unless the director finds that the grounds for revocation or suspension are of general application to all offices or to more than one office operated by the licensee, in which case, the director may revoke or suspend all of the licenses issued to the licensee~~)); or

(d) The licensee failed to comply with any directive, order, or subpoena issued by the director under this chapter.

The director may condition, revoke, or suspend only the particular license with respect to which grounds for conditioning, revocation, or suspension may occur or exist or the director may condition, revoke, or suspend all of the licenses issued to the licensee.

(4) The director may impose fines of up to one hundred dollars per day, per violation, upon the licensee, its employee or loan originator, or other person subject to this chapter for:

(a) Any violation of this chapter; or

(b) Failure to comply with any directive, order, or subpoena issued by the director under this chapter.

(5) The director may issue an order directing the licensee, its employee or loan originator, or other person subject to this chapter to:

(a) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter;

(b) Take such affirmative action as is necessary to comply with this chapter; ((~~or~~))

(c) Make a refund or restitution to a borrower or other person who is damaged as a result of a violation of this chapter;

(d) Refund all fees received through any violation of this chapter.

(6) The director may issue an order removing from office or prohibiting from participation in the affairs of any licensee, or both, any officer, principal, employee or mortgage loan originator, or any person subject to this chapter for:

(a) False statements or omission of material information from an application for a license that, if known, would have allowed the director to deny the original application for a license;

(b) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony;

(c) Suspension or revocation of a license to engage in lending or residential mortgage loan servicing, or perform a settlement service related to lending or residential mortgage loan servicing, in this state or another state;

(d) Failure to comply with any order or subpoena issued under this chapter;

(e) A violation of RCW 31.04.027, 31.04.102, 31.04.155, or 31.04.221; or

(f) Failure to obtain a license for activity that requires a license.

(7) Except to the extent prohibited by another statute, the director may engage in informal settlement of complaints or enforcement actions including, but not limited to, payment to the department for purposes of financial literacy and education programs authorized under RCW 43.320.150. If any person subject to this chapter makes a payment to the department under this section, the person may not advertise such payment.

(8) Whenever the director determines that the public is likely to be substantially injured by delay in issuing a cease and desist order, the director may immediately issue a temporary cease and desist order. The order may direct the licensee to discontinue any violation of this chapter, to take such affirmative action as is necessary to comply with this chapter, and may include a summary suspension of the licensee's license and may order the licensee to immediately cease the conduct of business under this chapter. The order ((~~shall~~)) becomes effective at the time specified in the order. Every temporary cease and desist order ((~~shall~~))must include a provision that a hearing will be held upon request to determine whether the order will become permanent. Such hearing ((~~shall~~))must be held within fourteen days of receipt of a request for a hearing unless otherwise specified in chapter 34.05 RCW.

(9) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability, if any, for acts committed before the surrender, including any administrative action initiated by the director to suspend or revoke a license, impose fines, compel the payment of restitution to borrowers or other persons, or exercise any other authority under this chapter. The statute of limitations on actions not subject to RCW 4.16.160 that are brought under this chapter by the director is five years.

(10) The revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and a borrower.

(11) Every license issued under this chapter remains in force and effect until it has been surrendered, revoked, or suspended in accordance with this chapter. However, the director may on his or her own initiative reinstate suspended licenses or issue new licenses to a licensee whose license or licenses have been revoked if the director finds that the licensee meets all the requirements of this chapter.

(12) A license issued under this chapter expires upon the licensee's failure to comply with the annual assessment requirements in RCW 31.04.085, and the rules. The department must provide notice of the expiration to the address of record provided by the licensee. On the 15th day after the department provides notice, if the assessment remains unpaid, the license expires. The licensee must receive notice prior to expiration and have the opportunity to stop the expiration as set forth in rule.

NEW SECTION. **Sec.**  A new section is added to chapter 31.04 RCW to read as follows:

(1) A residential mortgage loan servicer licensee must maintain liquidity, operating reserves, and a tangible net worth in accordance with generally accepted accounting principles as determined by the director. The director may adopt rules to interpret this subsection.

(2) A residential mortgage loan servicer that is a Fannie Mae or Freddie Mac-approved servicer meets the requirements of subsection (1) of this section if the liquidity, operating reserves, and tangible net worth each meet the standards of the government-sponsored enterprise for which they are approved. For loans serviced that would not otherwise be subject to the liquidity, operating reserves, and tangible net worth requirements of Fannie Mae or Freddie Mac, the residential mortgage loan servicer must maintain liquidity, operating reserves, and tangible net worth consistent with the highest standards of the government-sponsored entity or entities for which they are approved.

(3) If a licensee's liquidity, operating reserves, or tangible net worth fall below the amount required under subsection (1) or (2) of this section, the director or the director's designee may initiate an action.

NEW SECTION. **Sec.**  A new section is added to chapter 31.04 RCW to read as follows:

Upon application by the director and upon a showing that the interests of borrowers or creditors so requires, the superior court may appoint a receiver to take over, operate, or liquidate any residential mortgage loan servicer.

**Sec.**  RCW 31.04.102 and 2013 c 29 s 6 are each amended to read as follows:

(1) For all loans made by a licensee that are not secured by a lien on real property, the licensee must make disclosures in compliance with the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part ((~~226~~))1026, and all other applicable federal laws and regulations.

(2) For all loans made by a licensee that are secured by a lien on real property, the licensee ((~~shall~~))must provide to each borrower within three business days following receipt of a loan application a written disclosure containing an itemized estimation and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a loan from the licensee. A good faith estimate of a fee or cost ((~~shall~~))must be provided if the exact amount of the fee or cost is not available when the disclosure is provided. Disclosure in a form which complies with the requirements of the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part ((~~226~~))1026, the real estate settlement procedures act and regulation X, 24 C.F.R. ((~~Sec. 3500~~))Part 1024, and all other applicable federal laws and regulations, as now or hereafter amended, ((~~shall be deemed to~~)) constitutes compliance with this disclosure requirement. Each licensee ((~~shall~~))must comply with all other applicable federal and state laws and regulations.

(3) In addition, for all loans made by the licensee that are secured by a lien on real property, the licensee must provide to the borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three days of receipt of a loan application. The annual percentage rate must be calculated in compliance with the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part ((~~226~~))1024. If a licensee provides the borrower with a disclosure in compliance with the requirements of the truth in lending act within three business days of receipt of a loan application, then the licensee has complied with this subsection. If the director determines that the federal government has required a disclosure that substantially meets the objectives of this subsection, then the director may make a determination by rule that compliance with this federal disclosure requirement constitutes compliance with this subsection.

(4) In addition for all consumer loans made by the licensee that are secured by a lien on real property, the licensee must comply with RCW 19.144.020.

**Sec.**  RCW 31.04.105 and 2013 c 29 s 7 are each amended to read as follows:

Every licensee may:

(1) Lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed;

(2) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(3) Agree with the borrower for the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees properly incurred for a credit report and in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender;

(4) In connection with the making of a loan secured by real estate, when the borrower actually obtains a loan, agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee;

(5) Collect at the time of the loan closing up to but not exceeding forty-five days of prepaid interest;

(6) Charge and collect a penalty of not more than ten percent of any installment payment delinquent ten days or more;

(7) Collect from the debtor reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee;

(8) Make open-end loans as provided in this chapter;

(9) Charge and collect a fee for dishonored checks in an amount approved by the director; and

(10) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower.

**Sec.**  RCW 31.04.145 and 2012 c 17 s 5 are each amended to read as follows:

(1) For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the director may at any time, either personally or by designees, investigate or examine the loans and business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in the business of every licensee and of every person who is engaged in the business making or assisting in the making of loans at interest rates authorized by this chapter, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. The director or designated representative:

(a) ((~~Shall~~))Must have free access to the employees, offices, and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons during normal business hours;

(b) May require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing and may require such person to produce books, accounts, papers, records, files, and any other information the director or designated persons deem relevant to the inquiry;

(c) May require by directive, subpoena, or any other lawful means the production of original books, accounts, papers, records, files, and other information; may require that such original books, accounts, papers, records, files, and other information be copied; or may make copies of such original books, accounts, papers, records, files, or other information;

(d) May issue a subpoena or subpoena duces tecum requiring attendance by any person identified in this section or compelling production of any books, accounts, papers, records, files, or other documents or information identified in this section.

(2) The director ((~~shall~~))must make such periodic examinations of the affairs, business, office, and records of each licensee as determined by rule.

(3) Every licensee examined or investigated by the director or the director's designee ((~~shall~~))must pay to the director the cost of the examination or investigation of each licensed place of business as determined by rule by the director.

(4) In order to carry out the purposes of this section, the director may:

(a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to chapter 120, Laws of 2009;

(d) Accept and rely on examination or investigation reports made by other government officials, within or without this state;

(e) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to chapter 120, Laws of 2009 in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director; or

(f) Assess the licensee, individual, or person subject to chapter 120, Laws of 2009 the cost of the services in (a) of this subsection.

**Sec.**  RCW 31.04.205 and 2001 c 81 s 16 are each amended to read as follows:

(1) The director or designated persons may, at his or her discretion, take such action as provided for in this chapter to enforce this chapter. 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~~))is 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.

(2) The director may recover the state's costs and expenses for prosecuting violations of this chapter including staff time spent preparing for and attending administrative hearings and reasonable attorneys' fees unless, after a hearing, the director determines no violation occurred.

**Sec.**  RCW 31.04.221 and 2013 c 29 s 9 are each amended to read as follows:

An individual defined as a mortgage loan originator ((~~shall~~))must not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide ((~~multistate~~))mortgage licensing system.

**Sec.**  RCW 31.04.224 and 2012 c 17 s 6 are each amended to read as follows:

The following are exempt from licensing as mortgage loan originators under this chapter:

(1) Registered mortgage loan originators, or any individual required to be registered while actively employed by a covered financial institution as defined in regulation G, 12 C.F.R. Part 1007.102;

(2) ((~~A licensed~~))An attorney licensed in Washington who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of a lender, mortgage broker, or other mortgage loan originator;

(3) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member; or

(4) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

**Sec.**  RCW 31.04.247 and 2009 c 120 s 18 are each amended to read as follows:

(1) The director ((~~shall~~))must issue and deliver a mortgage loan originator license if, after investigation, the director makes at a minimum the following findings:

(a) The applicant has paid the required license fees;

(b) The applicant has met the requirements of this chapter;

(c) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that, for the purposes of this subsection, a subsequent formal vacation of such revocation is not a revocation;

(d) The applicant has not been convicted of a gross misdemeanor involving dishonesty or financial misconduct or has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court (i) during the seven‑year period preceding the date of the application for licensing and registration; or (ii) at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

(e) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of chapter 120, Laws of 2009. For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years;

(f) The applicant has completed the prelicensing education requirement as required by this chapter;

(g) The applicant has passed a written test that meets the test requirement as required by this chapter;

(h) The consumer loan licensee that the applicant works for has met the surety bond requirement as required by this chapter;

(i) The applicant has not been found to be in violation of this chapter or rules adopted under this chapter;

(j) The mortgage loan originator licensee has completed, during the calendar year preceding a licensee's annual license renewal date, continuing education as required by this chapter.

(2) If the director finds the conditions of this section have not been met, the director ((~~shall~~))must not issue the mortgage loan originator license. The director ((~~shall~~))must notify the applicant of the denial and return to the mortgage loan originator applicant any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

**Sec.**  RCW 31.04.277 and 2010 c 35 s 8 are each amended to read as follows:

Each consumer loan company licensee who makes, services, or brokers a loan secured by real property ((~~shall~~))must submit ((~~to~~))call reports through the nationwide mortgage licensing system and registry ((~~reports of condition, which must be in the~~))in a form and ((~~must contain~~))containing the information ((~~as~~))prescribed by the director or as deemed necessary by the nationwide mortgage licensing system and registry ((~~may require~~)).

**Sec.**  RCW 31.04.290 and 2013 c 29 s 10 are each amended to read as follows:

(1) A residential mortgage loan servicer must comply with the following requirements:

(a) ((~~The requirements of chapter 19.148 RCW;~~

~~(b)~~)) Any fee that is assessed by a servicer must be assessed within forty-five days of the date on which the fee was incurred and must be explained clearly and conspicuously in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee;

((~~(c)~~))(b) All amounts received by a servicer on a residential mortgage loan at the address where the borrower has been instructed to make payments must be accepted and credited, or treated as credited, within one business day of the date received, provided that the borrower has provided sufficient information to credit the account. If a servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date must be credited no later than the due date. If any payment is received and not credited, or treated as credited, the borrower must be notified of the disposition of the payment within ten business days by mail at the borrower's last known address. The notification must identify the reason the payment was not credited or treated as credited to the account, as well as any actions the borrower must take to make the residential mortgage loan current;

((~~(d)~~))(c) Any servicer that exercises the authority to collect escrow amounts on a residential mortgage loan held for the borrower for payment of insurance, taxes, and other charges with respect to the property ((~~shall~~))must collect and make all such payments from the escrow account and ensure that no late penalties are assessed or other negative consequences result for the borrower;

((~~(e)~~))(d) The servicer ((~~shall~~))must make reasonable attempts to comply with a borrower's request for information about the residential mortgage loan account and to respond to any dispute initiated by the borrower about the loan account. The servicer:

(i) Must maintain written or electronic records of each written request for information regarding a dispute or error involving the borrower's account until the residential mortgage loan is paid in full, sold, or otherwise satisfied; and

(ii) Must provide a written statement to the borrower within fifteen business days of receipt of a written request from the borrower. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient detail regarding the information sought by the borrower to permit the servicer to comply. At a minimum, the servicer's response to the borrower's request must include the following information:

(A) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(B) The current balance due on the residential mortgage loan, including the principal due, the amount of funds, if any, held in a suspense account, the amount of the escrow balance known to the servicer, if any, and whether there are any escrow deficiencies or shortages known to the servicer;

(C) The identity, address, and other relevant information about the current holder, owner, or assignee of the residential mortgage loan; and

(D) The telephone number and mailing address of a servicer representative with the information and authority to answer questions and resolve disputes; and

((~~(f)~~))(e) Promptly correct any errors and refund any fees assessed to the borrower resulting from the servicer's error.

(2) In addition to the statement in subsection (1)((~~(e)~~))(d)(ii) of this section, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower this statement must include:

(a) A copy of the original note, or if unavailable, an affidavit of lost note; and

(b) A statement that identifies and itemizes all fees and charges assessed under the loan transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the residential mortgage loan including escrow account activity and suspense account activity, if any. The period of the account history ((~~shall~~))must cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the residential mortgage loan for the entire two-year time period the servicer ((~~shall~~))must provide the information going back to the date on which the servicer began servicing the home loan, and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the residential mortgage loan, the servicer ((~~shall~~))must provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the residential mortgage loan up to the date of the request for the information. The borrower may request annually one statement free of charge.

**Sec.**  RCW 31.04.520 and 2009 c 149 s 4 are each amended to read as follows:

The borrower in a proprietary reverse mortgage transaction has the same right to rescind the transaction as provided in the truth in lending act, Regulation Z, 12 C.F.R. ((~~Sec. 226~~))Part 1026.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1) RCW 19.146.290 (Licensee to provide director with annual report of mortgage broker activity) and 2006 c 19 s 18; and

(2) RCW 19.146.330 (Loan originator—Limit on applications taken) and 2006 c 19 s 22.

**--- END ---**