

SHB 1749 - S COMM AMD

By Committee on Financial Institutions, Housing & Insurance

ADOPTED 03/31/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 19.146.010 and 2008 c 78 s 3 are each amended to read
4 as follows:

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

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

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

12 (3) "Borrower" means any person who consults with or retains a
13 mortgage broker or loan originator in an effort to obtain or seek
14 advice or information on obtaining or applying to obtain a residential
15 mortgage loan for himself, herself, or persons including himself or
16 herself, regardless of whether the person actually obtains such a loan.

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

22 (5) "Department" means the department of financial institutions.

23 (6) "Designated broker" means a natural person designated as the
24 person responsible for activities of the licensed mortgage broker in
25 conducting the business of a mortgage broker under this chapter and who
26 meets the experience and examination requirements set forth in RCW
27 19.146.210(1)(e).

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

29 (8) "Employee" means an individual who has an employment

1 relationship with a mortgage broker, and the individual is treated as
2 an employee by the mortgage broker for purposes of compliance with
3 federal income tax laws.

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

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

14 ~~((+10+))~~ (11)(a) "Loan originator" means a natural person who
15 ~~((+a+))~~ for direct or indirect compensation or gain, or in the
16 expectation of direct or indirect compensation or gain (i) takes a
17 residential mortgage loan application for a mortgage broker, or ~~((+b+))~~
18 (ii) offers or negotiates terms of a mortgage loan~~(, for direct or~~
19 ~~indirect compensation or gain, or in the expectation of direct or~~
20 ~~indirect compensation or gain)).~~ "Loan originator" also includes a
21 person who holds themselves out to the public as able to perform any of
22 these activities. "Loan originator" does not mean persons performing
23 purely administrative or clerical tasks for a mortgage broker. For the
24 purposes of this subsection, "administrative or clerical tasks" means
25 the receipt, collection, and distribution of information common for the
26 processing of a loan in the mortgage industry and communication with a
27 borrower to obtain information necessary for the processing of a loan.
28 A person who holds himself or herself out to the public as able to
29 obtain a loan is not performing administrative or clerical tasks.

30 ~~((+11+))~~ (b) "Loan originator" does not include a person or entity
31 that only performs real estate brokerage activities and is licensed or
32 registered in accordance with applicable state law, unless the person
33 or entity is compensated by a lender, a mortgage broker, or other
34 mortgage loan originator or by any agent of such a lender, mortgage
35 broker, or other mortgage loan originator. For purposes of this
36 chapter, the term "real estate brokerage activity" means any activity
37 that involves offering or providing real estate brokerage services to
38 the public, including:

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

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

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

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

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

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

17 (12) "Loan processor" means an individual who performs clerical or
18 support duties as an employee at the direction of and subject to the
19 supervision and instruction of a person licensed, or exempt from
20 licensing, under chapter 19.146 RCW.

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

26 ~~((+12))~~ (14) "Mortgage broker" means any person who for
27 compensation or gain, or in the expectation of compensation or gain (a)
28 assists a person in obtaining or applying to obtain a residential
29 mortgage loan or (b) holds himself or herself out as being able to
30 assist a person in obtaining or applying to obtain a residential
31 mortgage loan.

32 ~~((+13))~~ (15) "Mortgage loan originator" has the same meaning as
33 "loan originator."

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

1 (17) "Person" means a natural person, corporation, company, limited
2 liability corporation, partnership, or association.

3 ~~((14))~~ (18) "Principal" means any person who controls, directly
4 or indirectly through one or more intermediaries, or alone or in
5 concert with others, a ten percent or greater interest in a
6 partnership, company, association, or corporation, and the owner of a
7 sole proprietorship.

8 ~~((15))~~ (19) "Residential mortgage loan" means any loan primarily
9 for personal, family, or household use secured by a mortgage or deed of
10 trust on residential real estate upon which is constructed or intended
11 to be constructed a single family dwelling or multiple family dwelling
12 of four or less units.

13 ~~((16))~~ (20) "S.A.F.E. act" means the secure and fair enforcement
14 for mortgage licensing act of 2008, or Title V of the housing and
15 economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July
16 30, 2008.

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

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

25 **Sec. 2.** RCW 19.146.020 and 2006 c 19 s 3 are each amended to read
26 as follows:

27 (1) ~~((Except as provided under subsections (2) through (4) of this~~
28 ~~section,))~~ The following are exempt from all provisions of this
29 chapter:

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

1 ~~(ii) Subject to the director's written approval, the exclusive~~
2 ~~agents of an affiliate of a bank that is wholly owned by the bank~~
3 ~~holding company that owns the bank));~~

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

7 (c) An attorney licensed to practice law in this state who is not
8 principally engaged in the business of negotiating residential mortgage
9 loans when such attorney renders services in the course of his or her
10 practice as an attorney;

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

14 ~~(e) ((Any person making or acquiring a residential mortgage loan~~
15 ~~solely with his or her own funds for his or her own investment without~~
16 ~~intending to resell the residential mortgage loans;~~

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

22 ~~((g) Any mortgage broker approved and subject to auditing by the~~
23 ~~federal national mortgage association or the federal home loan mortgage~~
24 ~~corporation;~~

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

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

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

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

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

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

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

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

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

15 (2) (~~Those persons and their loan originators otherwise exempt~~
16 ~~under subsection (1)(e), (g), or (4) of this section must comply with~~
17 ~~RCW 19.146.0201 through 19.146.080. For violations of RCW 19.146.0201~~
18 ~~through 19.146.080, the director has authority to issue a cease and~~
19 ~~desist order as provided in RCW 19.146.220 and 19.146.227, to impose~~
20 ~~penalties as provided in RCW 19.146.220, and to obtain and review books~~
21 ~~and records that are relevant to any allegation of such a violation as~~
22 ~~provided in RCW 19.146.235.~~

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

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

34 (b) Any licensee under this subsection who would otherwise be
35 exempted from the requirements of licensing by this section may apply
36 to the director for exemption from licensing. The director shall adopt
37 rules for reviewing such applications and shall grant exemptions from

1 licensing to applications which are consistent with those rules and
2 consistent with the other provisions of this chapter.

3 ~~((4) The director may exempt an exclusive agent under subsection
4 (1)(a) of this section provided that the affiliate in subsection (1)(a)
5 of this section:~~

6 ~~(a) Applies for and maintains a license as provided by subsection
7 (3) of this section;~~

8 ~~(b) Has on file with the director a binding written agreement under
9 which the affiliate assumes responsibility for the exclusive agent's
10 violations of this chapter or rules adopted under this chapter; and~~

11 ~~(c) Maintains a bond or other security in an amount required by the
12 director that runs to the benefit of the state and any person who
13 suffers loss by reason of the exclusive agent's violation of this
14 chapter or rules adopted under this chapter.))~~

15 **Sec. 3.** RCW 19.146.0201 and 2006 c 19 s 4 are each amended to read
16 as follows:

17 It is a violation of this chapter for a loan originator(~~(7)~~) or
18 mortgage broker required to be licensed under this chapter(~~(7) or~~
19 ~~mortgage broker otherwise exempted from this chapter under RCW~~
20 ~~19.146.020(1)(e), (g), or (4))~~) to:

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

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

24 (3) Obtain property by fraud or misrepresentation;

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

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

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

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

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

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

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

14 (11) Fail to comply with any requirement of the truth-in-lending
15 act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226; the real
16 estate settlement procedures act, 12 U.S.C. Sec. 2601 and Regulation X,
17 24 C.F.R. Sec. 3500; the equal credit opportunity act, 15 U.S.C. Sec.
18 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12; Title V,
19 Subtitle A of the financial modernization act of 1999 (known as the
20 "Gramm-Leach-Bliley act"), 12 U.S.C. Secs. 6801-6809; the federal trade
21 commission's privacy rules, 16 C.F.R. Parts 313-314, mandated by the
22 Gramm-Leach-Bliley act; the home mortgage disclosure act, 12 U.S.C.
23 Sec. 2801 et seq. and Regulation C, home mortgage disclosure; the
24 federal trade commission act, 12 C.F.R. Part 203, 15 U.S.C. Sec. 45(a);
25 the telemarketing and consumer fraud and abuse act, 15 U.S.C. Secs.
26 6101 to 6108; and the federal trade commission telephone sales rule, 16
27 C.F.R. Part 310, as these acts existed on January 1, 2007, or such
28 subsequent date as may be provided by the department by rule, in any
29 advertising of residential mortgage loans, or any other applicable
30 mortgage broker or loan originator activities covered by the acts. The
31 department may adopt by rule requirements that mortgage brokers and
32 loan originators comply with other applicable federal statutes and
33 regulations in any advertising of residential mortgage loans, or any
34 other mortgage broker or loan originator activity;

35 (12) Fail to pay third-party providers no later than thirty days
36 after the recording of the loan closing documents or ninety days after
37 completion of the third-party service, whichever comes first, unless

1 otherwise agreed or unless the third-party service provider has been
2 notified in writing that a bona fide dispute exists regarding the
3 performance or quality of the third-party service;

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

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

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

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

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

27 (c) A real estate broker or salesperson licensed under chapter
28 18.85 RCW who also acts as a mortgage broker shall carry on such
29 mortgage broker business activities and shall maintain such person's
30 mortgage broker business records separate and apart from the real
31 estate broker activities conducted pursuant to chapter 18.85 RCW. Such
32 activities shall be deemed separate and apart even if they are
33 conducted at an office location with a common entrance and mailing
34 address, so long as each business is clearly identified by a sign
35 visible to the public, each business is physically separated within the
36 office facility, and no deception of the public as to the separate
37 identities of the broker business firms results. This subsection

1 (14)(c) shall not require a real estate broker or salesperson licensed
2 under chapter 18.85 RCW who also acts as a mortgage broker to maintain
3 a physical separation within the office facility for the conduct of its
4 real estate and mortgage broker activities where the director
5 determines that maintaining such physical separation would constitute
6 an undue financial hardship upon the mortgage broker and is unnecessary
7 for the protection of the public; or

8 (15) Fail to comply with any provision of RCW 19.146.030 through
9 19.146.080 or any rule adopted under those sections.

10 **Sec. 4.** RCW 19.146.205 and 2006 c 19 s 10 are each amended to read
11 as follows:

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

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

21 (b) If the applicant is a partnership or association, the name,
22 address, date of birth, and social security number of each general
23 partner or principal of the association, and any other names, dates of
24 birth, or social security numbers previously used by the members,
25 unless waived by the director;

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

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

34 (e) The name, address, date of birth, and social security number of
35 the applicant's designated broker, and any other names, dates of birth,
36 or social security numbers previously used by the designated broker and

1 a complete set of the designated broker's fingerprints taken by an
2 authorized law enforcement officer; and

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

6 (2) As a part of or in connection with an application for any
7 license under this section, or periodically upon license renewal, the
8 applicant shall furnish information concerning his or her identity,
9 including fingerprints for submission to the Washington state patrol,
10 the federal bureau of investigation, (~~and~~) the nationwide mortgage
11 licensing system and registry, or any governmental agency or entity
12 authorized to receive this information for a state and national
13 criminal history background check; personal history; experience;
14 business record; purposes; and other pertinent facts, as the director
15 may reasonably require. As part of or in connection with an
16 application for a license under this chapter, the director is
17 authorized to receive criminal history record information that includes
18 nonconviction data as defined in RCW 10.97.030. The department may
19 only disseminate nonconviction data obtained under this section to
20 criminal justice agencies. This section does not apply to financial
21 institutions regulated under chapters 31.12 and 31.13 RCW and Titles
22 30, 32, and 33 RCW.

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

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

33 (5) At the time of filing an application for a license under this
34 chapter, each applicant shall pay to the director through the
35 nationwide mortgage licensing system and registry the appropriate
36 application fee in an amount determined by rule of the director in
37 accordance with RCW 43.24.086 to cover, but not exceed, the cost of
38 processing and reviewing the application. The director shall deposit

1 the moneys in the financial services regulation fund, unless the
2 consumer services account is created as a dedicated, nonappropriated
3 account, in which case the director shall deposit the moneys in the
4 consumer services account.

5 ~~((+4))~~ (6)(a) Except as provided in (b) of this subsection, each
6 applicant for a mortgage broker's license shall file and maintain a
7 surety bond, in an amount ~~((of not greater than sixty thousand dollars~~
8 ~~nor less than twenty thousand dollars))~~ which the director deems
9 adequate to protect the public interest, executed by the applicant as
10 obligor and by a surety company authorized to do a surety business in
11 this state as surety. The bonding requirement as established by the
12 director ~~((may))~~ shall take the form of a ~~((uniform bond amount for all~~
13 ~~licensees or the director may establish by rule a schedule establishing~~
14 ~~a))~~ range of bond amounts which shall vary according to the annual
15 ~~((average number of loan originators of a))~~ loan origination volume of
16 the licensee. The bond shall run to the state of Washington as
17 obligee, and shall run first to the benefit of the borrower and then to
18 the benefit of the state and any person or persons who suffer loss by
19 reason of the applicant's or its loan originator's violation of any
20 provision of this chapter or rules adopted under this chapter. The
21 bond shall be conditioned that the obligor as licensee will faithfully
22 conform to and abide by this chapter and all rules adopted under this
23 chapter, and shall reimburse all persons who suffer loss by reason of
24 a violation of this chapter or rules adopted under this chapter.
25 Borrowers shall be given priority over the state and other persons.
26 The state and other third parties shall be allowed to receive
27 distribution pursuant to a valid claim against the remainder of the
28 bond. In the case of claims made by any person or entity who is not a
29 borrower, no final judgment may be entered prior to one hundred eighty
30 days following the date the claim is filed. The bond shall be
31 continuous and may be canceled by the surety upon the surety giving
32 written notice to the director of its intent to cancel the bond. The
33 cancellation shall be effective thirty days after the notice is
34 received by the director. Whether or not the bond is renewed,
35 continued, reinstated, reissued, or otherwise extended, replaced, or
36 modified, including increases or decreases in the penal sum, it shall
37 be considered one continuous obligation, and the surety upon the bond
38 shall not be liable in an aggregate or cumulative amount exceeding the

1 penal sum set forth on the face of the bond. In no event shall the
2 penal sum, or any portion thereof, at two or more points in time be
3 added together in determining the surety's liability. The bond shall
4 not be liable for any penalties imposed on the licensee, including, but
5 not limited to, any increased damages or attorneys' fees, or both,
6 awarded under RCW 19.86.090. The applicant may obtain the bond
7 directly from the surety or through a group bonding arrangement
8 involving a professional organization comprised of mortgage brokers if
9 the arrangement provides at least as much coverage as is required under
10 this subsection.

11 ~~(b) ((Subsection (4)(b) and (c) of this section applies only to~~
12 ~~applications received on or before January 1, 2007. Before January 1,~~
13 ~~2007, in lieu of a surety bond, the applicant may, upon approval by the~~
14 ~~director, file with the director a certificate of deposit, an~~
15 ~~irrevocable letter of credit, or such other instrument as approved by~~
16 ~~the director by rule, drawn in favor of the director for an amount~~
17 ~~equal to the required bond.~~

18 ~~(c) Before January 1, 2007, in lieu of the surety bond or~~
19 ~~compliance with (b) of this subsection, an applicant may obtain~~
20 ~~insurance or coverage from an association comprised of mortgage brokers~~
21 ~~that is organized as a mutual corporation for the sole purpose of~~
22 ~~insuring or self-insuring claims that may arise from a violation of~~
23 ~~this chapter. An applicant may only substitute coverage under this~~
24 ~~subsection for the requirements of (a) or (b) of this subsection if the~~
25 ~~director, with the consent of the insurance commissioner, has~~
26 ~~authorized such association to organize a mutual corporation under such~~
27 ~~terms and conditions as may be imposed by the director to ensure that~~
28 ~~the corporation is operated in a financially responsible manner to pay~~
29 ~~any claims within the financial responsibility limits specified in (a)~~
30 ~~of this subsection)) If the director determines that the bond required~~
31 ~~in (a) of this subsection is not reasonably available, the director~~
32 ~~shall waive the requirements for such a bond. The mortgage recovery~~
33 ~~fund account is created in the custody of the state treasurer. The~~
34 ~~director is authorized to charge fees to fund the account. All fees~~
35 ~~charged under this section, except those retained by the director for~~
36 ~~administration of the fund, must be deposited into the mortgage~~
37 ~~recovery fund account. Expenditures from the account may be used only~~
38 ~~for the same purposes as the surety bond as described in (a) of this~~

1 subsection. Only the director or the director's designee may authorize
2 expenditures from the account. The account is subject to allotment
3 procedures under chapter 43.88 RCW, but an appropriation is not
4 required for expenditures. A person entitled to receive payment from
5 the mortgage recovery fund may only receive reimbursement after a court
6 of competent jurisdiction has determined the actual damages caused by
7 the licensee. The director may determine by rule the procedure for
8 recovery; the amount each mortgage broker must pay through the
9 nationwide mortgage licensing system and registry for deposit in the
10 mortgage recovery fund; and the amount necessary to administer the
11 fund.

12 **Sec. 5.** RCW 19.146.228 and 2006 c 19 s 15 are each amended to read
13 as follows:

14 The director shall establish fees (~~by rule in accordance with the~~
15 ~~policy established in RCW 43.24.086 and fees shall be~~) sufficient to
16 cover, but not exceed, the costs of administering this chapter. These
17 fees may include:

18 (1) An annual assessment paid by each licensee on or before a date
19 specified by rule;

20 (2) An investigation fee to cover the costs of any investigation of
21 the books and records of a licensee or other person subject to this
22 chapter; and

23 (3) An application fee to cover the costs of processing
24 applications made to the director under this chapter.

25 Mortgage brokers and loan originators shall not be charged
26 investigation fees for the processing of complaints when the
27 investigation determines that no violation of this chapter occurred or
28 when the mortgage broker or loan originator provides a remedy
29 satisfactory to the complainant and the director and no order of the
30 director is issued. All moneys, fees, and penalties collected under
31 the authority of this chapter shall be deposited into the financial
32 services regulation fund, unless the consumer services account is
33 created as a dedicated, nonappropriated account, in which case all
34 moneys, fees, and penalties collected under this chapter shall be
35 deposited in the consumer services account.

1 **Sec. 6.** RCW 19.146.235 and 2006 c 19 s 16 are each amended to read
2 as follows:

3 The director or a designee has authority to conduct investigations
4 and examinations as provided in this section.

5 (1) For the purposes of investigating violations or complaints
6 arising under this chapter, the director or his or her designee may
7 make an investigation of the operations of any mortgage broker or loan
8 originator as often as necessary in order to carry out the purposes of
9 this chapter.

10 (2) Every mortgage broker shall make available to the director or
11 a designee its books and records relating to its operations.

12 (a) For the purpose of examinations, the director or his or her
13 designee may have access to such books and records during normal
14 business hours and interview the officers, principals, loan
15 originators, employees, independent contractors, and agents of the
16 licensee concerning their business.

17 (b) For the purposes of investigating violations or complaints
18 arising under this chapter, the director may at any time, either
19 personally or by a designee, investigate the business, including but
20 not limited to the books, accounts, records, and files used therein, of
21 every licensee and of every person engaged in the business of mortgage
22 brokering, whether such a person acts or claims to act under, or
23 without the authority of, this chapter.

24 (c) The director or designated person may direct, subpoena, or
25 order the attendance of and examine under oath all persons whose
26 testimony may be required about the loans or the business or subject
27 matter of any such examination or investigation, and may direct,
28 subpoena, or order such person to produce books, accounts, records,
29 files, and any other documents the director or designated person deems
30 relevant to the inquiry.

31 (3) (~~Once during the first five years of licensing, including~~
32 ~~branch licensing,~~) The director may visit, either personally or by
33 designee, the licensee's place or places of business to conduct an
34 examination. The scope of the examination is limited to documents and
35 information necessary to determine compliance with this chapter and
36 attendant rules. In general, the examination scope may include:

37 (a) A review for trust accounting compliance;

1 (b) Loan file review to determine the mortgage broker's compliance
2 with this chapter and applicable federal regulations covering the
3 business of mortgage brokering and lending;

4 (c) Interviews for the purpose of understanding business and
5 solicitation practices, transactional events, disclosure compliance,
6 complaint resolution, or determining specific compliance with this
7 chapter and the attendant rules; and

8 (d) A review of general business books and records, including
9 employee records, for the purpose of determining specific compliance
10 with this chapter and the attendant rules.

11 (4) The purpose of an examination is to make certain that licensees
12 are conducting business in compliance with the law. Therefore,
13 protocols for examination findings and corrective action directed from
14 an examination must be established by rule of the director. To
15 accomplish this purpose, these protocols must include the following:

16 (a) A reporting mechanism from the director to the licensee;

17 (b) A process for clear notification of violations and an
18 opportunity for response by the licensee; and

19 (c) The criteria by which the frequency of examinations will be
20 determined.

21 (5) If the examination findings clearly identify the need to expand
22 the scope of the examination, the director or a designee, upon five
23 days' written notification to the licensee with an explanation of the
24 need, may:

25 (a) Expand the examination review to locations other than the
26 examined location regardless of the number of years a location has held
27 a license; or

28 (b) Expand the time period of the examination beyond the five-year
29 period of licensing, provided the expansion of time does not exceed a
30 date certain identified in the written notification in this subsection.

31 (6) The director or a designee may consider reports made by
32 independent certified professionals for the mortgage broker covering
33 the same general subject matter as the examination. The director or a
34 designee may incorporate all or part of the report in the report of the
35 examination.

36 (7) The director may retain attorneys, accountants, or other
37 professionals and specialists as examiners, auditors, or investigators

1 to conduct or assist in the conduct of examinations or investigations.
2 The cost of these services for investigations only must be billed in
3 accordance with RCW 19.146.228.

4 (8) The director may establish by rule travel costs for examination
5 of out-of-state entities.

6 (9)(a) No person subject to examination or investigation under this
7 chapter may knowingly withhold, abstract, remove, mutilate, destroy, or
8 secrete any books, records, computer records, or other information.

9 (b) A person who commits an act under (a) of this subsection is
10 guilty of a class B felony punishable under RCW 9A.20.021(1)(b) or
11 punishable by a fine of not more than twenty thousand dollars, or both.

12 NEW SECTION. **Sec. 7.** A new section is added to chapter 19.146 RCW
13 to read as follows:

14 (1) Each loan originator applicant shall complete at least twenty
15 hours of prelicensing education approved by the nationwide mortgage
16 licensing system and registry. The prelicensing education shall
17 include at least three hours of federal law and regulations; three
18 hours of ethics, which shall include instruction on fraud, consumer
19 protection, and fair lending issues; two hours of training related to
20 lending standards for the nontraditional mortgage product marketplace;
21 and at least two hours of training specifically related to Washington
22 law.

23 (2) A loan originator applicant having successfully completed the
24 prelicensing education requirements approved by the nationwide mortgage
25 licensing system and registry for any state shall be accepted as credit
26 towards completion of prelicensing education requirements in this
27 state.

28 (3) This chapter does not preclude any prelicensing education
29 course, as approved by the nationwide mortgage licensing system and
30 registry, that is provided by the employer of the loan originator
31 applicant or an entity which is affiliated with the applicant by an
32 agency contract, or any subsidiary or affiliate of such an employer or
33 entity. Prelicensing education may be offered either in a classroom,
34 online, or by any other means approved by the nationwide mortgage
35 licensing system and registry.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 19.146 RCW
2 to read as follows:

3 (1) To obtain a loan originator license, an individual must pass a
4 test developed by the nationwide mortgage licensing system and registry
5 and administered by a test provider approved by the nationwide mortgage
6 licensing system and registry based upon reasonable standards.

7 (2) An individual is not considered to have passed a test unless
8 the individual achieves a test score of not less than seventy-five
9 percent correct answers to questions.

10 (a) An individual may retake a test three consecutive times with
11 each consecutive taking occurring at least thirty days after the
12 preceding test.

13 (b) After failing three consecutive tests, an individual must wait
14 at least six months before taking the test again.

15 (c) A licensed mortgage loan originator who fails to maintain a
16 valid license for a period of five years or longer must retake the
17 test, not taking into account any time during which that individual is
18 a registered mortgage loan originator.

19 (3) This section does not prohibit a test provider approved by the
20 nationwide mortgage licensing system and registry from providing a test
21 at the location of the employer of the loan originator applicant or any
22 subsidiary or affiliate of the employer of the applicant, or any entity
23 with which the applicant holds an exclusive arrangement to conduct the
24 business of a mortgage loan originator.

25 **Sec. 9.** RCW 19.146.300 and 2006 c 19 s 19 are each amended to read
26 as follows:

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

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

36 (b) Such other information regarding the loan originator

1 applicant's background, experience, character, and general fitness as
2 the director may require by rule.

3 (2)(a) As part of or in connection with an application for any
4 license under this section, or periodically upon license renewal, the
5 loan originator applicant shall furnish information concerning his or
6 her identity, including fingerprints for submission to the Washington
7 state patrol, the federal bureau of investigation, ~~((and))~~ the
8 nationwide mortgage licensing system and registry, or any governmental
9 agency or entity authorized to receive this information for a state and
10 national criminal history background check; personal history;
11 experience; business record; purposes; and other pertinent facts, as
12 the director may reasonably require. As part of or in connection with
13 an application for a license under this chapter, or periodically upon
14 license renewal, the director is authorized to receive criminal history
15 record information that includes nonconviction data as defined in RCW
16 10.97.030. The department may only disseminate nonconviction data
17 obtained under this section to criminal justice agencies. This section
18 does not apply to financial institutions regulated under chapters 31.12
19 and 31.13 RCW and Titles 30, 32, and 33 RCW.

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

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

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

37 (i) An independent credit report obtained from a consumer reporting

1 agency described in section 603(p) of the federal fair credit reporting
2 act; and

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

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

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

13 **Sec. 10.** RCW 19.146.310 and 2006 c 19 s 20 are each amended to
14 read as follows:

15 (1) The director shall issue and deliver a loan originator license
16 if, after investigation, the director makes the following findings:

17 (a) The loan originator applicant has paid the required license
18 fees;

19 (b) The loan originator applicant has met the requirements of RCW
20 19.146.300;

21 (c) The loan originator applicant has ~~((not))~~ never had a license
22 issued under this chapter or any similar state statute ~~((suspended or))~~
23 ~~revoked ((within five years of the filing of the present application))~~
24 except that, for the purposes of this subsection, a subsequent formal
25 vacation of a revocation is not a revocation;

26 (d)(i) The loan originator applicant has not been convicted of a
27 gross misdemeanor involving dishonesty or financial misconduct or ~~((a~~
28 ~~felony))~~ has not been convicted of, or pled guilty or nolo contendere
29 to, a felony in a domestic, foreign, or military court within seven
30 years of the filing of the present application; and

31 (ii) The loan originator applicant has not been convicted of, or
32 pled guilty or nolo contendere to, a felony in a domestic, foreign, or
33 military court at any time preceding the date of application if the
34 felony involved an act of fraud, dishonesty, breach of trust, or money
35 laundering;

36 (e) The loan originator applicant has passed a written examination
37 whose content shall be established by rule of the director;

1 (f) The loan originator applicant has not been found to be in
2 violation of this chapter or rules;

3 (g) The loan originator applicant has demonstrated financial
4 responsibility, character, and general fitness such as to command the
5 confidence of the community and to warrant a belief that the business
6 will be operated honestly and fairly within the purposes of this
7 chapter. For the purposes of this section, an applicant has not
8 demonstrated financial responsibility when the applicant shows
9 disregard in the management of his or her financial condition. A
10 determination that an individual has shown disregard in the management
11 of his or her financial condition may include, but is not limited to,
12 an assessment of: Current outstanding judgments, except judgments
13 solely as a result of medical expenses; current outstanding tax liens
14 or other government liens and filings; foreclosures within the last
15 three years; or a pattern of seriously delinquent accounts within the
16 past three years; and

17 (h) The loan originator licensee has completed, during the calendar
18 year preceding a licensee's annual license renewal date, a minimum of
19 eight hours of continuing education as established by rule of the
20 director. ~~((The director shall establish standards in rule for~~
21 ~~approval of professional organizations offering continuing education to~~
22 ~~loan originators. The director may approve continuing education taken~~
23 ~~by loan originators in other states if the director is satisfied that~~
24 ~~such continuing education meets the requirements of the continuing~~
25 ~~education required by this chapter.))~~

26 (2) If the director does not find the conditions of subsection (1)
27 of this section have been met, the director shall not issue the loan
28 originator license. The director shall notify the loan originator
29 applicant of the denial and return to the loan originator applicant any
30 remaining portion of the license fee that exceeds the department's
31 actual cost to investigate the license.

32 (3) The director shall issue a new loan originator license under
33 this chapter to any licensee that has a valid license and is otherwise
34 in compliance with this chapter.

35 (4) A loan originator license issued under this section expires on
36 the date one year from the date of issuance which, for license renewal
37 purposes, is also the renewal date. The director shall establish rules

1 regarding the loan originator license renewal process created under
2 this chapter.

3 (5) A loan originator licensee may surrender a license by
4 delivering to the director written notice of surrender, but the
5 surrender does not affect the loan originator licensee's civil or
6 criminal liability or any administrative actions arising from acts or
7 omissions occurring before such surrender.

8 (6) To prevent undue delay in the issuance of a loan originator
9 license and to facilitate the business of a loan originator, an interim
10 loan originator license with a fixed date of expiration may be issued
11 when the director determines that the loan originator has substantially
12 fulfilled the requirements for loan originator licensing as defined by
13 rule.

14 NEW SECTION. **Sec. 11.** A new section is added to chapter 19.146
15 RCW to read as follows:

16 (1) A licensed mortgage loan originator must complete a minimum of
17 eight hours of continuing education, eight of which is approved by the
18 nationwide mortgage licensing system and registry which must include at
19 least three hours of federal law and regulations; two hours of ethics,
20 which must include instruction on fraud, consumer protection, and fair
21 lending issues; and two hours of training related to lending standards
22 for the nontraditional mortgage product marketplace. Additionally, the
23 director may require at least one hour of continuing education on
24 Washington law provided by and administered through an approved
25 provider.

26 (2) The nationwide mortgage licensing system and registry must
27 review and approve continuing education courses. Review and approval
28 of a continuing education course must include review and approval of
29 the course provider.

30 (3) A licensed mortgage loan originator may only receive credit for
31 a continuing education course in the year in which the course is taken,
32 and may not take the same approved course in the same or successive
33 years to meet the annual requirements for continuing education.

34 (4) A licensed mortgage loan originator who is an instructor of an
35 approved continuing education course may receive credit for the
36 licensed mortgage loan originator's own annual continuing education
37 requirement at the rate of two hours credit for every one hour taught.

1 (5) A person having successfully completed the education
2 requirements approved by the nationwide mortgage licensing system and
3 registry for any state must have their credits accepted as credit
4 towards completion of continuing education requirements in this state.

5 (6) This section does not preclude any education course, as
6 approved by the nationwide mortgage licensing system and registry, that
7 is provided by the employer of the mortgage loan originator or an
8 entity which is affiliated with the mortgage loan originator by an
9 agency contract, or any subsidiary or affiliate of such employer or
10 entity. Continuing education may be offered either in a classroom,
11 online, or by any other means approved by the nationwide mortgage
12 licensing system and registry.

13 NEW SECTION. **Sec. 12.** A new section is added to chapter 19.146
14 RCW to read as follows:

15 The director shall establish a process whereby mortgage loan
16 originators may challenge information entered into the nationwide
17 mortgage licensing system and registry by the director.

18 NEW SECTION. **Sec. 13.** A new section is added to chapter 19.146
19 RCW to read as follows:

20 For the purposes of implementing an orderly and efficient licensing
21 process, the director may establish licensing rules and interim
22 procedures for licensing and acceptance of applications. For
23 previously registered or licensed individuals, the director may
24 establish expedited review and licensing procedures.

25 NEW SECTION. **Sec. 14.** A new section is added to chapter 31.04 RCW
26 to read as follows:

27 An individual defined as a mortgage loan originator shall not
28 engage in the business of a mortgage loan originator without first
29 obtaining and maintaining annually a license under this act. Each
30 licensed mortgage loan originator must register with and maintain a
31 valid unique identifier issued by the nationwide mortgage licensing
32 system and registry.

33 NEW SECTION. **Sec. 15.** A new section is added to chapter 19.146
34 RCW to read as follows:

1 (1) Except as otherwise provided in section 1512 of the S.A.F.E.
2 act, the requirements under any federal law or chapter 42.56 RCW
3 regarding the privacy or confidentiality of any information or material
4 provided to the nationwide mortgage licensing system and registry, and
5 any privilege arising under federal or state law, including the rules
6 of any federal or state court, with respect to that information or
7 material, continues to apply to the information or material after the
8 information or material has been disclosed to the nationwide mortgage
9 licensing system and registry. Information and material may be shared
10 with all state and federal regulatory officials with mortgage industry
11 oversight authority without the loss of privilege or the loss of
12 confidentiality protections provided by federal law or state law.

13 (2) For the purposes under subsection (1) of this section, the
14 director is authorized to enter agreements or sharing arrangements with
15 other governmental agencies, the conference of state bank supervisors,
16 the American association of residential mortgage regulators, or other
17 associations representing governmental agencies as established by rule,
18 regulation, or order of the director.

19 (3) Information or material that is subject to a privilege or
20 confidentiality under subsection (1) of this section is not subject to:

21 (a) Disclosure under any federal or state law governing the
22 disclosure to the public of information held by an officer or an agency
23 of the federal government or the respective state; or

24 (b) Subpoena or discovery, or admission into evidence, in any
25 private civil action or administrative process unless, with respect to
26 any privilege held by the nationwide mortgage licensing system and
27 registry with respect to that information or material, the person to
28 whom the information or material pertains waives, in whole or in part,
29 in the discretion of that person, that privilege.

30 (4) Chapter 42.56 RCW relating to the disclosure of confidential
31 supervisory information or any information or material described in
32 subsection (1) of this section that is inconsistent with subsection (1)
33 of this section is superseded by the requirements of this section.

34 (5) This section does not apply to the information or material
35 relating to the employment history of, and publicly adjudicated
36 disciplinary and enforcement actions against, mortgage loan originators
37 that is included in the nationwide mortgage licensing system and
38 registry for access by the public.

1 NEW SECTION. **Sec. 16.** A new section is added to chapter 19.146
2 RCW to read as follows:

3 In order to fulfill the purposes of this act, the director is
4 authorized to establish relationships or contracts with the nationwide
5 mortgage licensing system and registry or other entities designated by
6 the nationwide mortgage licensing system and registry to collect and
7 maintain records and process transaction fees or other fees related to
8 licensees or other persons subject to this chapter.

9 NEW SECTION. **Sec. 17.** A new section is added to chapter 19.146
10 RCW to read as follows:

11 Each mortgage broker licensee shall submit to the nationwide
12 mortgage licensing system and registry reports of condition, which must
13 be in the form and must contain the information as the nationwide
14 mortgage licensing system and registry may require.

15 NEW SECTION. **Sec. 18.** A new section is added to chapter 19.146
16 RCW to read as follows:

17 The director is authorized to regularly report violations of this
18 act, as well as enforcement actions and other relevant information, to
19 the nationwide mortgage licensing system and registry.

20 NEW SECTION. **Sec. 19.** (1) In order to facilitate an orderly
21 transition to licensing and minimize disruption in the mortgage
22 marketplace, sections 4, 6 through 9, 11, 12, 14, and 17 are effective
23 January 1, 2010.

24 (2) In order to facilitate an orderly transition to licensing and
25 minimize disruption in the mortgage marketplace, mortgage loan
26 originators who were previously exempt as exclusive agents under RCW
27 19.146.020(1)(a)(ii) must obtain a mortgage loan originator license
28 under this chapter before July 1, 2010.

29 NEW SECTION. **Sec. 20.** The director of financial institutions or
30 the director's designee may take the actions necessary to ensure this
31 act is implemented on July 1, 2010."

SHB 1749 - S COMM AMD

By Committee on Financial Institutions, Housing & Insurance

ADOPTED 03/31/2009

1 On page 1, line 3 of the title, after "2008;" strike the remainder
2 of the title and insert "amending RCW 19.146.010, 19.146.020,
3 19.146.0201, 19.146.205, 19.146.228, 19.146.235, 19.146.300, and
4 19.146.310; adding new sections to chapter 19.146 RCW; adding a new
5 section to chapter 31.04 RCW; creating new sections; and providing an
6 effective date."

--- END ---