

# Title 208 WAC

## FINANCIAL INSTITUTIONS, DEPARTMENT OF

**Chapters**

<b>208-418</b>	<b>Fees charged to credit unions and other persons.</b>
<b>208-620</b>	<b>Washington Consumer Loan Act.</b>
<b>208-660</b>	<b>Mortgage brokers and loan originators—Licensing.</b>
<b>208-680</b>	<b>Escrow Agent Registration Act.</b>
<b>208-690</b>	<b>Regulation of money services providers.</b>

### DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

#### Chapter 208-680A ESCROW—ORGANIZATION AND ADMINISTRATION

208-680A-020	Organization. [Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320.96-21-082, § 208-680A-020, filed 10/16/96, effective 11/16/96. 96-05-018, recodified as § 208-680A-020, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.94-04-050, § 308-128A-020, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128A-020, filed 9/9/88; Order RE 122, § 308-128A-020, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).
208-680A-030	Meeting notice. [Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320.96-21-082, § 208-680A-030, filed 10/16/96, effective 11/16/96. 96-05-018, recodified as § 208-680A-030, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.94-04-050, § 308-128A-030, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128A-030, filed 9/9/88; Order RE 122, § 308-128A-030, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).
208-680A-040	Definitions. [Statutory Authority: RCW 18.44.410.05-03-038, § 208-680A-040, filed 1/10/05, effective 2/10/05; 01-08-055, § 208-680A-040, filed 4/2/01, effective 5/3/01. Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320.96-21-082, § 208-680A-040, filed 10/16/96, effective 11/16/96. 96-05-018, recodified as § 208-680A-040, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.94-04-050, § 308-128A-040, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128A-040, filed 9/9/88; 79-07-009 (Order RE 126), § 308-128A-040, filed 6/7/79; Order RE 122, § 308-128A-040, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

#### Chapter 208-680B ESCROW—LICENSING AND EXAMINATION

208-680B-010	Credit and character report. [Statutory Authority: RCW 18.44.410.01-08-055, § 208-680B-010, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680B-010, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.88-19-016 (Order PM 763), § 308-128B-010, filed 9/9/88; Order RE 122, § 308-128B-010, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.-040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).
208-680B-015	License not transferable—Notice of change in principal officer or controlling person. [Statutory Authority: RCW 18.44.410.01-08-055, § 208-680B-015, filed 4/2/01, effective 5/3/01.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680B-020	Fingerprint identification. [Statutory Authority: RCW 18.44.410.01-08-055, § 208-680B-020, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680B-020, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.88-19-016 (Order PM 763), § 308-128B-020, filed 9/9/88; Order RE 122, § 308-128B-020, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.-040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).
208-680B-030	Escrow officer examination. [Statutory Authority: RCW 18.44.410.01-08-055, § 208-680B-030, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680B-030, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.88-19-016 (Order PM 763), § 308-128B-030, filed 9/9/88; Order RE 122, § 308-128B-030, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).
208-680B-050	Successful applicants must apply for license. [Statutory Authority: RCW 18.44.410.01-08-055, § 208-680B-050, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680B-050, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.88-19-016 (Order PM 763), § 308-128B-050, filed 9/9/88; Order RE 122, § 308-128B-050, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).
208-680B-070	Misuse of escrow officer license prohibited. [Statutory Authority: RCW 18.44.410.01-08-055, § 208-680B-070, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680B-070, filed 2/12/96, effective 4/1/96; Order RE 122, § 308-128B-070, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).
208-680B-080	Escrow officer and agent fees. [Statutory Authority: RCW 18.44.410.19.146.223, 19.146.265, 31.04.165, 31.45.200.01-12-029, § 208-680B-080, filed 5/29/01, effective 7/1/01. Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320.96-21-082, § 208-680B-080, filed 10/16/96, effective 11/16/96. 96-05-018, recodified as § 208-680B-080, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.91-11-066, § 308-128B-080, filed 5/16/91, effective 6/16/91. Statutory Authority: RCW 18.44.080 and 43.24.086.90-03-099, § 308-128B-080, filed 1/24/90, effective 3/1/90. Statutory Authority: RCW 43.24.086.87-18-032 (Order PM 668), § 308-128B-080, filed 8/27/87.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).
208-680B-081	Fee increase. [Statutory Authority: RCW 43.320.040, 18.44.410.07-22-010, § 208-680B-081, filed 10/25/07, effective 11/25/07. Statutory Authority: RCW 18.44.-410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200.01-12-029, § 208-680B-081, filed 5/29/01, effective 7/1/01.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.-040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).
208-680B-082	Waiver of fees. [Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.-200.01-12-029, § 208-680B-082, filed 5/29/01, effective 7/1/01.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.-040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).
208-680B-090	Dishonored checks and insufficient payment of fees. [Statutory Authority: RCW 18.44.410.01-08-055, § 208-680B-090, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680B-090, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320.88-19-016 (Order PM 763), § 308-128B-090, filed 9/9/88.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).
208-680B-100	Number of locations directly supervised by escrow officers simultaneously. [Statutory Authority: RCW 18.44.410.01-08-055, § 208-680B-100, filed 4/2/01, effective 5/3/01.] Repealed by 10-20-124, filed 10/5/10,

effective 11/5/10. Statutory Authority: RCW 43.320-040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680B-110 Escrow officers may only be designated to one company. [Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680B-110, filed 4/2/01, effective 5/3/01.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680B-120 Escrow agent's prohibition of designated escrow officer. [Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680B-120, filed 4/2/01, effective 5/3/01.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

**Chapter 208-680C  
ESCROW—ESCROW AGENT OFFICE**

208-680C-020 Office identification. [Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680C-020, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680C-020, filed 2/12/96, effective 4/1/96; Order RE 122, § 308-128C-020, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680C-030 Display of licenses. [96-05-018, recodified as § 208-680C-030, filed 2/12/96, effective 4/1/96; Order RE 122, § 308-128C-030, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680C-040 Change of office location. [Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680C-040, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680C-040, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 94-04-050, § 308-128C-040, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128C-040, filed 9/9/88; Order RE 122, § 308-128C-040, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680C-045 Closure of office. [Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680C-045, filed 4/2/01, effective 5/3/01. Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320. 96-21-082, § 208-680C-045, filed 10/16/96, effective 11/16/96.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680C-050 Deceptive names prohibited. [Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680C-050, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680C-050, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 94-04-050, § 308-128C-050, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128C-050, filed 9/9/88; Order RE 122, § 308-128C-050, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680C-060 Reporting significant events. [Statutory Authority: RCW 43.320.040, 18.44.410. 07-22-010, § 208-680C-060, filed 10/25/07, effective 11/25/07.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

**Chapter 208-680D  
ESCROW—RECORDS AND RESPONSIBILITIES**

208-680D-010 Designated escrow officer responsibilities. [Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680D-010, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680D-010, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 94-04-050, § 308-128D-010, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128D-010, filed 9/9/88; Order RE 122, § 308-128D-010, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680D-020 Required records. [Statutory Authority: RCW 18.44-410. 01-08-055, § 208-680D-020, filed 4/2/01, effective

5/3/01. 96-05-018, recodified as § 208-680D-020, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-23-049 (Order PM 790), § 308-128D-020, filed 11/14/88; 88-19-016 (Order PM 763), § 308-128D-020, filed 9/9/88; Order RE 122, § 308-128D-020, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680D-030 Accuracy and accessibility of records. [Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680D-030, filed 4/2/01, effective 5/3/01. Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320. 96-21-082, § 208-680D-030, filed 10/16/96, effective 11/16/96. 96-05-018, recodified as § 208-680D-030, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 94-04-050, § 308-128D-030, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128D-030, filed 9/9/88; Order RE 122, § 308-128D-030, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680D-040 Agreements and closings. [Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680D-040, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680D-040, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 94-04-050, § 308-128D-040, filed 1/31/94, effective 3/3/94; 88-23-049 (Order PM 790), § 308-128D-040, filed 11/14/88; Order RE 122, § 308-128D-040, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680D-050 Expeditious performance. [Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680D-050, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680D-050, filed 2/12/96, effective 4/1/96; Order RE 122, § 308-128D-050, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680D-060 Disbursement of funds. [Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680D-060, filed 4/2/01, effective 5/3/01. Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320. 96-21-082, § 208-680D-060, filed 10/16/96, effective 11/16/96. 96-05-018, recodified as § 208-680D-060, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-23-049 (Order PM 790), § 308-128D-060, filed 11/14/88; Order RE 122, § 308-128D-060, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680D-070 Suit or complaint notification. [96-05-018, recodified as § 208-680D-070, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 94-04-050, § 308-128D-070, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128D-070, filed 9/9/88; Order RE 122, § 308-128D-070, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680D-080 Licensed escrow officers' responsibilities. [Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680D-080, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680D-080, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320. 88-19-016 (Order PM 763), § 308-128D-080, filed 9/9/88.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680D-090 Escrow instructions, agreements, disclosures—Prohibitions. [Statutory Authority: RCW 18.44.410. 01-08-055, § 208-680D-090, filed 4/2/01, effective 5/3/01.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

**Chapter 208-680E  
ESCROW—TRUST ACCOUNT PROCEDURES**

208-680E-011 Administration of funds held in trust. [Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320. 96-21-082, § 208-680E-011, filed 10/16/96, effective

11/16/96, 96-05-018, recodified as § 208-680E-011, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320, 94-04-050, § 308-128E-011, filed 1/31/94, effective 3/3/94; 89-07-077 (Order PM 825), § 308-128E-011, filed 3/21/89, effective 6/1/89.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680E-025

**Chapter 208-680F  
ESCROW—FINANCIAL RESPONSIBILITY**

208-680F-010 Bond. [Statutory Authority: RCW 18.44.410, 01-08-055, § 208-680F-010, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680F-010, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320, 88-19-016 (Order PM 763), § 308-128F-010, filed 9/9/88; Order RE 122, § 308-128F-010, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680F-020 Errors and omissions policy—Securities alternative. [Statutory Authority: RCW 18.44.410, 05-03-038, § 208-680F-020, filed 1/10/05, effective 2/10/05; 01-08-055, § 208-680F-020, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680F-020, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320, 94-04-050, § 308-128F-020, filed 1/31/94, effective 3/3/94; 88-19-016 (Order PM 763), § 308-128F-020, filed 9/9/88; 79-07-009 (Order RE 126), § 308-128F-020, filed 6/7/79. Statutory Authority: RCW 18.44.360, 78-08-027 (Order RE 124, Resolution No. RE 124), § 308-128F-020, filed 7/14/78; Order RE 122, § 308-128F-020, filed 9/21/77.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680F-040 Return of cash deposit or securities. [Statutory Authority: RCW 18.44.410, 01-08-055, § 208-680F-040, filed 4/2/01, effective 5/3/01. Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320, 96-21-082, § 208-680F-040, filed 10/16/96, effective 11/16/96. 96-05-018, recodified as § 208-680F-040, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320, 88-19-016 (Order PM 763), § 308-128F-040, filed 9/9/88; 79-07-009 (Order RE 126), § 308-128F-040, filed 6/7/79.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680F-050 Claim on cash deposit or securities. [Statutory Authority: RCW 42.320.040 [43.320.040] and 18.44.320, 96-21-082, § 208-680F-050, filed 10/16/96, effective 11/16/96. 96-05-018, recodified as § 208-680F-050, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320, 88-19-016 (Order PM 763), § 308-128F-050, filed 9/9/88; 79-07-009 (Order RE 126), § 308-128F-050, filed 6/7/79.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680F-060 Cash deposit, securities—Full force and effect. [Statutory Authority: RCW 18.44.410, 01-08-055, § 208-680F-060, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680F-060, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320, 79-07-009 (Order RE 126), § 308-128F-060, filed 6/7/79.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680F-070 Cancellation of errors and omissions policy, new policy required. [Statutory Authority: RCW 18.44.410, 01-08-055, § 208-680F-070, filed 4/2/01, effective 5/3/01. 96-05-018, recodified as § 208-680F-070, filed 2/12/96, effective 4/1/96. Statutory Authority: RCW 18.44.320, 88-19-016 (Order PM 763), § 308-128F-070, filed 9/9/88; 79-07-009 (Order RE 126), § 308-128F-070,

filed 6/7/79.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

**Chapter 208-680G  
EXAMINATIONS, INVESTIGATIONS, ENFORCEMENT,  
SANCTIONS, AND COSTS**

208-680G-010 Examinations. [Statutory Authority: RCW 18.44.410, 01-08-055, § 208-680G-010, filed 4/2/01, effective 5/3/01.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680G-020 Investigations. [Statutory Authority: RCW 18.44.410, 01-08-055, § 208-680G-020, filed 4/2/01, effective 5/3/01.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680G-030 Enforcement. [Statutory Authority: RCW 18.44.410, 01-08-055, § 208-680G-030, filed 4/2/01, effective 5/3/01.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680G-040 Sanctions. [Statutory Authority: RCW 18.44.410, 01-08-055, § 208-680G-040, filed 4/2/01, effective 5/3/01.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

208-680G-050 Examination and investigation fees and expense— Authority to retain specialists. [Statutory Authority: RCW 18.44.121, [18.44]410, 05-03-037, § 208-680G-050, filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 18.44.410, 01-08-055, § 208-680G-050, filed 4/2/01, effective 5/3/01.] Repealed by 10-20-124, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

**Chapter 208-418 WAC  
FEES CHARGED TO CREDIT UNIONS AND OTHER  
PERSONS  
(Formerly chapter 419-18 WAC)**

**WAC**

208-418-040 Quarterly asset assessments.

**WAC 208-418-040 Quarterly asset assessments. (1)**  
The director will charge each credit union a quarterly asset assessment at the rate set forth in subsection (2) of this section. Asset assessments will be due on January 1, April 1, July 1, and October 1. Asset assessments must be paid no later than thirty days after their due date. The assessments will be computed on total assets as of the prior June 30 for the October 1 and January 1 assessments, and as of the prior December 31 for the April 1 and July 1 assessments.

(2)

Credit Union's Total Assets	Quarterly Asset Assessment
over \$500M	\$21,163 + (.00001729 x total assets over \$500M)
over \$100M up to \$500M	\$5,883 + (.00003819 x total assets over \$100M)
over \$25M up to \$100M	0.00005883 x total assets
over \$10M up to \$25M	\$1,296
over \$2M up to \$10M	\$863
over \$500K up to \$2M	\$575
up to \$500K	\$0

M = Million K = Thousand

(3) Quarterly asset assessments are charged for the calendar quarter that begins on the due date of the assessment. No rebates will be made to credit unions that cease to be state-chartered during the quarter. A credit union converting to state charter will pay a prorated quarterly asset assessment for the quarter during which the conversion is completed.

(4) From time to time, the director may determine that asset assessments on an out-of-state credit union or foreign credit union are inappropriate relative to the level of examination and supervision of that credit union by the division. In that event, the director may charge the credit union hourly fees for examination and supervision of the credit union, including, but not limited to, offsite monitoring, in lieu of asset assessments. Such fees are due upon receipt of billing from the division.

[Statutory Authority: RCW 31.12.516, 43.320.040, and chapter 43.135 RCW. 10-06-050, § 208-418-040, filed 2/24/10, effective 3/27/10. Statutory Authority: Chapter 43.135 RCW, RCW 43.320.040, 31.12.516(6), and 2008 c 285. 08-24-057, § 208-418-040, filed 11/26/08, effective 12/31/08. Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040. 01-12-004, § 208-418-040, filed 5/23/01, effective 6/23/01. Statutory Authority: 1996 c 274. 96-12-058, § 208-418-040, filed 5/31/96, effective 7/1/96. 96-06-011, recodified as § 208-418-040, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.535 and 31.12.545. 95-06-066, § 419-18-040, filed 2/28/95, effective 3/31/95; 91-06-062, § 419-18-040, filed 3/1/91, effective 4/1/91. Statutory Authority: RCW 31.12.545(1). 85-07-008 (Order 85-2), § 419-18-040, filed 3/8/85. Statutory Authority: RCW 31.12.320. 83-20-027 (Order 83-4), § 419-18-040, filed 9/26/83; 82-13-016 (Order 82-5), § 419-18-040, filed 6/7/82.]

### Chapter 208-620 WAC

#### WASHINGTON CONSUMER LOAN ACT

(Formerly chapter 50-20 WAC)

#### WAC

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208-620-620	How do I have to identify my business when I advertise?
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#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

208-620-380	Are there any additional requirements for out-of-state licensees? [Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-380, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-380, filed 1/27/06, effective 2/27/06.] Repealed by 10-20-122, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35.
208-620-390	If I am offering loans by mail or internet to Washington residents, do I have to license those locations? [Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-390, filed 1/27/06, effective 2/27/06.] Repealed by 10-20-122, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35.

**WAC 208-620-010 Definitions.** The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

"Act" means the Consumer Loan Act, chapter 31.04 RCW.

"Affiliate" means any person who controls, is controlled by, or is under common control with another.

"Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Section 226 et seq.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be submitted in writing or electronically and includes a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

"Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. Section 103.

"Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

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

"Common ownership" exists if an entity or entities possess an ownership or equity interest of five percent or more in another entity.

"Creditor" has the same meaning as in the Truth in Lending Act, 15 U.S.C. 1602(f).

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

"Depository Institutions Deregulatory and Monetary Control Act" means the Depository Institutions Deregulatory and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. § 1735f-7a.

"Director" means the director of the department of financial institutions or his or her designated representative.

"Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. section 1691 and Regulation B, 12 C.F.R. Section 202.

"Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Section 1681 et seq.

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. section 1692.

"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.

"Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. section 45(a).

"Filing" means filing, recording, releasing or reconveying mortgages, deeds of trust, security agreements or other documents, or transferring certificates of title to vehicles.

"Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

"Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. sections 2801 through 2810 and 12 C.F.R. Section 203.

"Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes step-parents, stepchildren, stepsiblings, and adoptive relationships.

"Individual servicing a mortgage loan" means a person who on behalf of a lender or servicer licensed by this state, or a lender or servicer exempt from licensing, 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.

For purposes of this definition "on behalf of a lender or servicer" means that the individual person is employed by the lender or servicer and does not receive any compensation or gain directly or indirectly from the borrower for performing the described activities.

"Insurance" means life insurance, disability insurance, property insurance, insurance covering involuntary unemployment and such other insurance as may be authorized by the insurance commissioner in accordance with Title 48 RCW.

"Lender" means any person that extends money to a borrower with the expectation of being repaid.

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

"License number" means your NMLSR unique identifier displayed as prescribed by the director.

"Licensee" means a person who holds one or more current licenses.

"Live check" means a loan solicited through the mail in the form of a check, which, when endorsed by the payee, binds the payee to the terms of the loan agreement contained on the check.

"Loan" means a sum of money lent at interest or for a fee or other charges and includes both open-end and closed-end transactions.

"Loan originator" means the same as mortgage loan originator.

"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 chapter 31.04 RCW.

A loan processor engaged as an independent contractor for a licensee must hold a mortgage loan originator license.

"Long-term subordinated debt" means for the purposes required in RCW 31.04.045 outstanding promissory notes or other evidence of debt with initial maturity of at least seven years and remaining maturity of at least two years.

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

"Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

"Mortgage broker" means the same as 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 mortgage broker in the same transaction.

"Mortgage loan originator" or "loan originator" means an individual who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain (1) takes a residential mortgage loan application; or (2) offers or negotiates terms of a residential mortgage loan, including short sale transactions.

Mortgage loan originator also includes an individual who for 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.

Mortgage loan originator also includes an individual who holds himself or herself out as being able to perform any of the activities described in this definition. For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

"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. An individual who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

"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 to conduct those activities, 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. See the definition of real estate brokerage activity in this subsection.

This definition does not apply to an individual servicing a mortgage loan before July 1, 2011.

This definition 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.

"Nationwide Mortgage Licensing System and Registry (NMLSR)" 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 licensing and registration of mortgage loan originators.

"Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage. This definition is limited to implementation of the S.A.F.E. Act.

"Out-of-state licensee" means a licensee that does not maintain a physical presence within the state, or a licensee that maintains headquarters or books and records outside Washington.

"Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

"Principal" means either (1) any person who controls, directly or indirectly through one or more intermediaries, a ten percent or greater interest in a partnership, company, association or corporation; or (2) the owner of a sole proprietorship.

"Principal amount" means the loan amount advanced to or for the direct benefit of the borrower.

"Principal balance" means the principal amount plus any allowable origination fee.

"RCW" means the *Revised Code of Washington*.

"Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including (1) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (2) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (3) 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; (4) 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 (5) offering to engage in any activity, or act in any capacity, described in (1) through (4) of this definition.

"Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sections 2601 et seq., and Regulation X, 24 C.F.R. Sections 3500 et seq.

"Records" mean books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under the act.

"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.

"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 (length), or loan types; capitalizations of arrearages; or principal reductions.

"Residential mortgage loan modification services" includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform residential mortgage loan modification services. Residential mortgage loan modification services also includes the collection of data for submission to an entity performing mortgage loan modification services. Residential mortgage loan modification services do not include actions by individuals servicing a mortgage loan before July 1, 2011.

"Registered mortgage loan originator" means any individual who (1) 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 (2) is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

"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"), Public Law No. 110-289, effective July 30, 2008.

"Senior officer" means an officer of a consumer loan company at the vice-president level or above.

"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. See RCW 31.04.-015(26).

"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. See RCW 31.04.015(27).

"Simple interest method" means the method of computing interest payable on a loan by applying the rate of interest specified in the note, or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Each payment must first be applied to any unpaid penalties, fees, or charges, then to accumulated interest, and last to the unpaid balance of the principal amount until paid in full. In using such method, interest must not be payable in advance or compounded.

"State" means the state of Washington.

"Subsidiary" means a person that is controlled by another.

"Table funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

"Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. § 6101 to 6108.

"Telephone Sales Rule" means the rules promulgated in 16 C.F.R. Part 310.

"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.

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

"Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sections 1601 et seq., and Regulation Z, 12 C.F.R. Sections 226 et seq.

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

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-010, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-010, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-010, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 31.04.165, 31.04.-015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-010, filed 1/27/06, effective 2/27/06. Statutory Authority: RCW 43.320.040, 31.04.-045, [31.04].105, [31.04].145, [31.04].155 and [31.04].165. 96-04-013, § 208-620-010, filed 1/26/96, effective 2/26/96.]

**WAC 208-620-105 Who is exempt from licensing as a mortgage loan originator under this act?** The following are exempt from licensing as a mortgage loan originator:

(1) Registered mortgage loan originators employed by an entity that is exempt from the act;

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

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

(4) A Washington licensed attorney 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 such lender, mortgage broker, or other mortgage loan originator; and

(5) Individuals who do not take residential mortgage loan applications or negotiate the terms of residential mortgage loans for compensation or gain.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-105, filed 10/5/10, effective 11/5/10. Statutory Authority:

RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-105, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-231 Which companies must have a consumer loan license to service residential mortgage loans secured by Washington residential real estate or obligating Washington residents?** (1) Companies servicing loans they originated.

(2) Companies servicing loans purchased post closing.

(3) Companies servicing loans owned by other companies.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-231, filed 10/5/10, effective 11/5/10.]

**WAC 208-620-235 When making loans, is there a maximum rate of interest allowed under the act?** Yes. The rate of interest specified in the note must not exceed twenty-five percent per annum.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-235, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-235, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-235, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-235, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-250 If my out-of-state company applies for a license under the Consumer Loan Act do we have to have a branch in the state of Washington?** (1) You are not required to maintain a physical presence in this state to hold a license but any location doing business under the act, wherever located, must be licensed.

(2) If you employ mortgage loan originators, those licensed employees must work from a licensed location. A licensed location can be a branch office or an individual loan originator's home.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-250, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-250, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-251 Are there any additional requirements for out-of-state licensees?** (1) All locations must be licensed. Any person that conducts business under the act with Washington residents or Washington residential real estate must obtain a license for all locations from which such business is conducted, including out-of-state locations, with the exception of those office locations providing only underwriting and back office services under WAC 208-620-310.

(2) **Keeping records out-of-state.** The director may approve the maintenance of a licensee's records at an out-of-state location. The licensee must request approval in writing and must agree to provide the director access to the records and pay the hourly rate plus travel costs pursuant to WAC 208-620-590.

(3) **Service on out-of-state licensee.** An out-of-state licensee's registered agent in Washington is the licensee's agent for service of process, notice, or demand.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-251, filed 10/5/10, effective 11/5/10.]

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**WAC 208-620-252 If I am offering loans by mail or internet to Washington residents, do I have to license those locations?** Yes. Any person that conducts business under the act with Washington residents must obtain a license for all locations including those that offer loans by mail or internet.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-252, filed 10/5/10, effective 11/5/10.]

**WAC 208-620-260 If I am licensed under the Consumer Loan Act, can I broker residential mortgage loans in the state of Washington?** Yes. You may broker residential mortgage loans under the Consumer Loan Act or Mortgage Broker Practices Act.

(1) If you broker loans under the Consumer Loan Act license, you are subject to the act and the loans are subject to the annual assessment under WAC 208-620-240.

(2) If you are licensed under the Mortgage Broker Practices Act, chapter 19.146 RCW, you must comply with that act. If you do hold that additional license, the loans you broker are subject to that act and are not subject to the annual assessment under this act.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-260, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-260, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-260, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-260, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-271 Do I need a license to assist a borrower with a residential mortgage loan modification?** Yes. Persons providing loan modification services for compensation or gain must be licensed under this chapter, or under chapter 19.146 RCW. See also WAC 208-620-550 and 208-620-551.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-271, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-271, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-310 Is it necessary to license an office that is only providing underwriting and other back-office services?** A location that is solely providing underwriting and other back-office services on Washington loans and has only incidental contact with the borrower, is not required to be licensed. Back office services do not include loan servicing.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-310, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-310, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-320 What is the amount of the bond required for my consumer loan license?** (1) If you originate loans the bond amount is based on the annual dollar amount of loans you originate. See the following chart:

- |  |          |
|--|----------|
| 1. Zero to twenty million in loans originated: | \$30,000 |
| 2. Twenty million to forty million:            | \$50,000 |

- |                                    |           |
|------------------------------------|-----------|
| 3. Forty million to fifty million: | \$100,000 |
| 4. Fifty million and above:        | \$150,000 |

(2) If you only service residential mortgage loans, your bond amount at application is thirty thousand dollars. Thereafter and subject to annual adjustment, your bond amount is based on the annual dollar amount of the residential mortgage loans serviced pursuant to the following schedule (see RCW 31.04.045(6)):

- |   |          |
|---|----------|
| 1. Zero to fifty million in loan principal: | \$30,000 |
| 2. Fifty million and above:                 | \$50,000 |

(3) If you only offer residential mortgage loan modification services, your bond amount is thirty thousand dollars.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-320, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-320, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-320, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-320, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-320, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-325 What will my bond amount be in the first year of licensing?** (1) Your initial bond amount will be based on either your prior year's loan origination volume in Washington or one hundred thousand dollars. See the bonding chart in WAC 208-620-320.

(2) If you only service residential mortgage loans your initial bond amount is thirty thousand dollars. For subsequent years see the bonding chart in WAC 208-620-320.

(3) If you only provide residential mortgage loan modification services, your bond amount is thirty thousand dollars initially and thereafter.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-325, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-325, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-327 How often will my bond amount change?** Your bond amount may change annually depending on your volume of loan origination and residential mortgage loans serviced in Washington. See RCW 31.04.045(6). By March 1st of each year, you must determine your required bond amount and provide DFI with proof of having an adequate bond.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-327, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-327, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-328 How often must I report my loan origination and residential mortgage loan servicing volume?** You must report your loan origination and loan servicing volume as directed on the form prescribed each year during the annual assessment period.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-328, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-328, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-370 What are the grounds for denying or conditioning my consumer loan company license application?** The director may deny or condition approval of a license application if you or any principal, officer, or board director of the applicant:

(1) Fails to pay a fee due the department or the NMLSR;  
 (2) Fails to demonstrate financial responsibility, experience, character, and general fitness to operate a business honestly, fairly, and efficiently within the purposes of the Consumer Loan Act. The director may find that the person has failed to make the demonstration if, among other things:

(a) The person is or has been subject to an injunction or an administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act, the Insurance Code, the Securities Act, or similar laws in this or another state; or

(b) An independent credit report issued by a recognized credit reporting agency indicates that the person has a history of unpaid debts; or

(c) The person is the subject of a criminal felony indictment, or a criminal gross misdemeanor charge involving dishonesty or financial misconduct (RCW 31.04.055 (1)(d)); or

(d) The person is insolvent in the sense that the value of the applicant's or licensee's liabilities exceeds its assets or in the sense that the applicant or licensee cannot meet its obligations as they mature; or

(e) The person has had a license to conduct lending, residential mortgage loan servicing, or to provide settlement services associated with lending or residential mortgage loan servicing revoked or suspended 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 (see RCW 31.04.093 (6)(c)).

(3) Has misrepresented, omitted or concealed a material fact from the department or has misrepresented a material fact to the department;

(4) Has been found to have committed an act of misrepresentation or fraud in any aspect of the conduct of the lending or brokering business or profession;

(5) Has failed to complete its application as defined in WAC 208-620-280, within a reasonable time after being notified that the department considers the file abandoned for failure to provide requested information or documentation.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-370, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-370, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-370, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-371 May I employ someone to work with Washington residents or Washington property who has been convicted of a felony, or who has had a lending-related license revoked or suspended?** No. (1) Pursuant to RCW 31.04.093(6), the director may prohibit any officer, principal, or employee from participating in the affairs of any licensee if that officer, principal, or employee has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(a) During the seven-year period preceding the date of the proposed employment; or

(b) At any time preceding the date of the proposed employment, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(2) For purposes of this section, "participation in the affairs of any licensee" means an officer, principal, or employee who will or does originate loans, supervise loan originators, or manage the loan production activities of the licensee.

(3) Additionally, the director may prohibit participation in the affairs of the licensee by any officer, principal, or employee who has had a license to engage in lending, or performance of a settlement service related to lending, revoked or suspended in this state or any state.

(4) The department considers it to be a deceptive practice in violation of RCW 31.04.027(2) for any licensee to employ an officer, principal, or employee to originate loans, supervise loan originators or manage the loan production activities of the licensee without first conducting a background check.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-371, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-371, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-373 What happens to residential mortgage loans in the pipeline if a mortgage loan originator leaves my company?** Existing loan applications must be processed by another licensed loan originator in the company. At the borrower's written request, the loan must be transferred to another licensed entity. You may pay the original loan originator for the work he or she performed prior to leaving.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-373, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-373, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-374 What action must I take in the NMLSR if I fire a residential mortgage loan originator or if a residential mortgage loan originator quits?** You must file a relationship termination through the NMLSR within ten days of firing someone or the person quitting.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-374, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-374, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-420 May I transact business in a name other than the name on my license?** (1) You may only transact business using the name on the license or as further described in this section.

(2) You may apply to the department to add a trade or doing business as (DBA) name to your main office license but you may not use the DBA alone to transact business. DBA names will only be attached to the main office license. Branch offices cannot have DBAs attached to the branch office license. The director may deny an application for a proposed DBA name if the proposed DBA name is similar to a currently existing licensee name.

(3) If you transact business using a DBA you must use either the main office license number or main office license name with the DBA. See also WAC 208-620-620, 208-620-621 and 208-620-622.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-420, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-420, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-430 What are my annual filing requirements as a consumer loan licensee?** Each year you are required to file annual reports on forms provided by the department. You must also pay a fee (assessment) based on your activities during the reporting year.

(1) **Annual reports and assessment on activity due March 1st.** You must provide the annual reports by March 1st of each year. The worksheet and annual assessment must also be provided to the department by March 1st of each year.

(2) **Late penalties.** A licensee that fails to submit the required annual reports, worksheet, and assessment by March 1st is subject to a penalty of fifty dollars per report for each day of delay. For example, if the department receives the consolidated annual report and worksheet on March 4th, the licensee would have to pay an additional three hundred dollars as a late penalty. The maximum late penalty that will be assessed is five thousand dollars per reporting year.

(3) **Failure to file.** If a licensee fails to pay its annual assessment or file the annual reports by April 1st the director may file a claim against the licensee's surety bond for failing to faithfully conform to and abide by the Consumer Loan Act. The department may make a claim on the licensee's surety bond for the late penalties under subsection (2) of this section and the greater of:

(a) The assessment paid the previous year;

(b) The average annual assessment paid in the previous two years; or

(c) Fifteen hundred dollars.

(4) **Annual reporting of residential mortgage loan data.** On an annual basis the company licensee must provide information on the characteristics of residential mortgage loan originations in an electronic format prescribed by the direction.

(5) **Residential mortgage loan annual reports content.**

(a) The director will provide the report format or forms and worksheet for the reporting requirement described in subsection (4) of this section.

(b) For the annual reporting of loan data, the company licensee must provide:

(i) Information sufficient to identify the mortgage loan and the unique identifier of the mortgage loan originator, mortgage broker (if applicable), and mortgage lender for the loan;

(ii) Information sufficient to enable a computation of key items in the federal truth in lending disclosures, including the annual percentage rate, finance charge, amount financed, a schedule of payments, and any deviations between the final disclosures and the most recent disclosures issued prior to the final disclosures;

(iii) Information included in the initial and any subsequent good faith estimate (GFE) disclosures required under the federal Real Estate Settlement Procedures Act including the rate, the date of any interest rate lock, itemization of settlement charges and all compensation;

(iv) Information included in the final HUD-1 Settlement Statement;

(v) Information related to the terms of the loans, including adjustable rate loan features (including timing of adjustments, indices used in setting rates, maximum and minimum adjustments, floors and ceilings of adjustments), the undiscounted interest rate (if maintained by the mortgage lender in an electronic format), penalties for late payments, and penalties for prepayment (including computation of the penalty amount, duration of prepayment penalty, the maximum amount of penalty);

(vi) Information typically used in underwriting, including the appraised value of the property, sales price of the property (if a purchase loan), loan to value, borrowers' income, monthly payment amount, housing debt-to-income ratio including taxes and insurance, total debt-to-income ratio including taxes and insurance, and credit score(s) of borrowers; and

(vii) Information included in a loan application register for mortgage lenders required to submit information pursuant to the federal Home Mortgage Disclosure Act.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-430, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-430, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-430, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-430, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-431 What are my quarterly call report filing requirements if I make, broker, or service residential mortgage loans?** When the NMLSR develops the call report functionality you will be required to file call reports on the dates and in a form prescribed by NMLSR (see RCW 31.04.277).

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-431, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-431, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-440 How do I calculate my annual assessment for activity in Washington?** (1)(a) **Calculation of the annual assessment for loans made, brokered or purchased.** The annual assessment is based on the "adjusted total loan value" as defined in subsection (2) of this section. The amount of the annual assessment is determined by multiplying the adjusted total loan value of the loans in the year being assessed by .000180271.

(b) **Calculation of the annual assessment for residential mortgage loans serviced.** The industry will be assessed the cost to DFI of regulating the industry. Costs include, but are not limited to, the cost of employee compensation, travel expenses, and goods and services expended in regulating the industry. Each licensee will pay a percentage of the cost based on the total annual volume of Washington residential mortgage loans serviced. The maximum amount assessed to any individual licensee will not exceed twenty-five thousand dollars.

(2) **All loans counted in assessment calculation.** The "adjusted total loan value" is the sum of:

(a) The principal loan balance on Washington loans in your loan portfolio on December 31 of the prior year; plus

(b) The total principal loan amount of all first and junior lien Washington loans both under and over twelve percent interest, you made, brokered, or purchased during the assessment year.

(3) **Reverse mortgages.** Each reporting year, you will report and be assessed on:

(a) The dollar amount of advances made; and

(b) The dollar amount of accrued interest.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-440, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-440, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-440, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-440, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-460 Must I file my annual reports even if I go out of business during the year?** (1) A licensee that ceases operations during the year must file the annual reports and pay the annual assessment required in WAC 208-620-430 within thirty days of closure.

(2) Failure to file within thirty days of closure will trigger the bond claim process as described in WAC 208-620-430(3), or other action.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-460, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-460, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-460, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-499 What are my reporting requirements if I want to close my company or surrender my license?** If you cease doing business in Washington you must do the following:

(1) Submit a surrender request through the NMLSR within ten days of closing the company or surrendering the license; and

(2) File the final closure form, annual reports, worksheet, and submit any fees owed as required in WAC 208-620-430. Failure to file these reports within thirty days of closure will trigger the bond claim process as described in WAC 208-620-430(3), or other action.

(3) If your license has expired or you are otherwise locked out of the NMLS data base, you must provide the documents described in subsection (2) of this section directly to the department.

Any Washington loans in your portfolio and activity under the act remain subject to the director's authority including investigation and examination, and the fees associated with those activities.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-499, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-499, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-510 What are my disclosure obligations to consumers?** (1) **Content requirements.** In addition to complying with the applicable disclosure requirements in the federal and state statutes referred to in WAC 208-620-505 if the loan will be secured by a lien on real property, you must

also provide the borrower or potential 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 business days of receipt of a loan application.

(2) **Proof of delivery.** The licensee must be able to prove that the disclosures under subsection (1) of this section were provided within the required time frames. For purposes of determining the timeliness of the required early disclosures, the department may use the date of the credit report or may use the date of an application received from a broker. In most cases, proof of mailing is sufficient evidence of delivery. If the licensee has an established system of disclosure tracking that includes a disclosure and correspondence log, checklists, and a reasonable system for determining if a borrower did receive the documents, the licensee will be presumed to be in compliance.

(3) **Residential mortgage loans—Rate locks.** Within three business days, including Saturdays, of receipt of a residential mortgage loan application you must provide the borrower with the following disclosure about the interest rate:

(a) If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change.

(b) If a rate lock agreement has been entered into you must disclose to the borrower whether the rate lock agreement is guaranteed and whether and under what conditions any rate lock fees are refundable to the borrower.

(c) If the borrower wants to lock the rate after the initial disclosure, you must provide a new rate lock disclosure and a rate lock agreement within three business days of the rate lock date that includes the following:

- (i) The length of the rate lock period;
- (ii) The expiration date of the rate lock;
- (iii) The rate of interest locked;

(iv) If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and

(v) Any other terms of the rate lock agreement.

(d) You must disclose payment of a rate lock fee as a cost in Block 2 of the GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209 with "P.O.C. (borrower)" recorded to the left of the borrower column.

(4) **Residential mortgage loans—Brokered loans.** Within three business days following receipt of a residential mortgage loan application you must provide to each borrower:

(a) An estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty;

(b) A good faith estimate that conforms with RESPA 24 C.F.R. 3500;

(c) A truth in lending disclosure that conforms with Regulation Z, 12 C.F.R. Section 226.

(d) A rate lock disclosure containing the following:

(i) If a rate lock agreement has been entered into you must disclose to the borrower whether the rate lock agreement is guaranteed and whether and under what conditions any rate lock fees are refundable to the borrower.

(ii) If the borrower wants to lock the rate after the initial disclosure, you must provide a new rate lock disclosure and a

rate lock agreement within three business days of the rate lock date. The rate lock agreement must include the following:

- (A) The length of the rate lock period;
- (B) The expiration date of the rate lock;
- (C) The rate of interest locked;

(D) If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and

(E) Any other terms of the rate lock agreement.

(e) You must disclose payment of a rate lock fee as a cost in Block 2 of the GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209 with "P.O.C. (borrower)" recorded to the left of the borrower column.

(5) **Residential mortgage loans—Shared appreciation mortgages (SAM) or mortgages with shared appreciation provisions.** Within three business days following receipt of a loan application for a shared appreciation mortgage, or a mortgage with a shared appreciation provision, in addition to the disclosures required by federal law or by this chapter, you must provide each borrower with a written disclosure containing at a minimum the following:

(a) The percentage of shared equity or shared appreciation you will receive (or a formula for determining it);

(b) The value the borrower will receive for sharing his or her equity or appreciation;

(c) The conditions that will trigger the borrower's duty to pay;

(d) The conditions that may cause the lender to terminate the mortgage or shared appreciation provision early;

(e) The procedure for including qualifying major home improvements in the home's basis (if any);

(f) Whether a prepayment penalty applies or other conditions applicable, if a borrower wishes to repay the loan early, including but not limited to, any date certain after which the borrower can repay the loan by paying back the lender's funds plus accrued equity; and

(g) The date on which the SAM terminates and the equity or appreciation becomes payable if no triggering event occurs.

(6) **Loan modifications.** You must immediately inform the borrower in writing if the owner of the loan requires additional information from the borrower, or if it becomes apparent that a residential mortgage loan modification is not possible.

(7) Each licensee must maintain in its files sufficient information to show compliance with state and federal law.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-510, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-510, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.-102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-510, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-515 What authority do I have as a licensee?** As a licensee you may:

(1) Lend money with a note rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed. This applies only to nonmortgage loans, junior lien mortgage loans, and to

lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans. The requirement for the simple interest method of calculating interest does not apply to reverse mortgages.

(2) Make open-end loans as authorized in RCW 31.04.-115 provided that:

(a) The annual fee allowed in RCW 31.04.115(3) may not exceed fifty dollars; and

(b) The annual fee must be charged in advance as a lump sum. It must not be charged monthly and must not be financed.

(3) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, covering the involuntary unemployment of the borrower, or other insurance products approved by the Washington state office of the insurance commissioner.

(4) Service residential mortgage loans. See also WAC 208-620-320, 208-620-325, 208-620-550, 208-620-551, and 208-620-900.

(5) Provide loan modification services for residential mortgage loans. See also WAC 208-620-320, 208-620-325, 208-620-545, 208-620-550, and 208-620-552.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-515, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-515, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.-040. 08-15-125, § 208-620-515, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-515, filed 1/27/06, effective 2/27/06.]

### **WAC 208-620-520 How long must I maintain my records under the Consumer Loan Act? What are the records I must maintain?**

(1) **General records.** Each licensee must maintain the books, accounts, records, papers, documents, files, and other information relevant to a loan for a minimum of twenty-five months, or the period of time required by federal law, whichever is longer, after making the final entry on that loan at a location approved by the director. Mortgage transaction documents have a different retention period; see subsection (3)(a) of this section.

(2) **Advertising records.** These records include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any advertising distributed directly by delivery, facsimile or computer network.

(3) **Other specific records.** The records required under subsection (1) of this section include, but are not limited to:

(a) All loan agreements or notes and all addendums, riders, or other documents that supplement the final loan agreements;

(b) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(c) The initial rate sheet or other supporting rate information;

(d) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;

(e) Rate lock agreements and the supporting rate sheets or other rate supporting document;

(f) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures include, but are not limited to: The good faith estimate, truth in lending disclosures, Equal Credit Opportunity Act disclosures, affiliated business arrangement disclosures, and RESPA servicing disclosure statement;

(g) Documents and records of compensation paid to employees and independent contractors;

(h) An accounting of all funds received in connection with loans with supporting data;

(i) Settlement statements (the final HUD-1 or HUD-1A);

(j) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;

(k) Records of any fees refunded to applicants for loans that did not close;

(l) All file correspondence and logs;

(m) All mortgage broker contracts with lenders and all other correspondence with the lenders; and

(n) All documents used to support the underwriting approval.

(4) Loan servicing documents. See subsection (1) of this section.

(5) Abandoned records. If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format, or proper destruction of the records.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-520, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-520, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.-165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-520, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-530 Can I maintain my records electronically?** Yes. (1) **Records must be available.** The records required to be maintained by RCW 31.04.145 may be maintained by means of electronic display equipment if such equipment is made available upon request to the director or his or her representatives for purposes of examination or investigation.

(2) The hardware or software needed to display the record must also be maintained during the required retention period under WAC 208-620-520(1).

(3) **Hard copy upon request.** You must provide the records in hard copy upon request of the director.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-530, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-530, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-531 Must I have a records disaster recovery and information security plan?** Yes. You must have written policies and procedures in place that detail your response to any event that results in damage or destruction to your records. You must maintain the policies and procedures as part of your books and records.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-531, filed 10/5/10, effective 11/5/10.]

**WAC 208-620-545 Must I provide a written fee agreement when I provide residential mortgage loan modification services?** Yes. You must provide a written fee agreement as prescribed by the director when providing residential mortgage modification services. You must provide a copy of the signed fee agreement to the consumer and you must keep a copy as part of your books and records.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-545, filed 10/5/10, effective 11/5/10.]

**WAC 208-620-550 What business practices are prohibited?** In addition to RCW 31.04.027, the following constitute an "unfair or deceptive" act or practice:

(1) Failure to provide the exact pay-off amount as of a certain date within five business days after being requested in writing to do so by a borrower of record or their authorized representative;

(2) Failure to record a borrower's payment as received on the day it is delivered to any of the licensee's locations during its regular working hours;

(3) Soliciting or entering into a contract with a borrower that provides in substance that the licensee may earn a fee or commission through its "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(4) **Engaging in unfair or deceptive advertising practices.** Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace. See also WAC 208-620-630;

(5) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department;

(6) Making any payment, directly or indirectly, or withholding or threatening to withhold any payment, 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;

(7) Leaving blanks on a document that is signed by the borrower or providing the borrower with documents with blanks;

(8) Failing to clearly disclose to a borrower whether the payment advertised or offered for a real estate loan includes amounts for taxes, insurance or other products sold to the borrower;

(9) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower, unless mail has been previously returned as undeliverable from the address, in order to verify that the asset is not otherwise insured;

(10) Willfully filing a lien on property without a legal basis to do so;

(11) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction;

(12) Failing to reconvey title to collateral, if any, within thirty business days when the loan is paid in full unless conditions exist that make compliance unreasonable;

(13) Intentionally delaying the closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower;

(14) Steering a borrower to a residential mortgage loan with less favorable terms than they qualify for in order to increase the compensation paid to the company or mortgage loan originator. An example is counseling, or directing a borrower to accept a residential mortgage loan product with a risk grade less favorable than the risk grade the borrower would qualify for based on the licensee or other regulated person's then current underwriting guidelines, prudently applied, considering the information available to the licensee or other regulated person, including the information provided by the borrower;

(15) Failing to indicate on all residential mortgage loan applications the company's unique identifier, the loan originator's unique identifier, and the date the application was taken;

(16) Receiving compensation or anything of value from any party for assisting in real estate "flopping." Flopping occurs during some short sales where the value of the property is misrepresented to the lender who then authorizes the sale of the property for less than market value. The property is then resold at market value or near market value for a profit. The failure to disclose the true value of the property to the lender constitutes fraud and is a violation of this chapter.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-550, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-550, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-550, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-550, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-551 Residential mortgage loan servicers—What business practices are prohibited?** In addition to RCW 31.04.027, you are prohibited from requiring or encouraging a borrower to:

(1) Waive his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(2) Waive his or her right to contest a future foreclosure;

(3) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(4) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or

(5) Cease communication with the lender or investor.

(6) You are further prohibited from:

(a) Purchasing insurance on a property secured by a loan you service without providing one or more notices to the borrower's last known address in order to verify that the property is not otherwise insured.

(b) Knowingly misapplying or recklessly applying loan payments to the outstanding balance of a loan.

(c) Knowingly misapplying or recklessly applying payments to escrow accounts.

(d) Charging excessive or unreasonable fees to provide loan payoff information.

(e) Knowingly or recklessly providing inaccurate information to a credit bureau, thereby harming a borrower's creditworthiness.

(f) Collecting private mortgage insurance beyond the date for which private mortgage insurance is no longer required.

(g) Knowingly or recklessly facilitating the illegal foreclosure of real property collateral.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-551, filed 10/5/10, effective 11/5/10.]

**WAC 208-620-552 Residential loan modification service providers—What business practices are prohibited?**

In addition to RCW 31.04.027, you are prohibited from:

(1) Collecting an advance fee of more than seven hundred fifty dollars.

(2) Collecting an advance fee without a written fee agreement. See also WAC 208-620-545.

(3) As a condition to providing loan modification services requiring or encouraging a borrower to:

(a) Waive his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(b) Waive his or her right to contest a future foreclosure;

(c) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(d) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or

(e) Cease communication with the lender, investor, or loan servicer or stop or delay making regularly scheduled payments on an existing mortgage unless a mortgage loan modification is completely negotiated and executed with the lender or investor and the modification agreement itself provides for a cessation or delay in making regularly scheduled payments; or

(f) Enter into any contract or agreement to purchase a borrower's property.

(4) You are further prohibited from failing in a timely manner to:

(a) Communicate with or on behalf of the borrower;

(b) Act on any reasonable request from or take any reasonable action on behalf of a borrower.

(5) Engaging in false or misleading advertising. In addition to WAC 208-620-630, examples of false or misleading advertising include:

(a) Advertising which includes a "guarantee" unless there is a bona fide guarantee which will benefit a borrower.

(b) Advertising which makes it appear that a licensee has a special relationship with lenders when no such relationship exists.

(6) Leading a borrower to believe that the borrower's credit record will not be negatively affected by a mortgage loan modification when the licensee has reason to believe that the borrower's credit record may be negatively affected by the mortgage loan modification.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-552, filed 10/5/10, effective 11/5/10.]

**WAC 208-620-555 What fees are allowed when making loans under the Consumer Loan Act?** (1) Residential mortgage loan origination fees. On first lien mortgage loans, licensees that are not "creditors" under Depository Institutions Deregulatory and Monetary Control Act may charge 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. On junior lien mortgage loans, all licensees may charge 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.

(2) Nonmortgage loan origination fees. All licensees may charge 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) Mortgage broker fees. When agreed to in writing by the borrower, 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.

(4) Third-party fees.

(a) When agreed to in writing by the borrower, 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.

(b) However, no charge may be collected unless a loan is made, except for reasonable fees actually and properly incurred 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.

(c) You must not charge or collect any fee to be paid to a third-party service provider, as defined in WAC 208-620-010, in excess of the actual costs paid or to be paid. You may charge the borrower for costs of allowable third-party services as provided by RCW 31.04.105(3) at the time of application for the loan or at any time thereafter except as prohibited.

(5) Rate lock fees. When agreed to in writing by the borrower, a nonrefundable rate lock fee. The fee may be retained if the borrower breaks the rate lock agreement and you are making the loan, if you have paid a third party for the interest rate lock, or if you have otherwise made a financial commitment to protect the rate during the lock period. The fee may not be retained if the borrower rescinds the loan under Regulation Z, or if the borrower does not qualify for a loan. See also WAC 208-620-510(3).

(6) Underwriting fees. On first lien mortgages made by licensees that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act, an underwriting fee.

(7) Late payment penalties. Not more than ten percent of any installment payment delinquent ten days or more.

(8) Attorneys' fees. 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.

(9) The fees allowed in subsections (5) and (6) of this section must be included in the loan origination fee calculations described in subsections (1) and (2) of this section.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-555, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-555, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-560 What fees are not allowed when making loans under the Consumer Loan Act? (1) Filing fees.** You must not charge or collect any funds from the borrower for the cost of filing, as defined in WAC 208-620-010, or for any other fees paid or to be paid to public officials, unless such charges are paid or are to be paid within one hundred eighty days by the licensee to public officials or other third parties for such filing. Any fee you collect for releasing or reconveying the security for the obligation must be paid to an unrelated third party unless you can demonstrate activities you conducted to facilitate the reconveyance.

(2) **Dishonored check fees.** You may charge or collect twenty-five dollars or the actual amount charged by the financial institution for a check, draft, ACH, or other transfer if returned unpaid or denied by the financial institution drawn upon. Only one fee may be collected with respect to a particular check, draft, ACH, or other transfer even if it has been returned or denied more than once.

(3) **Credit and noncredit insurance.**

(a) Except for the transaction described in (b) of this subsection, you may include the premiums for credit and non-credit insurance in the principal amount of the loan, provided that purchase of the insurance is not required to obtain a loan and that this fact is disclosed to the borrower in writing and the borrower's confirmation is obtained by signature on the disclosure form.

(b) You must not sell single premium credit insurance to a borrower at the inception of coverage unless the sale is in compliance with chapter 48.18 RCW.

(4) **Fees on existing loans.** Unless otherwise preempted under the Depository Institutions Deregulatory and Monetary Control Act, if you make a new loan or increases a credit line within one hundred twenty days after originating a previous loan or credit line to the same borrower, the origination fee on the new loan or increased credit line must be limited as follows:

(a) You must only charge an origination fee on that part of the new loan not used to pay the amount due on the previous loan;

(b) You must only charge an origination fee on the difference between the amount of the existing credit line and the increased credit line;

(c) The limits in (a) and (b) of this subsection do not apply if you refund the origination fee on the existing loan or credit line;

(d) The limits in (a) and (b) of this subsection do not apply if you can demonstrate a net tangible benefit to the borrower for the new loan or credit line increase. For purposes of this subsection a net tangible benefit may be demonstrated by a lower monthly payment, or a decrease in the interest rate. Any net tangible benefit analysis must include the fees or charges for the new loan or credit line increase.

(5) **Discount points.**

(a) You must not collect a fee from the borrower for lowering the interest rate unless the interest rate is actually reduced.

(b) Any applicable program add-on fees must be disclosed as part of the discount points.

(6) **Administrative fees.** On nonmortgages, junior lien and first lien mortgages by licensees who are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act, you must not collect a document preparation fee, a processing fee, an administrative fee, an application fee, or a courier fee unless paid to an unrelated third party and agreed to in writing in advance by the borrower.

(7) **Underwriting fees.** On nonmortgage and junior lien mortgage loans you must not collect an underwriting fee.

(8) **Prepayment penalty.** You must not collect a prepayment penalty on the following loans:

(a) Any nonmortgage loan;

(b) Any adjustable rate residential mortgage loan, except as allowed by RCW 19.144.040;

(c) Any junior lien mortgage loan; or

(d) Any loan you made if you are not a "creditor" under DIDMCA.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-560, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-560, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-560, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 31.04.165, 31.04.-015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-560, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-565 What fees am I allowed to charge or receive when acting as a residential mortgage loan broker under the act? (1) A broker's 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.**

(2) A yield spread premium (YSP) if available. You must disclose the YSP as a dollar amount credited to the borrower on the good faith estimate and as applicable on the settlement statement.

(3) A processing fee when paid to an independent third-party processor.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-565, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-565, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.-040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-565, filed 12/23/08, effective 1/23/09.]

**WAC 208-620-567 What fees can I charge when servicing residential mortgage loans under the act?** (1) You may charge servicing fees authorized by the loan documents, by law, or by the borrower. Examples include, but are not limited to, late fees as authorized by the loan documents, insufficient check fees as authorized by law, and wire transfer fees for wire transfers requested by the borrower.

(2) You may only charge a fee for a default related service that is usual and customary or reasonable in light of the service provided.

(3) You may not charge fees paid to third parties in excess of the fee charged by the third party.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-567, filed 10/5/10, effective 11/5/10.]

**WAC 208-620-568 What fees am I not allowed to charge when providing residential mortgage loan modification services under the act?** You must not charge total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-568, filed 10/5/10, effective 11/5/10.]

**WAC 208-620-620 How do I have to identify my business when I advertise?** You must either identify the business using your Washington consumer loan license name, or using an approved DBA name with the main office license name or license number (CLA-123456). For use of URL addresses and web pages, see WAC 208-620-621 and 208-620-622.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-620, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-620, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-620, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-621 May I advertise over the internet using a URL address that is not my licensed business name?** Yes, provided that any URL address you advertise takes the user directly to your main or home web page. If you want the user to be directed to a different main or home web page, the URL address must contain your license name in addition to any other names or words in the URL address. URL addresses may be used as DBA names upon request to and approval from DFI.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-621, filed 10/5/10, effective 11/5/10.]

**WAC 208-620-622 When I advertise using the internet or any electronic form (including, but not limited to, text messages), is there specific content my web pages must contain?** Yes. You must provide the following language, in addition to any other, on your web pages or in any medium where you hold yourself out as being able to provide the services:

(1) Main or home page.

(a) The company's license name and NMLS unique identifier must be displayed on the licensee's main or home web page.

(b) If mortgage loan originators are named, their NMLS numbers must follow the names.

(c) The main or home page must also contain a link to the NMLS consumer access web site page for the company.

(2) Branch office web page - no DBA. Comply with subsection (1) of this section.

(3) Main or branch office web page - DBA. If the company uses a DBA on a web page the web page must contain the main office license name, comply with subsection (1)(b) of this section, and the web page must contain a link to the NMLS consumer access web site page for the company.

(4) Mortgage loan originator web page. If a loan originator maintains a separate home or main page, the URL address to the site must be a DBA of the licensee and the licensee's name must appear on the web page. The web page must also contain the loan originator's NMLS number and a link to the NMLS consumer access web page for the company.

(5) Compliance with other laws. Web site content used to solicit Washington consumers must comply with all relevant state and federal statutes for specific services and products advertised on the web site.

(6) Oversight. The company is responsible for web site content displayed on all company web pages used to solicit Washington consumers including main, branch, and mortgage loan originator web pages.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-622, filed 10/5/10, effective 11/5/10.]

**WAC 208-620-630 What are the advertising restrictions? (1) Licensees are prohibited from advertising with envelopes or stationery that contain an official-looking emblem designed to resemble a government mailing or that suggest an affiliation that does not exist. Some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws include, but are not limited to:**

(a) Characterizing products as "government loan programs," "government-supported loans," or other words that may mislead a consumer into believing that the government is guaranteeing, endorsing, or supporting the advertised loan product. Using the words "FHA loan," "VA loan," or words for other products that are in fact endorsed or sponsored by a federal, state, or local government entity is allowed.

(b) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(c) Envelopes designed to resemble official government mailings, such as IRS or U.S. Treasury envelopes, or other government mailers.

(d) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the mailing.

(e) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(f) Any suggestion or representation that the licensee is, or is affiliated with, a state or federal agency, municipality, bank, savings bank, trust company, savings and loan association, building and loan association, credit union, or other entity that it does not actually represent.

(2) **When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR?** The required disclosures in your advertisement must be reasonably understandable. Consumers must be able to see, read, or hear, and understand the information. Many factors, including the size, duration, and location of the required disclosures, and the background or other information in the advertisement, can affect whether the information is clear and conspicuous. This requirement applies to all mandatory disclosures. The disclosure of the APR must be at least equivalent to any other rates disclosed in the advertisement.

(3) **The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised?** Whenever a specific interest rate is advertised, the licensee must retain a copy of supporting rate information, and the APR calculation for the advertised interest rate.

(4) **Must I quote the annual percentage rate when discussing rates with a borrower?** Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 C.F.R., part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

(5) **May a licensee advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 31.04.027.

(6) **May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am?** No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

(7) **If I advertise using a borrower's current loan information, what must I disclose about that information?** When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with the name of the source of the information.

(8) **Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the purportedly "free" item through the negotiation process. This is a violation of RCW 31.04.027 (2), (7), and (10). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations*, available at <http://www.ftc.gov/bcp/guides/free.htm>, 16 C.F.R. § 251.1(g) (2003).

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-630, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-630, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 78. 09-01-159, § 208-620-630, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040. 08-15-125, § 208-620-630, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 31.04.165, 31.04.015, 31.04.045, 31.04.075, 31.04.085, 31.04.093, 31.04.102, 31.04.115, 31.04.145, 31.04.155, and 31.04.175. 06-04-053, § 208-620-630, filed 1/27/06, effective 2/27/06.]

**WAC 208-620-700 Mortgage loan originator—General.** (1) **May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location. The licensed location can be the main office, or any licensed branch.

(2) **May I transfer loan files to another licensed entity?** No. Loan files are the property and responsibility of the company named on the loan application. Only the borrower may submit a written request to the company to transmit the borrower's selected information to another entity. The company must transmit the information within five business days after receiving the borrower's written request.

(3) **May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you 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 AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING."

(4) **As a loan originator, may I be paid directly by the borrower for my services?** No. You may not be paid any compensation or fees directly by the borrower.

(5) **May I charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. You may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, or brokering of a residential mortgage loan.

(6) **May I bring a lawsuit against a borrower for the collection of compensation?** No. Only the company may bring collection actions against borrowers to collect compensation.

(7) **May I work as a licensed loan originator for a consumer loan company located out of the state?** Yes. You may originate loans for any company you are sponsored by as long as the out-of-state company licenses a branch in Washington for you to work from. See subsection (1) of this section.

(8) **May I hire employees or independent contractors to assist me?** No. Only the consumer loan company can hire employees or independent contractors to work for the company. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel and loan processors whose work is related to the consumer loan company's activities.

(9) **Do loan processors have to be licensed as loan originators?** W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed or exempt consumer loan company and do not hold themselves out as able to conduct the activities of a loan originator.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-700, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-700, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-710 Mortgage loan originator—Licensing.** (1) **Must I have a license to act as a mortgage loan originator for a consumer loan company?** Yes. You must not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this act. You must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry (NMLSR).

(2) **How do I apply for a loan originator license?** Your application consists of filing an on-line application through the NMLSR and providing Washington specific requirements directly to DFI. You must pay an application fee and filing fee through the NMLSR system.

(3) **What are the eligibility requirements to become a licensed loan originator?**

(a) Be eighteen years or older.

(b) Have a high school diploma, an equivalent to a high school diploma, or three years work experience in the industry.

(i) The work experience must be in one or more of the following, within the last five years:

(A) As a mortgage broker or designated broker of a mortgage broker for a minimum of two years; or

(B) As a mortgage banker, responsible individual, or manager of a mortgage banking business; or

(C) As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or

(D) As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or

(E) As a manager or supervisor of mortgage loan originators; or

(F) As a mortgage processor, underwriter, or quality control professional; or

(G) As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and the department determines your background is sufficient.

(ii) The work experience must be evidenced by a detailed work history and:

(A) W-2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(B) 1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(C) Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company.

(ii) In addition to supplying the application information, both you and the company intending to sponsor you must be in good standing with the department.

(c) **Demonstrate financial responsibility.** 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 judgments or other government liens or filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years.

(d) Complete twenty hours of prelicensing education from an NMLSR approved provider. See WAC 208-620-720.

(e) **Pass a licensing test.** You must take and pass the NMLSR tests that assess your knowledge of the mortgage business and related regulations at the federal and state level. See WAC 208-620-725.

(f) **Complete prelicensing education.** You must complete prelicensing education. See WAC 208-620-720.

(g) **Submit an application.** You must complete an application through the NMLSR and provide information directly to DFI. You must pay application and filing fees to the NMLSR.

(h) **Prove your identity.** You must provide information to prove your identity.

(i) **Provide a bond.**

(i) If you are employed by a company that is exempt from licensing, or uses a bond substitute, you must obtain and maintain an individual bond based on the volume of your mortgage loan origination activity. By March 1st of each year, you must determine your required bond amount and provide DFI with proof of having an adequate bond. The bond must be in the following amount:

1. Zero to twenty million in loans originated:	\$20,000
2. Twenty million to thirty million:	\$30,000
3. Thirty million to forty million:	\$40,000
4. Forty million and above:	\$50,000

(ii) If you are employed by a company that is exempt and is a nonprofit housing organization making loans under housing programs that are funded in whole or in part by federal or state programs with the primary purpose of assisting low-income borrowers with purchasing or repairing housing or for the development of housing for low-income Washington state residents, the bond must be in the following amounts:

1. Zero to fifty million in loans originated:	\$10,000
2. Fifty +:	\$20,000

(j) File a quarterly call report. Reserved.

**(4) In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?**

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) **License suspensions or revocations.** You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked.

(c) **Criminal history.** You are not eligible for a loan originator license if you have 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.

**(5) What will happen if my loan originator license application is incomplete?** After submitting your on-line application through the NMLSR and filing the required information and documentation with the department, the department will notify you of any application deficiencies.

**(6) How do I withdraw my application for a loan originator license?**

(a) Once you have submitted the on-line application through NMLSR you may withdraw the application through NMLSR. You will not receive a refund of the NMLSR filing fee or the amount the department uses to investigate your license application.

(b) The withdrawal of your license application will not affect any license suspension or revocation proceedings in progress at the time you withdraw your application through the NMLSR.

**(7) When will the department consider my loan originator license application to be abandoned?** If you do not respond within fifteen days and as directed by the department, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

**(8) What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?** See WAC 208-620-615.

**(9) May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

**(10) How do I change information on my loan originator license?** You must submit an amendment to your license through the NMLSR. You may be charged a fee.

**(11) What is an inactive loan originator license?** When a licensed loan originator is not sponsored by a licensed or exempt entity, the license is inactive. When a person holds an inactive license, they may not conduct any of the activities of a loan originator, or hold themselves out as a licensed loan originator.

**(12) When my loan originator license is inactive, am I subject to the director's enforcement authority?** Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

**(13) When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

**(14) May I originate loans from a web site when my license is inactive?** No. You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive.

**(15) How do I activate my loan originator license?** The sponsoring company must submit a sponsorship request for your license through the NMLSR. The department will notify you and the sponsoring company if approved.

**(16) When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must meet the minimum requirements to obtain a license under the S.A.F.E. Act to receive an interim license.

**(17) When does my loan originator license expire?** The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.

**(18) How do I renew my loan originator license?**

(a) Before the license expiration date you must renew your license through the NMLSR. Renewal consists of:

(i) Paying the annual assessment fee; and

(ii) Meeting the continuing education requirement. You will not have a continuing education requirement in the year in which you complete preclicensing education. See WAC 208-620-730.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

**(19) If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal before March 1st, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (17) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service

postmark or department "date received" stamp by March 1st. If you fail to comply with the renewal request requirements you must apply for a new license.

**(20) If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

**(21) May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

**(22) May I surrender my loan originator's license?** Yes. Only you may surrender your license before the license expires through the NMLSR.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omissions occurring before the license surrender.

**(23) Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

**(24) If I operate as a loan originator on the internet, must I display my license number on my web site?** Yes. You must display your license number, and the license number and name as it appears on the license of the company you represent, on the web site.

**(25) Must I include my loan originator license number on any documents?** You must include your license number immediately following your name on solicitations, correspondence, business cards, advertisements, and residential mortgage loan applications.

**(26) When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the company you are associated with:

(a) When asked by any party to a loan transaction, including third-party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

**(27) May I conduct business under a name other than the name on my loan originator license?** No. You must only use the name on your license when conducting business. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-710, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-710, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-725 Mortgage loan originator—Testing. Must I pass a test prior to becoming a loan originator?** Yes.

(1) You must take and pass the NMLSR sponsored loan originator test. The test has two parts; one on federal law and regulation, and one on Washington specific law and regulation. You must receive a score of seventy-five percent or higher to pass the test.

**(2) Where may I find information about the loan originator test?** The NMLSR web site will publish the names and contact information of approved testing providers.

**(3) How much does the loan originator test cost?** Testing costs are set by the test provider and the NMLSR and may be modified from time to time. The NMLSR web site will publish the current testing fee with the testing provider contact information.

**(4) How do I register to take the loan originator test?** Register through the NMLSR web site.

**(5) What topics may be covered in the loan originator test?** At a minimum, the test topics will include ethics, federal and state law and regulation pertaining to mortgage origination, federal and state law and regulation on fraud, consumer protection, nontraditional mortgage products, and fair lending.

**(6) After passing the NMLSR loan originator test, will I have to take it again?** If you fail to maintain a valid license for a period of five years or longer you must retake the test, not taking into account any time during which you were a registered mortgage loan originator.

**(7) How soon after failing the loan originator test may I take it again?** After taking and failing the test you must wait thirty days before taking it again. After failing four consecutive times, you must then wait at least six months before taking the test again.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-725, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-620-725, filed 12/1/09, effective 1/1/10.]

**WAC 208-620-830 What disclosures or statements must I provide to a borrower in a reverse mortgage transaction?** In addition to any disclosures required by federal law, you must provide, at a minimum, the following:

(1) Counseling disclosure. You must provide the following plain language statement in conspicuous bold sixteen-point type or larger, prior to receiving a complete and final loan application: "Important notice to reverse mortgage loan applicant: A reverse mortgage is a complex financial transaction that provides a means of using the equity you have built up in your home, or the value of your home, as a way to access home equity. If you decide to obtain a reverse mortgage loan, you will sign binding legal documents that will have important legal, tax, and financial implications for you and your estate. It is very important for you to understand the terms of the reverse mortgage and its effect. Before entering into this transaction, you are required by law to consult with an independent loan counselor. A list of approved counselors will be provided to you by the lender or broker. You may also want to discuss your decision with family members or others on whom you rely for financial advice."

(2) Loan statements. You or the loan servicer must provide an annual, or more frequent, disclosure statement to the borrower, providing details of the loan advances, balance, other terms, and the name and telephone number of the lender's employee or agent who has been specifically designated to respond to inquiries concerning reverse mortgage loans.

(3) Benefits and tax disclosure. You must provide the following statement prior to or simultaneously with receiving an initial loan application:

"If you receive advances under the terms of a reverse mortgage, you may lose your right to receive certain public funds, such as Medicaid, and possibly others. Also, receiving advances under the terms of a reverse mortgage may have tax consequences for you. You may wish to obtain advice from a tax professional or an attorney before you decide on a reverse mortgage."

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-830, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 31.04.165, 2009 c 120, and 2009 c 149. 09-24-090, § 208-660-830 [208-620-830], filed 12/1/09, effective 1/1/10.]

**WAC 208-620-835 Under what circumstances will the department determine that the making of a reverse mortgage was unsuitable for a particular borrower and therefore an unfair and deceptive practice in violation of RCW 31.04.027?** Examples of circumstances which might indicate that an offered reverse mortgage loan is unsuitable include reverse mortgage loans when the applicant:

(1) Does not intend to reside in the property on a long-term basis.

(2) Does not want nonborrower residents of the property to be displaced at the maturity of the loan because they will not be able to pay off the reverse mortgage loan.

(3) Will use the proceeds of the reverse mortgage loan to purchase a product, such as annuities or other investments, which are not appropriate for the borrower.

(4) Does not understand the terms and conditions of a reverse mortgage loan or what happens to the collateral when the reverse mortgage loan matures.

(5) Would receive disbursements from the reverse mortgage loan that are insufficient to meet the applicant's stated needs or is not enough to justify the initial cost of a reverse mortgage loan.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-835, filed 10/5/10, effective 11/5/10.]

**WAC 208-620-900 What requirements must I comply with when servicing residential mortgage loans?** In addition to complying with all other provisions of the act you must:

(1)(a) Comply with applicable federal laws or regulations when servicing a residential mortgage loan.

(b) Comply with applicable federal laws or regulations when servicing a residential mortgage loan guaranteed or insured by a government program.

(c) Comply with applicable federal laws or regulations when servicing a residential mortgage loan guaranteed or insured by Fannie Mae or Freddie Mac.

(d) A violation of an applicable federal law or regulation is a violation of this act.

(2) Comply with chapter 19.148 RCW.

(3) You must assess fees to a borrower's account within forty-five days of the date on which the fee was incurred. You must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee.

(4)(a) You must accept and credit all amounts received within one business day of receipt when the borrower has made the payment to the address where instructed, provided that the borrower has provided sufficient information to credit the account. If you use 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.

(b) You may enter into a written contract with the borrower whereby you hold funds of a certain type or sent by a certain method for a period of time until the funds are available.

(5) You must notify the borrower if a payment is received but not credited. You must mail the notification to the borrower 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.

(6)(a) If you collect escrow amounts held for the borrower for payment of insurance, taxes, or other charges with respect to the property, you must collect and make all payments from the escrow account and, to the extent you have control, ensure that no late penalties are assessed or other negative consequences result for the borrower.

(b) You may enter into a written agreement with the borrower whereby you are not required to make escrow payments unless funds are available in the escrow account. The agreement must include language that puts the borrower on notice that the borrower is responsible for the payment of the escrow amounts if a sufficient amount is not maintained in the escrow account. See also subsection (1)(c) of this section.

(c) You must notify the borrower within ten business days of any change to the escrow account other than the changes brought about by the borrower's regularly scheduled payment. Examples of changes requiring notification include, but are not limited to, a reduction in the required cushion amount for the account, or a change in the property's tax assessment.

(7) You must make a reasonable attempt 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. A reasonable attempt includes, but is not limited to:

(a) Maintaining 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;

(b) Providing 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.

(8) You must provide at a minimum the following information to a borrower's request described in subsection (7) of this section:

(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.

(e) You may charge a fee for preparing and furnishing the statement described in this subsection not exceeding thirty dollars per statement.

(f) You must promptly correct any errors and refund any fees assessed to the borrower resulting from an error you made.

(g) If the content of your response meets the requirements under RESPA for a response to a qualified written request, you will be deemed in compliance with this subsection.

(9) In addition to the statement described in subsection (6) 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 also 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 servicing 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.

(c) The period of the account history shall 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 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 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.

(d) If the borrower requests this statement, you must provide it free of charge; but the borrower is only entitled to one free statement annually. If the borrower requests more than one statement annually, you may charge thirty dollars for the second and subsequent statements.

(10) If a borrower's property goes into foreclosure and the foreclosure sale occurs, you must notify the borrower within three business days of sale of the completion of the sale. You must mail the notification to the borrower's last known address provided to you. If the notification is returned to you because the address is deficient in some manner, you must post the notification of the foreclosure sale on the property itself within three days of the notification being returned to you.

[Statutory Authority: RCW 43.320.040, 31.04.165 and 2010 c 35. 10-20-122, § 208-620-900, filed 10/5/10, effective 11/5/10.]

### Chapter 208-660 WAC

## MORTGAGE BROKERS AND LOAN ORIGINATORS—LICENSING

(Formerly chapter 50-60 WAC)

### WAC

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**WAC 208-660-006 Definitions. What definitions are applicable to these rules?** Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

"Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

"Advertising material" means any form of sales or promotional materials used in connection with the mortgage broker business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; or internet pages.

"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.

"Annual loan origination volume" means the aggregate of the principal loan amounts brokered by the licensee.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be in writing or electronically submitted, including a written record of an oral application. If the sub-

mission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

"Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value range, exclusion of a value, or a minimum value.

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

"Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker.

"Branch office license" means a branch office license issued by the director allowing the licensee to conduct a mortgage broker business at the location indicated on the license.

"Business day" means Monday through Friday excluding federally recognized bank holidays.

"Certificate of passing an approved examination" means a certificate signed by the testing administrator verifying that the individual performed with a satisfactory score or higher.

"Certificate of satisfactory completion of an approved continuing education course" means a certificate signed by the course provider verifying that the individual has attended an approved continuing education course.

"Compensation or gain" means remuneration, benefits, or an increase in something having monetary value, including, but not limited to, moneys, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing moneys that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special or unusual bank or financing terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation. "Compensation or gain" is not evaluated solely on a loan by loan basis.

For example, a realtor advertising that buyers using their services will receive free loan origination assistance is doing so in the anticipation of "compensation or gain" through increased real estate business.

"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.

For purposes of this definition, the CLI system includes computer hardware or software, an internet-based system, or any combination of these, which provides information to consumers about residential mortgage interest rates and other loan terms which are available from another person.

"Computer loan information system provider" or "CLI provider" is any person who provides a computer loan information service, either directly, or as an owner-operator of a CLI system, or both.

"Consumer Protection Act" means chapter 19.86 RCW.

"Control" including the terms "controls," "is controlled by," or "is under common control" means the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person is presumed to control another person if such person is:

- A general partner, officer, director, or employer of another person;
- Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of another person; or
- Has similar status or function in the business as a person in this definition.

"Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:

- Has been convicted of the crime in any jurisdiction;
- Has been convicted of a crime which, if committed within this state would constitute a crime under the laws of this state;
- Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or
- Has been found guilty of a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

"Designated broker" means a natural person 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).

"Director" means the director of financial institutions.

"Discount points" or "points" mean a fee paid by a borrower to a lender to reduce the interest rate of a residential mortgage loan. Pursuant to Regulation X, discount points are to be reflected on the good faith estimate and settlement statement as a dollar amount.

"Division of consumer services" means the division of consumer services within the department of financial institutions, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

"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.

"Examination" or "compliance examination" means the examination performed by the division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules to determine whether the licensee is in compliance with applicable laws and regulations.

"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.

Federal statutes and regulations used in these rules are:

- "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

- "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 CFR Part 202.

- "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

- "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 41-58.

- "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 CFR Parts 313-314.

- "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

- "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 CFR Part 203.

- "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

- "Homeowners Protection Act" means the Homeowners Protection Act of 1998 (HPA), 12 U.S.C. Sec. 4901 et seq.

- "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 24 CFR Part 3500 et seq.

"S.A.F.E." 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.

- "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telephone Sales Rule, 16 CFR Part 310.

- "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 CFR Part 226 et seq.

"Federally insured financial institution" means a savings bank, savings and loan association, or credit union, whether state or federally chartered, or a federally insured bank, authorized to conduct business in this state.

"Financial misconduct," for the purposes of the act, means a criminal conviction for any of the following:

- Any conduct prohibited by the act;
- Any conduct prohibited by statutes governing mortgage brokers in other states, or the United States, if such conduct would constitute a violation of the act;

- Any conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers; or

- Any conduct commonly known as white collar crime, including, but not limited to, embezzlement, identity theft, mail or wire fraud, insider trading, money laundering, check fraud, or similar crimes.

"Independent contractor" 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.

The following factors may be considered to determine if a person is an independent contractor:

Is the person instructed about when, where and how to work?

Is the person guaranteed a regular wage?

Is the person reimbursed for business expenses?

Does the person maintain a separate business?

Is the person exposed to potential profits and losses?

Is the person provided employee benefits such as insurance, a pension plan, or vacation or sick pay?

"License number" means the NMLSR unique identifier displayed as prescribed by the director.

"Licensee" means:

- A mortgage broker licensed by the director; or

- The principal(s) or designated broker of a mortgage broker; or

- A loan originator licensed by the director; or

- Any person subject to licensing under RCW 19.146.-200; or

- Any person acting as a mortgage broker or loan originator subject to any provisions of the act.

"Loan modification" means a change in one or more residential mortgage loan terms or conditions and includes forbearances, repayment plans, a change in interest rates, loan term (length), loan type (fixed or adjustable), the capitalization of arrearages, and principal reductions. "Loan modification" does not include services that result in refinancing a residential mortgage loan.

"Loan originator or mortgage loan originator" means a natural person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain:

- Takes a residential mortgage loan application for a mortgage broker; or

- Offers or negotiates terms of a mortgage loan, including short sale transactions.

"Loan originator" also includes a person who holds themselves out to the public as able to perform any of the activities described in this definition. For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a mortgage broker or loan originator,

including the use of business cards, stationery, brochures, rate lists, or other promotional items.

For purposes of further defining "loan originator," "taking a residential mortgage loan application" includes soliciting, accepting, or offering to accept an application for a residential mortgage loan or assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application.

"Loan originator" also includes a natural person 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.

"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 loan. An individual who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

"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:

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

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

(c) 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 any such transaction;

(d) 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

(e) Offering to engage in any activity, or act in any capacity, described in (a) through (d) of this subsection.

"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.

The definition of loan originator 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.

"Loan originator licensee" means a natural person who is licensed as a loan originator or is subject to licensing under RCW 19.146.200 or who is acting as a loan originator subject to any provisions of the act.

"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 chapter 19.146 RCW. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms.

"Material litigation" means any litigation that would be relevant to the director's ruling on an application for a license including, but not limited to, criminal or civil action involving dishonesty or financial misconduct.

"Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan. A mortgage broker either prepares a residential mortgage loan for funding by another entity or table-funds the residential mortgage loan. See the definition of "table funding." (These are the two activities allowed under the MBPA.)

For purposes of this definition, a person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms (rates, fees, other costs), preparing loan packages, or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X, 24 CFR Part 3500, Section 3500 (2)(b).

For purposes of this definition, a person "holds himself or herself out" by advertising or otherwise informing the public that they engage in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate sheets, or other promotional items.

"Mortgage broker licensee" means a person that is licensed as a mortgage broker or is subject to licensing under RCW 19.146.200 or is acting as a mortgage broker subject to any provisions of the act.

"Mortgage Broker Practices Act" means chapter 19.146 RCW.

"Mortgage loan originator" means the same as "loan originator."

"Nationwide Mortgage Licensing System and Registry (NMLSR)" 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 licensing and registration of mortgage loan originators.

"Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage. This definition is limited to implementation of the S.A.F.E. Act.

"Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

"Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

"Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest,

and similar items in regard to the property used as security for the loan.

"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, and the owner of a sole proprietorship.

"Rate lock 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 loan available to that borrower.

"Registered agent" means a person located in Washington appointed to accept service of process for a licensee.

"Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of:

(a) 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

(b) Is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

"Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on 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.

For purposes of this definition, a loan "primarily for personal, family, or household use" includes loan applications for a finance or refinance of a primary residence for any purpose, loan applications on second homes, and loan applications on nonowner occupied residential real estate provided the licensee has knowledge that proceeds of the loan are intended to be used primarily for personal, family or household use.

"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. Loan modification does not include services that result in refinancing a residential mortgage loan.

"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.

"Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

- Residential real estate includes, but is not limited to:
  - A single family home;
  - A duplex;
  - A triplex;
  - A fourplex;

- A single condominium in a condominium complex;
- A single unit within a cooperative;
- A manufactured home; or
- A fractile, fee simple interest in any of the above.
- Residential real estate does not include:
  - An apartment building or dwelling of five or more units; or
  - A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings.

"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.

"Table-funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned.

"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 loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

"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.

"Underwriting" means a lender's detailed credit analysis preceding the offering or making of a loan. The analysis may be based on information furnished by the borrower (employment history, salary, financial statements), the borrower's credit history from a credit report, the lender's evaluation of the borrower's credit needs and ability to pay, and an assessment of the collateral for the loan. While mortgage brokers may have access to various automated underwriting systems to facilitate an evaluation of the borrower's qualifications, the mortgage broker who qualifies or approves a borrower in this manner is not the underwriter of the loan and cannot charge a fee for underwriting the loan. Third-party charges the mortgage broker incurs in using or accessing an automated system to qualify or approve a borrower may, like other third-party expenses, be passed on to the borrower.

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

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-006, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-006, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-006, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-11-103, § 208-660-006, filed 5/20/08, effective 6/20/08; 08-05-126, § 208-660-006, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-006, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-155 Mortgage brokers—General. (1) May I originate residential mortgage loans in Washington without a license?** No. Mortgage brokers and loan originators must have a valid Washington license, or be exempt from licensing pursuant to RCW 19.146.020, in order to originate residential mortgage loans. There is no "one-time, one loan" exception.

**(2) May I originate a Washington residential mortgage loan using the license of an already licensed or exempt Washington mortgage broker and then split the proceeds with that mortgage broker?** No. Mortgage broker licenses may only be used by the person named on the license. Mortgage broker licenses may not be transferred, sold, traded, assigned, loaned, shared, or given to any other person. Two individually licensed mortgage brokers may originate a loan. Each licensee is itemized in the disclosures and is paid their proportionate share of fees in relation to the work provided at the loan closing. Federal laws may prohibit this cobrokering.

**(3) Do I need a license to assist a borrower with a residential mortgage loan modification?** Yes. Persons providing loan modification services for compensation or gain must be licensed under this chapter, or under chapter 31.04 RCW. See also WAC 208-660-430(23), 208-660-500(4), 208-660-550 (3)(c) and (4).

**(4) As a licensed mortgage broker, am I responsible for the actions of my employees and independent contractors?** Yes. You are responsible for any conduct violating the act or these rules by any person you employ, or engage as an independent contractor, to work in the business covered by your license.

**(5) Who at the licensed mortgage broker company is responsible for the licensee's compliance with the act and these rules?** The designated broker, principals, and owners with supervisory authority are responsible for the licensee's compliance with the act and these rules.

**(6) What is the nature of my relationship with the borrower?** You have a fiduciary relationship with the borrower. See RCW 19.146.095.

**(7) May I charge upfront broker fees when assisting the borrower in applying for a loan?** No. You may only charge the borrower a fee, commission, or other compensation for the preparation, negotiation, and brokering of a residential mortgage loan when the loan is closed on the terms and conditions agreed upon by you and the borrower.

**(8) May I charge fees when the loan does not close, or does not close on the terms and conditions agreed upon by me and the borrower?** You may charge a fee, and may bring a suit for collection of the fee, not to exceed three hundred dollars, for services rendered, for the preparation of documents, or for the transfer of documents in the borrower's file which were prepared for, or paid for by, the borrower if:

(a) You have obtained a written commitment from a lender on the same terms and conditions agreed upon by you and the borrower; and

(b) The borrower fails to close on a loan through no fault of yours; and

(c) The fee is not otherwise prohibited by the Truth in Lending Act.

**(9) As a mortgage broker, may I solicit or accept fees from a borrower in advance to pay third-party provid-**

**ers?** Yes. However, prior to accepting the funds, you must provide the borrower in writing a notice identifying the specific third-party provider goods and services the funds are to be used for. Additionally, you must not charge the borrower more for the third-party provider goods and services than the actual costs of the goods and services charged by the provider. Once you have the funds you must then:

(a) Deposit the funds in a trust account pursuant to the act and these rules (see WAC 208-660-410 on Trust accounting);

(b) Refund any fees collected for goods or services not provided.

**(10) What is a "written commitment from a lender on the same terms and conditions agreed upon by the borrower and mortgage broker"?** The written commitment is a written agreement or contract between the mortgage broker and lender containing mutually acceptable loan provisions and terms. The lender must be one with whom the mortgage broker maintains a written correspondent or loan brokerage agreement as required by RCW 19.146.040(3). The mutually acceptable loan provisions and terms must be the same terms and conditions set forth in the most recent good faith estimate signed by both the borrower and the mortgage broker.

**(11) How do I sponsor a loan originator?** You must file a sponsorship request through the NMLSR.

**(12) What action must a mortgage broker take to terminate a working relationship with a loan originator?** The licensed mortgage broker must process the termination through the NMLSR.

**(13) When must I update my record in the NMLSR after I terminate employment with a loan originator?** You must process the termination through the NMLSR within five business days of the termination.

**(14) Are there any loan originator compensation models I am prohibited from using?** Yes. You are prohibited from using a compensation model for loan originators based on a loan's interest rate or other terms. You are not prohibited from basing compensation on the principal balance of a loan.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-155, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-155, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-155, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-155, filed 11/21/06, effective 1/1/07.]

#### **WAC 208-660-175 Mortgage brokers—Surety bond.**

**(1) What are the surety bond requirements for licensed mortgage brokers?**

(a) Mortgage brokers must at all times have a valid surety bond on file with the director. The surety bond must be provided on a form prescribed by the department.

(b) The surety bond amount must be based upon the annual loan origination volume of the licensee in the state of Washington.

(c) When the mortgage broker initially applies for a license, the dollar amount of the surety bond must be a minimum of twenty thousand dollars. Thereafter, by March 31st of each year, you must determine your required bond amount based on loan origination volume and provide DFI with proof of having an adequate bond.

(d) The surety bond must list the mortgage broker's full name, unified business identifier (UBI), and NMLSR unique identifier.

(e) The surety bond must be signed by a principal of the mortgage broker as well as an authorized representative of the insurance company listed as surety. The power-of-attorney must identify the signing representative as authorized by the insurance company. The insurance company must include their surety bond number and seal on the surety bond form.

The following chart shows the surety bond amount required for the annual loan origination volume of the licensee in the state of Washington:

Loan Volume in Millions	Bond Amount
\$40+	\$60,000
\$20 to \$40	\$40,000
\$0 to \$20	\$20,000

(f) If you only offer residential mortgage loan modification services, your bond amount is twenty thousand dollars, initially and thereafter.

(2) **Who provides mortgage broker surety bonds?** To purchase a surety bond, contact your insurance broker. A list of insurance companies that underwrite Washington surety bonds in Washington is available from the Washington state office of the insurance commissioner's web site.

(3) **What do I do with the surety bond once I receive it from my insurance company?** You must sign the original surety bond and include the surety bond and the attached power-of-attorney with your license application package.

(4) **What happens to my mortgage broker license if my surety bond is canceled?** Failure to maintain a surety bond is a violation of the act and may result in an enforcement action against you.

(5) **May I change surety bond companies?** Yes. You may change your insurance provider at any time. Your current insurance company will issue a cancellation notice for your existing surety bond. The cancellation notice may be effective no less than thirty days following the director's receipt of the cancellation notice.

Prior to the cancellation date of the existing surety bond, you must have on file with the department a replacement surety bond. The replacement surety bond must be in effect on or before the cancellation date of the prior surety bond.

(6) **Why must I carry a surety bond to have a mortgage broker license?** The surety bond protects the state and any persons who suffer loss by reason of violations of any provision of the act or these rules by you or your employees or independent contractors.

(7) **Who may make a claim against a licensed mortgage broker's surety bond?** The director, or any person, including a third-party provider, who has been injured by a violation of the act, may make a claim against a bond.

(8) **How may I make a claim against a licensed mortgage broker's surety bond?** The department can provide you with the name of a licensed mortgage broker's surety bond provider. Contact the surety bond company and follow its required procedures to make your claim.

(9) **How long does the bond claim procedure take?** The time to complete a bond claim may vary among bonding companies. If the claimant is not a borrower, final judgment

will not be entered prior to one hundred eighty days after the claim is filed.

(10) **When must I file a bond claim?** A bond claim must be filed within one year of the date of the act that causes the claim.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-175, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-175, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-175, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-350 Loan originators—Licensing. (1) How do I apply for a loan originator license? Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR system. You also must:**

(a) **Be eighteen years or older.**

(b) **Have a high school diploma, an equivalent to a high school diploma, or three years experience in the industry. The experience must meet the criteria in WAC 208-660-250 (1)(e)(i) and (ii).**

(c) **Pass a licensing test.** You must take and pass the national and state components of the NMLSR tests. See WAC 208-660-360, Loan originators—Testing.

(d) **Submit an application.** You must submit an on-line application through the NMLSR.

(e) **Prove your identity.** You must provide information to prove your identity.

(f) **Pay the application fee.** You must pay an application fee for your application, as well as an administrative fee to the NMLSR. See WAC 208-660-550, Department fees and costs.

(g) **Complete prelicensing education.** You must complete prelicensing education. See WAC 208-660-355.

(2) **In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?**

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction. This investigation may also include a review of whether you have had a license issued under the act or any similar state statute suspended.

(b) **License suspensions or revocations.**

(i) You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules.

(ii) You are not eligible for a loan originator license if you have ever had a license issued under the Mortgage Broker Practices Act or the Consumer Loan Act or any similar state statute revoked.

(iii) For purposes of (b) and (c) of this subsection, a "similar statute" may include statutes involving other finan-

cial services, such as insurance, securities, escrow or banking.

**(c) Criminal history.**

(i) You are not eligible for a loan originator license if you have ever been convicted of a felony involving an act of fraud, dishonesty, breach of trust, or money laundering.

(ii) You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony not involving fraud, dishonesty, breach of trust, or money laundering, within seven years of the filing of the present application.

**(d) Financial background.**

(i) The department will investigate your financial background including a review of your credit report to determine if you have demonstrated financial responsibility including, but not limited to, an assessment of your current outstanding judgments (except judgments solely as a result of medical expenses); current outstanding tax liens or judgments or other government liens or filings; foreclosure within the last three years; or a pattern of seriously delinquent accounts within the past three years.

(ii) Specifically, you are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

**(3) What will happen if my loan originator license application is incomplete?** After submitting your on-line application through the NMLSR, the department will notify you of any application deficiencies.

**(4) How do I withdraw my application for a loan originator license?** Once you have submitted the on-line application through NMLSR you may withdraw the application through NMLSR. You will not receive a refund of the NMLSR application fee but you may receive a partial refund of your licensing fee if the fee exceeds the department's actual cost to investigate the license application.

**(5) When will the department consider my loan originator license application to be abandoned?** If you do not respond as directed by the department's request for information and within fifteen business days, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

**(6) What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?** Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request a hearing. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied. **See also WAC 208-660-009.**

**(7) How will the department provide me with my loan originator license?** The department may use any of the following methods to provide you with your loan originator license:

(a) A license sent to you electronically that you may print.

(b) A license verification available on the department's web site and accessible for viewing by the public.

**(8) May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

**(9) How do I change information on my loan originator license?** You must submit an amendment to your license through the NMLSR. You may be charged a fee.

**(10) What is an inactive loan originator license?** When a licensed loan originator is not sponsored by a licensed or exempt company, the license is inactive. If a licensed loan originator works for a consumer loan company (chapter 31.04 RCW) as a W-2 employee, they may continue to do business under their inactive license until June 30, 2010, or until the company goes onto the NMLSR and sponsors their license.

**(11) When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

**(12) How do I activate my loan originator license?** The sponsoring company must submit a sponsorship request for your license through the NMLSR. The department will notify you and all the companies you are working with of the new working relationship if approved.

**(13) When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license. In no case shall these requirements be less than the minimum requirements to obtain a license under the S.A.F.E. Act.

**(14) When does my loan originator license expire?** The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.

**(15) How do I renew my loan originator license?**

(a) Before the license expiration date you must renew your license through the NMLSR. Renewal consists of:

(i) Pay the annual assessment fee; and

(ii) Meet the continuing education requirement. You will not have a continuing education requirement in the year in which you complete prelicensing education. See WAC 208-660-370.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

**(16) If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal on or before February 28th each year, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (15) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service

postmark or department "date received" stamp prior to March 1st each year. If you fail to comply with the renewal request requirements prior to March 1st, you must apply for a new license.

**(17) If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

**(18) May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

**(19) What happens to the loan applications I originated before my loan originator license expired?** Existing loan applications must be processed by the licensed mortgage broker or another licensed loan originator working for the mortgage broker.

**(20) May I surrender my loan originator's license?** Yes. Only you may surrender your license before the license expires through the NMLSR.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omission occurring before the license surrender.

**(21) Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the mortgage broker company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

**(22) If I operate as a loan originator on the internet, must I display my license number on my web site?** Yes. You must display your license number, and the license number and name as it appears on the license of the licensed mortgage broker you represent, on the web site.

**(23) Must I include my license number on any documents?** You must include your license number immediately following your name on solicitations, including business cards, advertisements, and residential mortgage loan applications.

**(24) When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the mortgage broker you are associated with:

(a) When asked by any party to a loan transaction, including third party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

**(25) May I conduct business under a name other than the name on my loan originator license?** No. You must only use the name on your license when conducting business.

If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."

**(26) Will I have to obtain an individual bond if the company I work for is exempt from licensing?** Reserved.

**(27) Will I have to file quarterly call reports if I have an individual bond?** Reserved.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-350, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-350, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 09-12-111, § 208-660-350, filed 6/2/09, effective 7/3/09. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-350, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.-223. 08-05-126, § 208-660-350, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 07-13-079, § 208-660-350, filed 6/18/07, effective 7/19/07; 06-23-137, § 208-660-350, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-430 Disclosure requirements. (1) What disclosures must I make to borrowers and when?**

Within three business days of receiving a borrower's loan application, or receiving money from a borrower for third-party provider services, you, as a mortgage broker or loan originator on behalf of a mortgage broker, must make all disclosures required by RCW 19.146.030 (1), (2), (3), and 19.144.020. The one page disclosure summary required by RCW 19.144.020 must be dated when provided to the borrower. The disclosures must be in a form acceptable to the director.

**(2) What is the disclosure required under RCW 19.146.030(1)?** 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. A good faith estimate of a fee or cost must be provided if the exact amount of the fee or cost is not determinable. This subsection does not require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

The specific content of the disclosure required under RCW 19.146.030(1) is identified in RCW 19.146.030(2).

**(3) What is the disclosure required under RCW 19.146.030(2)?** Mortgage brokers must disclose the following content:

(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 and Regulation Z, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.-030(1) governs the delivery requirement of these disclosures;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspec-

tion, 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 RESPA and Regulation X, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(c) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change;

(d) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower, to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(e) Whether and under what conditions any lock-in fees are refundable to the borrower; and

(f) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

**(4) What is the disclosure required under RCW 19.144.020?** See WAC 208-600-200.

**(5) How do I disclose the yield spread premium (YSP) from the lender?**

(a) You must disclose the YSP as a dollar amount credited to the borrower on the GFE.

(b) You must direct the settlement service provider to disclose the YSP on line 802 on the HUD-1 or equivalent settlement statement. The YSP must be expressed as a dollar amount.

(c) Failure to properly disclose the yield spread premium (YSP) is a violation of RCW 19.146.0201 (6) and (11), and RESPA.

**(6) Are there additional disclosure requirements related to interest rate locks?** Yes. Pursuant to RCW 19.146.030(3), if subsequent to the written disclosure being provided under this section, a mortgage broker or loan originator enters into a rate lock agreement with a borrower or represents to the borrower that the borrower has entered into a rate lock agreement, then within three business days the mortgage broker or loan originator must deliver or send by first-class mail to the borrower a written confirmation of the terms of the rate lock agreement, which must include a copy of the disclosure made under subsection (3)(c) of this section.

**(7) What must I disclose to the borrower if they do not choose to enter into a rate lock agreement?** If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change.

**(8) Will a rate lock agreement always guarantee the interest rate and terms?** No. A rate lock agreement may or may not be guaranteed by the mortgage broker or lender. The

rate lock agreement must clearly state whether the rate lock agreement is guaranteed by the mortgage broker or lender.

**(9) How do I disclose the payment of a rate lock fee?** You must disclose payment of a rate lock fee as a cost in Block 2 of the GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209 with "P.O.C. (borrower)" recorded to the left of the borrower column.

**(10) Are there any model forms that suffice for the disclosure content under RCW 19.146.030(2)?** Yes. The following model forms are acceptable forms of disclosure:

(a) For RCW 19.146.030 (2)(a), mortgage brokers are encouraged to use the federal truth-in-lending disclosure form for mortgage loan transactions provided under the Truth-in-Lending Act and Regulation Z, as now or hereafter amended. However, the federal truth-in-lending disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(a). The delivery of disclosures is governed by RCW 19.146.030(1).

(b) For RCW 19.146.030 (2)(b), mortgage brokers are encouraged to use the federal good faith estimate disclosure form provided under the Real Estate Settlement Procedures Act and Regulation X, as now or hereafter amended. However, the federal good faith estimate disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(b). The delivery of disclosures is governed by RCW 19.146.030 (1).

(c) For RCW 19.146.030 (2)(c), (d), (e), (f) and (3), the department encourages mortgage brokers to use the department published model disclosure forms that can be found on the department's web site.

**(11) May my mortgage broker fees increase following the disclosures required under RCW 19.146.030(1)?** Pursuant to RCW 19.146.030(4), a mortgage broker must not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the initial written good faith estimate disclosure required in RCW 19.146.030 (1) and (2)(b), unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(b) The mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

**(12) Are there any situations in which fees that benefit the mortgage broker can increase without additional disclosure?** Yes, there are two possible situations where an increase in the fees benefiting the mortgage broker may increase without the requirement to provide additional disclosures. These situations are:

(a) The additional disclosure is not required if the borrower's closing costs, excluding prepaid escrowed costs of ownership, on the final settlement statement do not exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower. For purposes of this section "prepaid escrowed costs of ownership" mean any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan; or

(b) The fee or set of fees that benefit the mortgage broker are disclosed as a percentage of the loan amount and the increase in fees results from an increase in the loan amount, provided that:

(i) The increase in loan amount is requested by the borrower; and

(ii) The fee or set of fees that are calculated as a percentage of the loan amount have been disclosed on the initial written disclosure as both a percentage of the loan amount and as a dollar amount based upon the assumed loan amount used in the initial written disclosure; and

(iii) The total aggregate increase in the fee or set of fees that benefit the mortgage broker as a result of the increase in loan amount is less than seven hundred fifty dollars.

This section does not apply to the disclosure required in RCW 19.144.020.

**(13) What action may the department take if I improperly disclose my mortgage broker fees on the good faith estimate and HUD-1/1A statement?** If you fail to disclose your mortgage broker fees as required, the department may request, direct, or order you to refund those fees to the borrower if the result of that disclosure resulted in confusion or deception to the borrower.

**(14) May the department take action against a mortgage broker when mortgage broker fees are disclosed incorrectly on the HUD-1/1A and the incorrect disclosure was made by an independent escrow agent, title company, or lender?** If the mortgage broker can show the department that they disclosed their fees correctly on the good faith estimate, and have instructed the independent escrow agent, title company, or lender to disclose the fees correctly on the HUD-1/1A, and the independent escrow agent, title company, or lender has not followed the instructions, the department may not take action against the mortgage broker.

**(15) What action may the department take if I fail to provide additional disclosures as required under RCW 19.146.030(4)?** Generally, the department may request, direct, or order you to refund fees.

**(16) How will the department determine whether to request, direct or order me to refund fees to the borrowers?** Generally, the department will make its determination by answering the following questions:

(a) Has an initial good faith estimate disclosure of costs been provided to the borrower in accordance with RCW 19.146.030 (1) and (2)(b)?

(b) Were any subsequent good faith estimate disclosures of costs provided to the borrower no less than three business days prior to the signing of the loan closing documents? Additionally, was the subsequent disclosure accompanied by a clear written explanation of the change?

(c) How were the costs disclosed in each good faith estimate (e.g., dollar amount, percentage, or both)?

(d) Did the total costs, excluding prepaid escrowed costs of ownership, on the final settlement statement exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower no less than three business days prior to the signing of the loan closing documents?

(e) If the costs at closing did exceed the most recent disclosure of costs was the need to charge the fee reasonably foreseeable at the time the written disclosure was provided?

(f) If the costs at closing did exceed the most recent disclosure of costs did the mortgage broker provide a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed, no less than three business days prior to the signing of the loan closing documents?

**(17) If I failed to provide the initial good faith estimate or TILA disclosure under RCW 19.146.030 (1) and (2)(a) and (b) what action may the department take?** If you have not provided the initial good faith estimate or TILA disclosure as required, including both delivery and content requirements, the department may request, direct or order you to refund to the borrower fees that inured to your benefit.

**(18) If I received trust funds from a borrower, but failed to provide the disclosures as required in RCW 19.146.030 (1) and (2), what action may the department take?** If you did not provide the disclosures as required, including both delivery and content requirements, the department may request, direct, or order you to refund to the borrower any trust funds they have paid regardless of whether you have already expended those trust funds on third-party providers.

**(19) Under what circumstances must I redisclose the initial disclosures required under the act?** Generally, any loan terms or conditions that change must be redisclosed to the borrower no less than three business days prior to the signing of the loan closing documents. Some examples are:

(a) Adjustable rate loan terms, including index, margin, and any changes to the fixed period.

(b) The initial fixed period.

(c) Any balloon payment requirements.

(d) Interest only options and any changes to the options.

(e) Lien position of the loan.

(f) Terms and the number of months or years for amortization purposes.

(g) Prepayment penalty terms and conditions.

(h) Any other term or condition that may be specific to a certain loan product.

**(20) If a loan application is canceled or denied within three days of application must I provide the disclosures required under RCW 19.146.030?** If you have not used any borrower trust funds and those funds have been returned to the borrower in conformance with these rules, the disclosures pursuant to RCW 19.146.030 are not required.

**(21) Is a mortgage broker that table funds a loan exempt from disclosures?** No. A mortgage broker must provide all disclosures required by the act, and disclose all fees as required by Regulation X, regardless of the funding mechanism used in the transaction.

**(22) What must I provide to the borrower if I am unable to complete a loan for them and they have paid for services from third-party providers?** If you are unable to complete a loan for the borrower for any reason, and if the borrower has paid you for third-party provider services, and the borrower makes a written request to you, you must provide the borrower with copies of the product from any third-party provider, including, but not limited to, an appraisal, title report, or credit report. You must provide the copies within five business days of the borrower's request.

The borrower may also request that you provide the originals of the documents to another mortgage broker or lender

of the borrower's choice. By furnishing the originals to another mortgage broker or lender, you are conveying the right to use the documents to the other broker or lender. You must, upon request by the other broker or lender, provide written evidence of the conveyance. You must provide the originals to the mortgage broker or lender within five business days of the borrower's request.

**(23) Must I provide a written fee agreement when I provide residential mortgage loan modification services?**

Yes. You must provide a written fee agreement as prescribed by the director when providing residential mortgage modification services. You must provide a copy of the signed fee agreement to the consumer and you must keep a copy as part of your books and records.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-430, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-430, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-430, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-430, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-430, filed 11/21/06, effective 1/1/07.]

**WAC 208-660-445 May I advertise over the internet using a URL address that is not my licensed business name?**

Yes, provided that any URL address you advertise takes the user directly to your main or home web page. If you want the user to be directed to a different main or home web page, the URL address must contain your license name in addition to any other names or words in the URL address. URL addresses may be used as DBA names upon request to and approval from DFI.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-445, filed 10/5/10, effective 11/5/10.]

**WAC 208-660-446 When I advertise using the internet or any electronic form (including, but not limited to, text messages), is there specific content advertisements must contain?**

Yes. You must provide the following language, in addition to any other, on your web pages or in any medium where you hold yourself out as being able to provide the services:

(1) Main or home page.

(a) The company's license name and NMLS unique identifier must be displayed on the licensee's main or home web page.

(b) If loan originators are named, their NMLS numbers must follow the names.

(c) The main or home page must also contain a link to the NMLS consumer access web site page for the company.

(2)(a) Branch office web page - no DBA. Comply with subsection (1) of this section.

(b) Main office, or branch office web page - DBA. If the company uses a DBA on a web page the web page must contain the main office license name, and the information in subsection (1)(b) of this section, and the web page must contain a link to the NMLS consumer access web site page for the company.

(3) Loan originator web page. If a loan originator maintains a separate home or main page, the URL address to the site must be a DBA of the licensee and the licensee's name

must appear on the web page. The web page must also contain the loan originator's NMLS number and a link to the NMLS consumer access web page for the company.

(4) Compliance with other laws. Web site content used to solicit Washington consumers must comply with all relevant Washington state and federal statutes for specific services and products advertised on the web site.

(5) Oversight. The company is responsible for web site content displayed on all web pages used to solicit Washington consumers including main, branch, and loan originators' web pages.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-446, filed 10/5/10, effective 11/5/10.]

**WAC 208-660-500 Prohibited practices. (1) What may I request of an appraiser?**

You may request an area or market survey. While there are no strict definitions of these terms, generally they refer to general information regarding a region, area, or plat. The information usually includes the high, low and average sales price, numbers of properties available for sale or that have been sold within a set period, marketing times, days on market, absorption rate or the mixture of different property types in the specified area, among other possible components. An area survey does not contain sufficient information or is not so defining as to allow an appraiser or reader to determine the value of a specified property or property type.

(2) **How may I discuss property values with an appraiser, prior to the appraisal, without the discussion constituting improperly influencing the appraiser?** You may inform the appraiser of your opinion of value, the borrower's opinion of value, or the list or sales price of the property. You are prohibited from telling the appraiser the value you need or that is required for your loan to be successful.

(3) **What business practices are prohibited?** The following business practices are prohibited:

(a) Directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Engaging in any unfair or deceptive practice toward any person.

(c) Obtaining property by fraud or misrepresentation.

(d) Soliciting or entering 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.

(e) Charging discount points on a loan which does not result in a reduction of the interest rate. Some examples of discount point misrepresentations are:

(i) A mortgage broker or lender charging discount points on the good faith estimate or settlement statement payable to the mortgage broker or any party that is not the actual lender on the resident mortgage loan.

(ii) Charging loan fees or mortgage broker fees that are represented to the borrower as discount points when such fees do not actually reduce the rate on the loan, or reflecting loan origination fees or mortgage broker fees as discount points.

(iii) Charging discount points that are not mathematically determinable as the same direct reduction of the rate

available to any two borrowers with the same program and underwriting characteristics on the same date of disclosure.

(iv) Charging total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided when providing residential mortgage loan modification services.

(f) Failing to clearly and conspicuously disclose whether a payment advertised or offered for a residential mortgage loan includes amounts for taxes, insurance, or other products sold to the borrower. This prohibition includes the practice of misrepresenting, either orally, in writing, or in any advertising materials, a loan payment that includes only principal and interest as a loan payment that includes principal, interest, tax, and insurance.

(g) Failing to provide the exact pay-off amount of a loan you own or service as of a certain date five or fewer business days after being requested in writing to do so by a borrower of record or their authorized representative.

(h) Failing to record a borrower's payment, on a loan you own or service, as received on the day it is delivered to any of the licensee's locations during its regular working hours.

(i) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department.

(j) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower in order to verify that the asset is not otherwise insured.

(k) Willfully filing a lien on property without a legal basis to do so.

(l) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction.

(m) Failing to reconvey title to collateral, if any, within thirty days when the loan is paid in full unless conditions exist that make compliance unreasonable.

(n) Failing to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law.

(o) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan. An example is advertising a discounted rate without clearly and conspicuously disclosing in the advertisement the cost of the discount to the borrower and that the rate is discounted.

(p) Engage in bait and switch advertising.

Bait and switch means a deceptive practice of soliciting or promising a loan at favorable terms, but later "switching" or providing a loan at less favorable terms. While bait and switch will be determined by the facts of a case, the following examples, alone or in combination, may exhibit a bait and switch practice:

(i) A deceptive change of loan program from fixed to variable rate.

(ii) A deceptive increase in interest rate.

(iii) The misrepresentation of discount points. This may include discount points that have a different rate buydown

effect than promised, or origination fees that a borrower has been led to believe are discount points affecting the rate.

(iv) A deceptive increase in fees or other costs.

(v) A deceptive disclosure of monthly payment amount. This practice may involve soliciting a loan with payments that do not include monthly amounts for taxes and insurance or other reserved items, while leading the borrower to believe that such amounts are included.

(vi) Additional undisclosed terms such as prepayment penalties or balloon payments, or deceiving borrowers about the effect of disclosed terms.

(vii) Additional layers of financing not previously disclosed that serve to increase the overall cost to the borrower. This practice may involve the surprise combination of first and second mortgages to achieve the originally promised loan amount.

(viii) Leading borrowers to believe that subsequent events will be possible or practical when in fact it is known that the events will not be possible or practical.

(ix) Advertising or offering rates, programs, or terms that are not actually available at the time. See WAC 208-660-440(5).

(q) Engage in unfair or deceptive advertising practices. Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace.

(r) Negligently making any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department.

(s) Making 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.

(t) Advertising a rate of interest without clearly and conspicuously disclosing the annual percentage rate implied by the rate of interest.

(u) Failing to comply with the federal statutes and regulations in RCW 19.146.0201(11).

(v) Failing to pay third-party providers within the applicable timelines.

(w) Collecting or charging, or attempting to collect or charge, or use or propose any agreement purporting to collect or charge any fees prohibited by the act.

(x) Acting as a loan originator and real estate broker or salesperson, or acting as a loan originator in a manner that violates RCW 19.146.0201(14).

(y) Failing to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

(z) Intentionally delay closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(aa) Steering a borrower to less favorable terms in order to increase the compensation paid to the company or mortgage loan originator.

(bb) Receiving compensation or any thing of value from any party for assisting in real estate "flopping." Flopping occurs during some short sales where the value of the property is misrepresented to the lender who then authorizes the sale of the property for less than market value. The property

is then resold at market value or near market value for a profit. The failure to disclose the true value of the property to the lender constitutes fraud and is a violation of this chapter.

(cc) Abandoning records. If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format, or proper destruction of the records.

**(4) What additional practices are prohibited when providing residential mortgage loan modification services?** You are prohibited from:

(a) Collecting an advance fee of more than seven hundred fifty dollars;

(b) Collecting an advance fee without a written fee agreement (see also WAC 208-660-XXX);

(c) As a condition to providing loan modification services requiring or encouraging a borrower to:

(i) Sign a waiver of his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(ii) Sign a waiver of his or her right to contest a future foreclosure;

(iii) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(iv) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan;

(v) Cease communication with the lender, investor, or loan servicer or stop or delay making regularly scheduled payments on an existing mortgage unless a mortgage loan modification is completely negotiated and executed with the lender or investor and the modification agreement itself provides for a cessation or delay in making regularly scheduled payments; or

(d) Entering into any contract or agreement to purchase a borrower's property;

(e) Failing in a timely manner to:

(i) Communicate with or on behalf of the borrower;

(ii) Act on any reasonable request from or take any reasonable action on behalf of a borrower;

(f) Engaging in false or misleading advertising. In addition to WAC 208-620-630, examples of false or misleading advertising include:

(i) Advertising which includes a "guarantee" unless there is a bona fide guarantee which will benefit a borrower;

(ii) Advertising which makes it appear that a licensee has a special relationship with lenders when no such relationship exists;

(g) Leading a borrower to believe that the borrower's credit record will not be negatively affected by a mortgage loan modification when the licensee has reason to believe that the borrower's credit record may be negatively affected by the mortgage loan modification.

**(5) What federal guidance has the director adopted for use by the department in determining if a violation under subsection (3)(b) of this section has occurred?** The director has adopted the following documents:

(a) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators "Guidance on Nontraditional Mortgage Product Risks" (released November 14, 2006); and

(b) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and National Association of Consumer Credit Administrators "Statement on Subprime Mortgage Lending," effective July 10, 2007 (published in the Federal Register at Vol. 72, No. 131).

**(6) What must I do to comply with the federal guidelines on nontraditional mortgage loan product risks and statement on subprime lending?** You must adopt written policies and procedures implementing the federal guidelines that are applicable to your mortgage broker business. The policies and procedures must be maintained as a part of your books and records and must be made available to the department upon request.

**(7) When I develop policies and procedures to implement the federal guidelines, what topics must be included?** The policies and procedures must include, at a minimum, the following:

**(a) Consumer protection.**

**Communication with borrowers.** Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions. Specifically:

- Borrowers must be advised of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated. For example, loan products with low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin must be adequately described to the borrower. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments.

- Borrowers must be advised as to the maximum amount their monthly payment may be if the interest rate increases to its maximum rate under the terms of the loan.

- Borrowers must be advised as to the maximum interest rate that can occur under the terms of the loan.

- Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.

- Borrowers must be made aware of any pricing premium based on reduced documentation.

**(b) Control standards.**

(i) Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

(ii) Reporting to DFI. In a separate written document, as prescribed by the director and submitted with the mortgage broker annual report, every licensee must submit information regarding the offering of nontraditional mortgage loan products.

(8) **May I charge a loan origination fee or discount points when I originate but do not make a loan?** No. You may not charge a loan origination fee or discount points as described in Regulation X, Part 3500, Appendix A.

(9) **What mortgage broker fees may I charge?** You may charge a mortgage broker fee that was agreed upon between you and the borrower as stated on a good faith estimate disclosure form or similar document provided that such fee is disclosed in compliance with the act and these rules.

(10) **How do I disclose my mortgage broker fees on the good faith estimate and settlement statement?** You must disclose or direct the disclosure of your fees on the good faith estimate and HUD-1/1A Settlement Statement or similar document.

(11) **May I charge the borrower a fee that exceeds the fee I initially disclosed to the borrower?** Pursuant to RCW 19.146.030(4), you may not charge any fee that benefits you if it exceeds the fee you initially disclosed unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the initial disclosure was provided; and

(b) You have 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. See WAC 208-660-430 for specific details, disclosures, and exceptions implementing RCW 19.146.030(4).

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-500, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-500, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-500, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-500, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-500, filed 11/21/06, effective 1/1/07.]

## Chapter 208-680 WAC

### ESCROW AGENT REGISTRATION ACT

#### WAC

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**WAC 208-680-030 Definitions. What definitions are applicable to these rules?** Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

"Act" means the Escrow Agent Registration Act, codified under chapter 18.44 RCW.

"Applicant" means any person applying for an escrow officer license or any person or group of persons applying for an escrow agent license. The term "applicant" includes the officers and controlling persons of the applicant, as well as any escrow officer seeking to become an escrow agent's designated escrow officer or branch designated escrow officer.

"Branch designated escrow officer" means any licensed escrow officer designated by a licensed escrow agent and approved by the director to supervise a specific branch office. The branch designated escrow officer is the licensed escrow officer responsible for supervising an agent's handling of escrow transactions, management of the agent's trust account, and supervision of all other licensed escrow officers employed by the agent at his or her branch designated office.

"Cash deposit" means funds deposited, in lieu of an errors and omissions policy, in an account in a recognized Washington state depository which account is maintained separate and apart from the escrow agent's own funds. The funds shall be deposited in such a manner to permit only the director to withdraw from the principal amount. The escrow agent may withdraw any interest accumulated to the account.

"Closing" means the transfer of title of real or personal property or execution of a real estate contract whichever event occurs first.

"Completed escrow" means a transaction in which the escrow agent has fully discharged its duties to the principal parties to the transaction. This includes, but is not limited to: Obtaining all necessary documents, obtaining required signatures, completing reconveyance or title elimination, and disbursing funds to the principal parties to the transaction, the agents to the transaction, and to third parties to the transaction as agreed by the principal parties in the escrow instructions or on the settlement form (such as HUD-1 or HUD-1A).

"Department" means the department of financial institutions.

"Designated escrow officer" means any licensed escrow officer designated by a licensed escrow agent and approved by the director as the licensed escrow officer responsible for supervising that agent's handling of escrow transactions, management of the agent's trust account, and supervision of all licensed escrow officers and other persons employed by the agent.

"Director" means the director of the department of financial institutions or his or her duly authorized representative. For purposes of this act, the division of consumer services is deemed to be the director's authorized representative.

"Escrow instructions" are the instructions, signed by the principal parties to the transaction that identify the duties and responsibilities of the escrow agent in carrying out the escrow, that identify the thing or things of value held by the escrow agent and the specified condition or set of conditions under which the thing or things of value are to be transferred.

"Good funds" means funds in a bank account that are immediately usable by the owner of the account. Good funds may be derived from the monetary instruments described in RCW 18.44.400(3).

"Handling escrow transactions" means participating in escrow transactions. It includes, but is not limited to, having access to a client's: Personal information, financial records, or funds. Employees that perform administrative functions like payroll or human resources services are not handling escrow transactions unless such persons also perform duties meeting this definition.

"Investigation" means an inquiry undertaken for the purpose of detection of violations of the act and these rules or securing information lawfully required under the act and

these rules. The director may make private or public investigations.

"Officers" of the escrow agent shall include the president, secretary, treasurer, vice-president, and any other equivalent persons with control over management decisions of the escrow agent.

"Overdue instrument" means a negotiable instrument that is overdue as defined in RCW 62A.3-304.

"Permanent record" means any record required to be kept under RCW 18.44.400 for a period of six years from the completion of the escrow transaction.

"Principal officers" means natural person applicants for escrow agent licenses; corporate officers, vice-president and above; directors, shareholders, members, or anyone else owning ten percent or more of the escrow agent's equity; general or managing partners; sole proprietors and spouses of sole proprietors; designated and branch designated escrow officers; and any person defined as a "controlling person" in RCW 18.44.011(1).

"Principal parties" means the buyers and sellers in a purchase transaction, and the borrower and lender in a refinance transaction.

"Providing escrow services" means conducting transactions, except the acts of a qualified intermediary in facilitating an exchange under section 1031 of the Internal Revenue Code, wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he or she is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof.

"Reconveyance" means an instrument used to transfer title from an individual holding such title in trust to the equitable owner of real estate, when title is held as collateral security for a debt.

"Third party to the transaction" means those persons providing professional services necessary for the closing of the escrow, including, but not limited to: Real estate brokers, lenders, mortgage brokers, attorneys, tax facilitators or underlying lien holders.

"Transfer of title" occurs at the time the seller executes a deed or bill of sale and such is delivered to the purchaser or recorded.

"Trust" means a fiduciary relationship whereby a thing of value is delivered to an escrow agent with the intention that such thing of value be administered by the escrow agent for the benefit of the principal parties to the transaction.

"Trust account" means a bank account holding funds of any party to the transaction.

"Unclaimed funds" means any funds that are abandoned under the Uniform Unclaimed Property Act, chapter 63.29 RCW.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-030, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-040 Exceptions—General.** (1) **Do I need an escrow license to provide escrow services?** Unless you fall into one of the exceptions in RCW 18.44.021, you must have a license under the act before providing escrow services.

(2) **I only plan on performing one or two escrow transactions. Do I need an escrow license?** Yes. You must license unless you meet one of the above exceptions. There is no exception under the act for persons performing limited numbers of transactions.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-040, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-045 Exceptions—Attorneys.** (1) **I am licensed to practice law in Washington. Am I excepted from licensing as an escrow agent?** Yes, as long as you only perform escrow services as part of your law practice. You are excepted from licensure as an escrow agent while you are engaged in the practice of law, but you are required to apply for and receive an escrow license before you perform escrow services outside of your legal practice. Your attorney exception may be extended to your bona fide legal practice, but is otherwise an individual exception and may not be extended to a separate business entity. Your exception may not be extended to nonattorney individuals unless they are employees of your bona fide law practice and you supervise all of their transactions.

You or your attorney-owned business entity will be required to license as an escrow agent if you or your business entity do one or more of the following:

(a) Principally provide escrow services, not including escrow services provided incidentally to the practice of law;

(b) Advertise yourself or your business entity as providing the services of an escrow agent without identifying yourself or your business entity as an attorney or law practice;

(c) Receive compensation or gain for providing escrow services through a business entity other than a bona fide law practice; or

(d) Permit nonattorney associates or employees to conduct escrow transactions without either a valid escrow officer license or an attorney's supervision.

(2) **I am licensed to practice law in Washington. Am I subject to the department's investigative authority?** Yes. The department has broad investigative authority under the act and these rules, and its investigatory authority is not restricted to persons who are required to obtain a license. The department has the power to investigate unlicensed persons and entities at least to the extent necessary to determine whether a violation of the act or these rules has occurred. This includes preliminary investigations of attorneys and business entities that claim the attorney exception from licensure.

Among other actions, the department may:

(a) Compel written statements from or subpoena any person with relevant information;

(b) Compel production of written materials and take evidence; and

(c) Apply to a superior court for an order compelling compliance with its authority under the act.

For further information on the department's investigative authority, see RCW 18.44.420 and WAC 208-680-620.

(3) **I am licensed to practice law in Washington. Am I subject to the department's examination authority?** Generally, no. Unless the department determines that the attorney exception from licensure does not apply to you or your business, you will not be subject to the department's examination authority under WAC 208-680-610. If the department has determined that the exception does not apply, you will be required to license the escrow portion of your business and it may be subject to regular examinations.

(4) **I am licensed to practice law in Washington and excepted from licensing under the act. Am I subject to other provisions of the act?** You may be subject to other provisions of the act for activities you conduct outside the practice of law. The attorney exception is a limited, individual exception from the act's licensure provision for actions undertaken while engaged in your professional, legal duties, and is not a general exemption from the act.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-045, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-110 Credit and character report.** **What kinds of credit and character reports must I provide with my application?**

(1) If you are applying for an escrow officer license, or are applying to be a designated escrow officer, you must provide:

(a) Proof that you have passed the escrow officer examination; and

(b) Satisfactory proof of your good character; and

(c) Satisfactory proof of your good credit rating, as evidenced by a report from a recognized credit-reporting agency, and in a form approved by the director.

(2) If you are applying for an escrow agent license, you must provide satisfactory proof of character and credit rating for all principal officers. If your applicant is a business entity and not a natural person, you must provide satisfactory proof of your entity's credit rating. This proof must be obtained and provided by a recognized credit-reporting agency in a form approved by the department.

(3) If you are reporting a change in principal officer, you will be required to provide with your escrow agent amendment application, for any new principal officer:

(a) Satisfactory proof of his or her good character; and

(b) Satisfactory proof of his or her good credit as evidenced by a report from a recognized credit-reporting agency, and in a form approved by the director.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-110, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-125 License not transferable.** (1) **Can I transfer my license to another person or entity?** No. Neither an escrow agent license nor an escrow officer's license may be transferred.

(2) **Can all or substantially all of the assets of an escrow agent be transferred to another person?** Yes. A licensed escrow agent may transfer all or substantially all of its assets to another person as long as the transfer is approved

by the department and the receiving party (the transferee) has been issued an escrow agent license under the act prior to the transfer.

(3) **If I am transferring my assets to another escrow agent, what notification must I provide to the department?** You must provide written notice to the department at least thirty days before the effective date of the transfer. The written notice must include a copy of the signed transfer agreement that contains, at a minimum:

(a) A stipulation that the transferee is responsible for obtaining an escrow agent license and finding or designating a licensed escrow officer as a designated escrow officer before completion of the transfer;

(b) A stipulation that the transferee will obtain and submit to the director evidence of financial responsibility in the form of the required bond or bonds and errors and omission insurance in compliance with RCW 18.44.201 and these rules before completion of the transfer;

(c) A stipulation that the transferee is either restricted from using or authorized to use, the escrow agent's business name, unless this requirement is waived by the director; and

(d) A stipulation indicating which of the parties will:

(i) Make all payments due to principal parties on or before the effective date of the transfer;

(ii) Maintain and preserve the accounting and other records as required by RCW 18.44.400 and WAC 208-680-520 and 208-680-530; and

(iii) Provide notice of the transfer to all principal parties who have pending escrows or deposited funds with the escrow agent, or who have executed some other form of written agreement with the escrow agent. Such notice must be provided within five days of your notice to the department, and must comply with RCW 18.44.465.

(4) **If I am acquiring all or substantially all of the assets of an escrow agent, what notifications must I provide?** The department treats this kind of sale of assets as a change in a principal officer. If you do not have an escrow agent license, you must apply for and receive one. If you already have an escrow agent license, at least thirty days before you acquire all or substantially all of the assets of an escrow agent you must provide the department with all the information required of a principal officer or controlling person as if you were applying for a new license. The change of control transaction may not be completed until the transferee has received a license and provided the department with appropriate notices.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-125, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-130 What kind of background check and fingerprinting information may the department require with my application for an escrow agent license?**

(1) If you are applying for an escrow agent license:

(a) You must submit fingerprint identification for the natural person making the application, and for your principal officers, designated escrow officer or branch designated escrow officers, and any controlling person. This identification must be submitted on standard Federal Bureau of Investigation fingerprint cardstock or another form acceptable to the department.

(b) You may be required, at the department's discretion, to provide additional background information any applicant, principal officer, designated escrow officer, controlling person, or partner. This may include any information the department deems necessary to satisfy the director that the requirements under RCW 18.44.031(2) have been met. The director may require that such information be reported in writing and signed by the reporting individuals.

(c) If you have been issued an escrow agent license and experience a change in one or more principal officers or controlling persons, you must submit fingerprints and such other information as the director may request under (b) of this subsection to the department thirty days prior to the effective date of the change in principal officer or controlling person.

(2) The department will collect a fingerprinting fee from you equal to the department's cost for processing fingerprints through the Washington state patrol.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-130, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-135 What kind of background check and fingerprinting information may the department require with my application for an escrow officer license?**

(1) If you are applying for an escrow officer license or to be a designated escrow officer:

(a) You must submit fingerprint identification for the applicant. This identification must be submitted on standard Federal Bureau of Investigation fingerprint cardstock or another form acceptable to the department.

(b) You may be required, at the department's discretion, to provide additional background information about yourself to ascertain your honesty, truthfulness, and good reputation. This information may include, but is not limited to: Residential address and telephone number, qualifications, employment history, a personal credit report, and other information that the director may deem appropriate under RCW 18.44.-031(2).

(2) The department will collect a fingerprinting fee from you equal to the department's cost for processing fingerprints through the Washington state patrol.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-135, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-145 Escrow officer examination. (1)**

**How do I take the escrow officer examination?** While the director determines the form and content of the escrow officer examination with the advice of the escrow commission, the test is administered by a third-party company under a contract with the department. It is given at least annually. For information about the examination process and available dates, applicants should consult the department's web site, which will redirect them to the current testing service provider for more detailed information.

(2) **Do I need to take and pass the escrow officer examination before filing my application and paying my application fee to the department?** Yes. You must submit a copy of your test pass certificate with your application to the department. You must have passed the escrow examination no more than one year before your initial application for

a license. If your license is not issued within two years of your successful completion of the examination, you will be required to retake the examination.

**(3) Will the department review my application before I take the test to see if I meet the other requirements?** No. Due to volume and resource limitations, the department does not review escrow officer applications unless they are accompanied by a test pass certificate.

**(4) I am an attorney licensed to practice law in Washington. If I am required to license as an escrow officer, will I be required to take and pass the escrow officer examination?** No, the department will accept membership in the Washington bar in lieu of taking and passing the escrow officer exam.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-145, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-155 What escrow officer and agent fees will I be required to pay?** Escrow officer and agent fees:

Title of Fee	Fee
Escrow officer:	
First examination (test)	\$168.00
Reexamination (test)	168.00
Application	179.26
License renewal	179.26
Transfer of license to a new escrow agent, name or address change, or license activation	28.01
Duplicate license	28.01
Escrow agent:	
Application	386.55
Renewal	386.55
Late renewal with penalty	579.81
Change of designated escrow officer, or name or address change, per license generated	28.01
Duplicate license	28.01
Escrow agent branch office:	
Application and original license	386.55
Renewal	386.55
Late renewal with penalty	579.81
Change of branch designated escrow officer, or name or address change, per license generated	28.01
Duplicate license	28.01

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-155, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-165 May the director waive fees under the act?** Yes. The director may waive any or all of the fees and assessments imposed under WAC 208-680-155, in whole or in part, when he or she determines that both of the following factors are present:

(1) The consumer services program fund exceeds the projected acceptable minimum fund balance level approved by the office of financial management;

(2) The fees paid by escrow agents equals or exceeds the costs of the licensing, examinations, and enforcement escrow program; and

(3) That such course of action would be fiscally prudent.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-165, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-170 What happens if my check is dishonored or my payment of an escrow fee is insufficient?** Payment of any fee required under chapter 18.44 RCW by a check that is dishonored or is an insufficient payment will be considered nonpayment. The license action for which the dishonored check or insufficient payment was tendered will not be completed by the department, and a fifteen dollar nonsufficient funds fee may be charged.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-170, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-175 May my designated escrow officer or branch designated escrow officer supervise more than one of my locations?** No, unless the director provides written consent. Designated escrow officers and branch designated escrow officers may not simultaneously supervise more than one location without the prior written consent of the department.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-175, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-176 If my designated escrow officer or branch designated escrow officer leaves, may I continue to operate my escrow business?** You may continue to complete existing client files to the extent necessary to avoid prejudicing those existing clients and files, provided you notify the department within one business day of the loss of or change of your designated escrow officer or branch designated escrow officer. You must notify the department of your proposed replacement designated escrow officer within five days of the loss or change, and you may not accept new clients or new files until your designated escrow officer has been approved by the department or the department has otherwise authorized new activities. If you need more than five days to identify your replacement designated escrow officer, you must seek approval from the department. Failure to replace your designated escrow officer or to receive approval from the director for an extension may result in an enforcement action against you and the suspension or revocation of your license. If your identified replacement is rejected by the department, you will have an additional thirty days to find a new replacement.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-176, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-177 What must I do to replace my designated escrow officer?** You must apply to the department for approval of the new designated escrow officer or branch designated escrow officer. The new designated

escrow officer must meet the requirements of WAC 208-680-110 and 208-680-135.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-177, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-180 May a designated escrow officer or a branch designated escrow officer work for two or more escrow agents?** No, unless the director provides written consent. A designated escrow officer or branch designated escrow officer may perform escrow services for only one escrow agent at a time without the prior written consent of the director or his/her designee. A designated escrow officer or branch designated escrow officer may only supervise those escrow agent and escrow agent employees for whom the officer has been designated by the director or his/her designee.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-180, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-185 What constitutes the misuse of my escrow officer license?** Regardless of whether or not you are compensated, it is misuse of your escrow license to:

(1) Allow another person to use it to establish and carry on an escrow agent business over which you do not have full management and supervisory responsibilities; or

(2) Fail to adequately supervise any individual conducting escrow or assisting in escrow under the authority of your license.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-185, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-195 Can an escrow agent prohibit its designated escrow officer from accessing its trust account books and records?** Yes, provided the agent notifies the department within twenty-four hours of the prohibition. Notification must include the reason for the prohibition, a current address and telephone number for the prohibited designated escrow officer, a request for a replacement designated escrow officer, and a notice that no escrow business will be conducted until a new designated escrow officer is approved or the director has given prior written consent. Unless this notice is given under this section, an escrow agent may not prohibit the designated escrow officer from accessing the escrow agent's trust account books and records.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-195, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-210 How must I identify my location or locations?** Any main or branch office of an escrow agent must be identified by displaying the escrow agent's name in a manner visible to the public. The displayed name must be the name recorded on the license for that particular location. Any physical location where an escrow agent holds itself out to the public as able to perform escrow services as defined under RCW 18.44.011(4) is considered an office for the purposes of this section.

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[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-210, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-225 Do I need to display my licenses?**

(1) The licenses of a designated escrow officer, branch designated escrow officer, and all other escrow officers must be prominently displayed in the office at the address on each individual license.

(2) An escrow agent license must be displayed in the main office of that escrow agent, and any branch licenses must be displayed in the appropriate branch office.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-225, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-235 If I move the location of one or more of my offices, what notification requirements must I meet?** You must notify the department of any change of the location or mailing address of your main or branch offices before engaging in business at your new locations or addresses. You must file your change of address application with the department at least ten business days before the change in business location or address. The application and required attachments must be accompanied by all applicable fees specified under WAC 208-680-155.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-235, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-240 Escrow agent renewal and reinstatement. (1) How long is an escrow agent license valid?** All escrow agent licenses expire on December 31st of every year.

(2) **Can I renew my escrow agent license?** Yes. Escrow agent licenses may be renewed by paying the applicable fee to the department.

(3) **I did not renew my escrow agent license on time, did not pay my escrow agent renewal fee by my renewal date, or my renewal fee payment was rejected. Can my escrow officers still provide escrow services?** No. Your escrow agent license is now expired, and any escrow services your escrow officers perform are considered unlicensed activities and are in violation of the act. If they continue to perform escrow services on behalf of your agent after expiration of your license, the department may investigate and bring an enforcement proceeding against them.

For additional information about failed payments, see WAC 208-680-170.

(4) **I did not renew my escrow agent license on time. Can I still renew my license, or do I need to file a new application?** Once your license has expired, you have thirty days to file for renewal and to pay the renewal fee, and the department may assess a penalty. If you don't renew, your license will be canceled on the thirty-first day. A canceled license cannot be renewed or reinstated. If your escrow agent license is canceled and you wish to provide escrow services, you will have to apply for a new escrow agent license. Any escrow services your escrow officers perform after your license is canceled are unlicensed activities and are in violation of the act.

Even if you renew your license before it is canceled, you (and your escrow officers) are still liable for any unlicensed activities conducted while your license was expired.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-240, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-243 Escrow officer renewal and reinstatement. (1) How long is an escrow officer license valid?**

Escrow officer licenses are valid for one year from the date of issuance.

**(2) Can I renew my escrow officer license?** Yes. Escrow officer licenses may be renewed by completing the on-line renewal application and paying the annual renewal license fee specified under WAC 208-680-155 by your renewal date. Your renewal date is the date one year after the day your license was issued.

**(3) I did not complete the on-line escrow officer renewal process, did not pay my renewal fee by my renewal date, or my renewal fee payment was rejected. Can I still provide escrow services?**

No. Your license is now expired, and any escrow services you perform are considered unlicensed activities and are in violation of the act. If you continue to perform escrow services after expiration of your license, the department may investigate and bring an enforcement proceeding against you.

For additional information about failed payments, see WAC 208-680-170.

**(4) I did not complete the on-line escrow officer form and pay my renewal fee by my renewal date. Can I still renew my license, or do I need to reapply?**

Once your license has expired, you have sixty days to file for renewal and to pay the renewal fee, and the department may assess a penalty. If you don't renew, your license will be canceled on the sixty-first day. A canceled license cannot be renewed or reinstated. If your license is canceled and you wish to provide escrow services, you will have to apply for a new license. You should note that if your new license is not issued within two years of your passing the escrow examination, you will have to take the escrow examination again. See WAC 208-680-135.

Even if you renew your license before it is canceled, you are still liable for any unlicensed activities you conducted while your license was expired.

For the renewal fee structure, see WAC 208-680-155.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-243, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-245 Closure of office. (1) If I close one of my offices, what effect does that have on any other offices?**

When the main office of an escrow agent closes, all branch offices must close. When a branch office closes and the main office remains licensed, the responsibility for records maintenance and trust accounting for the branch's transactions reverts to the main office.

**(2) If I close an office, what are my notification requirements?** When either the main office or a branch office of an escrow agent closes, either the designated escrow officer or a controlling person are jointly and severally

obliged to notify the department within twenty-four hours of closure.

In addition to notifying the department, the designated escrow officer or a controlling person must:

(a) Within thirty days of office closure, provide the department with an itemized accounting of funds held in trust at the time of closure, including the names of the principal parties to the transaction, the escrow number, the amount of funds held and the purpose of the funds. If the trust account balance is zero, the escrow agent must provide a reconciliation of the trial balance supporting the zero balance;

(b) Within thirty days of office closure, provide the department with the name, residence address and telephone number of the person responsible for the records;

(c) Within thirty days of office closure, the street address where the records are located;

(d) Within thirty days of any change in the person responsible for the records or the place the records are maintained, notify the department of the change;

(e) Within thirty days of closure, provide the department with an itemized list of your retained records, specifying their location and quantity, including the number of files and the number of boxes they are stored in; and

(f) Within thirty days of closure, provide the department with a records retention plan that identifies the ways that you will store, retrieve, and destroy your required records in compliance with the act and this section. Your plan must identify how you will continue to pay any costs associated with your storage location.

**(3) How long do I need to maintain my records after closure?**

(a) Your records must be maintained for at least six years, and must be maintained in the state of Washington. They must be available upon demand of the department during business hours and must be maintained in a readily retrievable manner. Closing one or more of your offices does not discharge your obligation to retain your records.

(b) If there is a change in the person responsible for your records, or if the location of your records change, you must notify the department within thirty days.

(c) Your records must be stored, retrievable, and destroyed in accordance with the records retention plan you have submitted to the department.

**(4) What are my obligations regarding my trust account after I close a branch office?**

If the closed branch office has an associated trust account that contains client funds at the time of closure, the designated escrow officer or branch designated escrow officer responsible for that location must provide the department with monthly reports and reconciliations of the trust account to the trial balance, in compliance with WAC 208-680-410(9), until the trust account balance is zero. These reconciliations are due within thirty days of the end of the preceding month. If the designated or branch designated escrow officer is no longer with the escrow agent, another principal officer must file the monthly reports and reconciliations.

**(5) What are my obligations regarding my trust account after I close my main office?**

If your trust account contains client funds at the time of closure, the designated escrow officer must provide the department with monthly reports and reconciliations of the trust bank account to the

trial balance, in compliance with WAC 208-680-410(9), until the trust bank account balance is zero. These reconciliations are due within thirty days of the end of the preceding month.

**(6) If I close my main office, what obligation do I have regarding winding up my business?** You must wind up your business in a reasonably prompt manner. Until your account balances are zero, you must also maintain your fidelity and surety bonds under WAC 208-680-310 and your errors and omissions policy under WAC 208-680-320.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-245, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-255 Deceptive names prohibited. What restrictions affect the name I may use for my business?** At the discretion of the director, an escrow agent may not receive a license or advertise in any manner using names or trade styles which: Are similar to current licensees; imply that the agent is a nonprofit organization, research organization, title insurance company, public bureau or public group; or are otherwise deceptive or in violation of RCW 30.04.020, 31.12.025, 32.04.020(2), 33.08.010, or any other statute that limits the use of names. A bona fide franchisee may be issued a license using the name of the franchisor with the firm name of the franchisee. Licensees and applicants should be aware that other statutes may further restrict the trade names that they may use.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-255, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-265 Reporting significant events. What significant events am I required to report to the department, and how quickly must I report them?** Depending on the significant event, you will have different reporting periods.

**(1) Ten-day prenotification required.** You must report to the director, in writing, changes to the following information at least ten days before they occur:

(a) Your location or mailing address. See RCW 18.44.061 and WAC 208-680-235;

(b) The form of your business organization or its place of organization. For example, if your business is changing from a sole proprietorship to a corporation, or from a corporation to a limited liability corporation, you must notify the department and may be required to file a new escrow agent application;

(c) The name and mailing address of your registered agent if you are an out-of-state escrow agent; or

(d) Your legal or trade name.

**(2) Twenty-four hour post-notification required.** You must notify the director in writing within twenty-four hours of any change to the trust status of your trust account. For example, if you use an interest-bearing trust account because you are required to under a limited practice officer or attorney license, and the status of your interest-bearing account changes for any reason, you must notify the department in writing within twenty-four hours. This notification does not affect your responsibility to comply at all times with the trust account requirements of the act and WAC 208-680-410.

**(3) Five-day post-notification required.** You must notify the director in writing within five business days of any changes to the escrow agent's surety or fidelity bonds or errors and omissions policy. See RCW 18.44.201.

**(4) Ten-day post-notification required.** You are required to notify the director in writing within ten days of the occurrence of any of the following:

(a) The cancellation or expiration of your Washington state master business license;

(b) For an in-state escrow agent, a change in your standing with the Washington secretary of state, including the resignation or change of your registered agent. If you are an out-of-state escrow agent, you are subject to subsection (1) of this section, which requires ten-day prenotification;

(c) The escrow agent filing for bankruptcy;

(d) The personal bankruptcy filing of one or more of your principal officers, controlling persons, licensed escrow officers, designated escrow officers, or branch designated escrow officers; or

(e) Any change in a principal officer, if no other reporting period is specified in the act or these rules. This includes changes in ownership affecting ten percent or more of the escrow agent's equity.

**(5) Other notification requirements.** In addition to the notice requirements under this section, you are required to follow any other notification requirements in the act or in these rules. These include, but are not limited to:

(a) For an escrow office closure, see WAC 208-680-245.

(b) For a transfer involving all or substantially all of its assets, the escrow agent must comply with WAC 208-680-125.

(c) For a change in principal officer or controlling person of a licensed escrow agent, the escrow agent must comply with WAC 208-680-125 and 208-680-110 and may be required to file a new application for an escrow agent license.

(d) For changes in designated escrow officer or branch designated escrow officer, see WAC 208-680-510.

(e) For termination of a licensed escrow officer, the escrow agent must notify the department within three business days that the escrow officer no longer represents the escrow agent. If the escrow officer was terminated for dishonesty or financial misconduct involving the business, the escrow agent must provide the department with that information. Within ten business days of the termination, the escrow agent must deliver the escrow officer's license to the department. See RCW 18.44.101.

(f) For the filing of quarterly reports, see WAC 208-680-425.

(g) For suit or complaint notification, see WAC 208-680-570.

(h) Within five business days of the escrow agent's license being revoked, surrendered, suspended, or the license expiring, the escrow agent shall notify the principal parties of preexisting escrows of the action. The contents of the notification must comply with RCW 18.44.465.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-265, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-275 Employment restrictions. (1) What criminal background restrictions are there on the**

**persons I may employ?** You may not employ any person to handle escrow transactions who has been convicted of or pleaded no contest within the last seven years to either:

- (a) A felony; or
- (b) A gross misdemeanor involving dishonesty.

**(2) What financial responsibility restrictions are there on the persons I may employ to handle client funds?**

In addition to the criminal background restrictions that apply to all employees handling escrow transactions, an employee that receives money, disburses funds, or acts as a signatory on trust accounts may not have demonstrated disregard in the management of his or her financial condition in the last three years. Disregard for his or her financial condition may be shown by, but is not limited to:

(a) Being subject to an administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act, the Insurance Code, the Securities Act, the Check Cashers and Sellers Act, or other similar laws in this or another state;

(b) An independent credit report issued by a recognized credit reporting agency that indicates the person has a history of unpaid debts; or

(c) Any other demonstration of his or her inability to appropriately manage his or her personal finances in a way that may endanger the funds of either the escrow agent or the escrow agent's client.

**(3) Do I need to examine my current employee's backgrounds to ensure that I am in compliance with this requirement?** Yes. The restrictions are on all employees, not just new hires.

**(4) How will the department enforce these provisions?**

(a) Each escrow agent must develop written policies and procedures to document its efforts to comply with section 4, chapter 34, Laws of 2010 and this section. You must make your policies and procedures available to the department upon request, and they must be maintained as part of your books and records;

(b) Your actual practices must be consistent with your written policies and procedures and your employees must be trained in those policies and procedures;

(c) Each year, each escrow agent's designated escrow officer must submit to the department a statement along with the agent's renewal paperwork attesting to its compliance with its internal policies and procedures. Failure to truthfully submit this statement is a violation of the act. A branch designated escrow officer may sign and submit the statement of compliance for a branch office; and

(d) The department reserves the right to perform its own background checks on escrow agent employees to determine compliance during examinations, investigations, and enforcement proceedings.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34), 10-20-124, § 208-680-275, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-310 Fidelity and surety bonds. (1)**

**What is a fidelity bond under the act?** For purposes of the act, a fidelity bond is a primary commercial blanket bond or an equivalent bond that is acceptable to the department, regardless of the name used to identify the specific insurance

product. A bond is an acceptable equivalent if it meets the requirements of the act. At a minimum, it must:

(a) Provide an aggregate minimum coverage of two hundred thousand dollars;

(b) Have a deductible of no more than ten thousand dollars;

(c) Cover fraudulent or dishonest acts committed by one or more corporate officers, partners, sole practitioners, escrow officers, and employees, acting alone or in concert; and

(d) Run to the benefit of the escrow agent, unless the fraudulent or dishonest act is committed by one or more corporate officers, partners, or sole practitioners, in which case it runs to the benefit of the harmed consumer.

**(2) I am unable to find a fidelity bond that permits third parties to claim on the bond. Can I use a bond that does not allow a third party to claim on the bond?** If you make a good faith effort to find a bond that complies with the statutory and regulatory requirements, and are unable to do so, the department may accept a bond that meets the other fidelity requirements but does not permit third-party claims. The department may relax this requirement only until a determination can be made about the general availability of conforming bonds.

Licenses that use a nonconforming bond as authorized under this subsection should be aware that the department may consider a refusal to file a claim on a fidelity bond for fraudulent or dishonest acts committed by a corporate officer, partner, or sole practitioner, to be conducting business in an unsafe or unsound manner under section 11, chapter 34, Laws of 2010 and WAC 208-680-645.

**(3) Am I required to maintain any other kind of bond?** If your fidelity bond has a deductible, you must maintain a surety bond in the amount of ten thousand dollars. The surety bond must run to the benefit of the state and any person harmed by an escrow agent or its employees. The surety bond must be an original signed and sealed document with power of attorney attached, not a certificate of insurance.

**(4) How long must I maintain my bonds?** All bonds must be kept in effect while you are conducting escrow business. Additionally, after closure of your office you must maintain your fidelity and surety bonds until your escrow trust accounts have been reconciled and all balances are zero.

**(5) How do I demonstrate compliance with this requirement?** Along with your application or renewal, you must provide the department with a certificate of insurance. You must also provide coverage information to the department upon demand. The certificate of insurance does not need to be entitled a certificate of insurance, but must include at a minimum:

(a) Your escrow agent's name;

(b) The insurer's name;

(c) The aggregate amount of coverage;

(d) The amount of any deductible; and

(e) A statement of compliance with RCW 18.44.201.

To ensure compliance with the bonding requirement, you must provide a copy of the full bond language to the department during your first year of compliance, and then upon demand in subsequent years.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-310, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-320 Errors and omissions policies. (1) What errors and omissions policy must I carry?** You must carry an errors and omissions policy in the minimum aggregate amount of fifty thousand dollars or provide the department with a cash or securities alternative as described in subsection (2) of this section. Either a bond or the cash or securities deposit must be maintained until you have closed your office, all of your accounts have been reconciled, and all balances are zero.

**(2) If I want to use a securities alternative to the errors and omissions bond requirement in RCW 18.44.201 (1)(b), what are the requirements?**

(a) Securities used as an alternative to an errors and omissions policy must be effectively delivered to the director along with a properly executed irrevocable assignment and any supporting documentation as required by the director.

(b) Only those securities that meet the definition of "investment securities" under chapter 208-512 WAC may be used to satisfy RCW 18.44.201. Securities issued by the licensed escrow agent or its affiliates are not acceptable securities for the purposes of fulfilling the requirements of RCW 18.44.201.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-320, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-330 When will the cash deposit or securities I used in lieu of an errors and omissions policy be returned to me?** (1) If your cash deposit or securities were deposited with the department to allow you to conduct escrow business, and you are closing, they will be returned to you the later of:

(a) One year from the date of the expiration, cancellation, surrender, or revocation of your license, unless there are any pending actions commenced under WAC 208-680-340 prior to the expiration, cancellation, surrender, or revocation of the escrow agent's license; or

(b) The day your trust accounts are fully reconciled and show a zero balance.

(2) If your cash deposit or securities were provided to the department to allow you to conduct escrow business and you have obtained an errors and omissions policy, your deposit or securities will be returned within thirty days of your providing the department with proof that you have obtained an errors and omissions policy.

(3) If your cash deposit or securities were provided to the department as part of a licensing application, they will be returned to you within thirty days of the department's denial of your application for an escrow agent license.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-330, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-340 How are claims filed on my cash deposit or securities in lieu of an errors and omissions policy?** (1) Upon receipt of notification of a legal action for which notice is required to be given to the department under

WAC 208-680-570, the department will notify the complaining party of the existence of any cash deposit or securities and the provisions of this chapter.

(2) A claim against the cash deposit or securities must be in the form of certified copy of a final judgment from a court of competent jurisdiction. Upon receipt of a claim in the proper form, the department will release the amount of cash deposit or securities sufficient to pay the final judgment.

(3) The department will notify the escrow agent of the receipt of the claim and advise the escrow agent that it must deposit additional cash or securities with the department to maintain the required principal amount of fifty thousand dollars after payment of the claim.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-340, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-350 How long do I have to maintain my cash deposit and securities, and what are the consequences of failure to do so?** If you assign, transfer, or set over a cash or securities deposit in lieu of an errors and omissions policy, you must keep the deposit in full force and effect at all times as a condition precedent to your authority to transact escrow business. Your deposit or securities must be at least the principal amount of fifty thousand dollars. After closure, you must maintain your cash deposit until your trust account has a zero balance.

Failure to maintain the deposit or securities at the minimum level is sufficient grounds for the suspension or revocation of your license.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-350, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-360 What happens if my errors and omissions policy or my fidelity or surety bonds expire or are canceled?** In the event of cancellation or expiration of your errors and omissions policy or your fidelity or surety bonds, you must file satisfactory evidence of a new policy, bond, or reinstatement with the director before conducting any escrow business. Failure to file a new policy, bond, or reinstatement is sufficient grounds for the suspension or revocation of your license. During the time you do not have full insurance and bonding coverage in effect, you may not transact escrow business.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-360, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-410 Administration of funds held in trust. (1) Who is responsible for funds received from the principal parties to an escrow?** The designated escrow officer or branch designated escrow officer is responsible for all funds received from the principal parties to an escrow transaction or escrow collection account. He or she must hold the funds in trust for the purposes of the transaction or agreement and must not utilize such funds for the benefit of the agent or any person not entitled to such benefit. The escrow agent must establish a trust account or accounts in a recognized Washington state depository. The escrow agent, through the designated escrow officer, is responsible for

depositing, holding, disbursing, and accounting for funds in the trust account as provided in the act and the rules. For branch offices, the branch designated escrow officer is also responsible for depositing, holding, disbursing, and accounting for funds in the branch's trust account. The escrow agent is ultimately responsible for all the actions of the designated escrow officer or branch designated escrow officer.

**(2) What kind of an account can I use as a trust account for my escrow services?** Your trust account or accounts must be designated as a trust account or accounts in the certified name of the escrow agent. Your trust accounts must be noninterest bearing demand deposit accounts unless they are one of the following:

(a) An interest-bearing trust account or dividend earning investment account containing funds pertaining to an individual escrow transaction or escrow collection account, if directed to use one by a written agreement between and signed by all principal parties to the transaction. The agreement must specify the manner of distribution of accumulated interest to the parties to the transaction;

(b) An interest-bearing trust account or dividend-earning investment account containing only funds held on behalf of an owner, vendor, lessor, etc., involving escrow collections, if directed to use one by a written agreement or directive signed by the principal parties. The agreement must specify the manner of distribution of accumulated interest to the parties to the transaction;

(c) An interest-bearing trust account containing funds related to transactions in which a limited practice officer has prepared documents under authorization set forth in APR 12(h); or

(d) An interest-bearing trust account containing funds related to transactions in which a licensed attorney has prepared documents.

**(3) What information do I need to provide to the department regarding my trust account?** Each time you renew your escrow agent license, you must provide the department with an authorization to examine your trust account. This authorization must be on a form specified by the department, signed by a representative of the bank, and notarized.

**(4) Can I set up a system of records and procedures that varies from this section?** You must establish and maintain a system of records and procedures as provided in this section unless you receive approval from the department. Any alternative records or procedures proposed for use by the escrow agent must be approved in advance by the department.

**(5) Who is responsible for disbursements of funds and funds held in trust?** The escrow agent is ultimately responsible for the disbursement of all funds received and held in trust, regardless of how they are disbursed.

**(6) Who may have signatory authority over trust account disbursements?** The designated escrow officer must have signatory authority on all trust accounts, and he or she may authorize any employee that he or she supervises to sign disbursements by including them on a bank account signature card. Branch designated escrow officers must have signature authority for trust accounts at their branch, and may have signature authority for other branches if the designated escrow officer authorizes it on either a temporary or perma-

nent basis. The signatory authority of any employee other than a designated or branch designated escrow officer is discretionary, may be conditional or temporary, and may be revoked by the designated escrow officer at any time.

**(7) When must my client's funds be deposited into a trust account?** You must deposit any funds you receive for an escrow transaction or collection account into the escrow agent's trust account on the first banking day following receipt.

This requirement does not apply to funds owned exclusively by the agent.

**(8) What do I need to do when I receive escrow funds?**

(a) When you receive funds, you must record the date, amount, source, and purpose on either a cash receipts journal or duplicate receipt. If you use a duplicate receipt, you must keep it as a permanent record.

(b) When you deposit funds into your trust account or accounts, the deposit must be documented by:

(i) For traditionally deposited funds, a duplicate bank deposit slip that is validated by bank imprint or an attached deposit receipt that bears the signature of the authorized representative of the agent indicating that the funds were actually deposited into the proper trust account;

(ii) For funds received via wire transfer, posting of the deposit in the same manner as other receipts with a traceable identifying name or number supplied by the financial institution or transferring entity. You must also make arrangements for a follow-up "hard copy" receipt for the deposit; or

(iii) For remotely deposited funds, a follow-up "hard copy" receipt for the deposit.

(c) The traceable identifying name or number supplied by the financial institution in (b) of this subsection does not need to be a name or number you use to identify the transaction, but must be enough to allow the department to track and verify the transfer.

**(9) What are my responsibilities regarding my individual client ledgers?** You must maintain an individual client ledger for each escrow transaction or collection account for which funds are received in trust. All receipts and disbursements must be posted in the individual client ledger. Your client ledgers are subject to the following requirements:

(a) Credit entries must show the date of deposit or wire transfer, amount, and name of remitter.

(b) Debit entries must show the date of check or wire transfer, check number (if funds are disbursed via check), amount of check or wire transfer, and name of payee.

(c) You must prepare monthly trial balances of each client ledger. You must reconcile the ledger with both the trust account bank statement and the trust account receipts and disbursement records. The reconciliation must be signed by the designated escrow officer or branch designated escrow officer, and must be maintained as permanent records.

**(10) What are my obligations regarding a reconciled trust account?** Your reconciled trust account or accounts must be equal at all times to your outstanding trust liability to clients. Your outstanding trust liability to clients must equal the trial balance of all of your escrows with undisbursed balances.

**(11) What requirements must I meet for disbursements of trust funds?**

(a) Disbursed funds must be good funds.

(b) Unless otherwise authorized in the escrow instructions, you must make trust fund disbursements by check. Checks must be drawn on your trust account or accounts, and must identify which specific escrow transaction or collection account the disbursement relates to. The number of each check and its amount, date, payee, and the specific client's ledger sheet debited must be shown in the cash register or cash disbursement journal. All data must agree exactly with the check as written.

(c) You may make disbursements via wire transfer if both of the following are true:

(i) You have made arrangements with the financial institution that holds your trust account or accounts to provide you with a follow-up "hard copy" debit memo when funds are disbursed via wire transfer; and

(ii) You retain in the transaction file a copy of instructions signed by the owner of the funds to be wire transferred identifying the receiving entity and account number.

(d) You may make appropriate transfers between escrow accounts by ledger entries alone if you use either:

(i) A transfer form containing the date of the transfer, the amount being transferred, the identity of the accounts being debited and credited, and the signature of a person authorized to approve disbursements; or

(ii) An intrabank debit memo transfer form, and all escrow accounts involved in the transaction are closed through the same bank account.

(e) If you are making recurring transfers between collection escrows, they must be authorized by standing escrow instructions on file from all appropriate parties.

**(12) I have a voided check written on the trust account. What do I need to do with it?** You must permanently deface the check and retain it.

**(13) What are my obligations regarding fees payable to me for my escrow services?** You must be paid via a separate check or bank transfer, drawn on the trust account and bearing the escrow or transaction number, for escrow and service fees. This payment must be provided for in the escrow instructions. All of your fees relating to a transaction may be combined in a single check, or transfer, but either the closing or settlement statement or an addendum signed by the principal parties must itemize the included charges.

**(14) What are my obligations regarding fees payable to me for my collection account services?** Your collection account fees may be paid with a single check for each collection period as long as such a check is supported by a schedule of fees and identified to each individual account. Your fees must be paid monthly unless the collection contract agreement provides a longer collection period.

**(15) May I have funds in my trust account that are not related to an escrow transaction or collection account?** No. Only funds related to an escrow transaction or an escrow collection account may be placed in your trust account. None of your funds may be in the trust account for any reason.

**(16) What kinds of disbursements am I not allowed to make from my trust account?** You may only make dis-

bursements from your trust account for authorized purposes. Specifically, you may not make disbursements:

(a) For items not related to a specific escrow transaction or escrow collection account, including aggregate disbursements to the department of revenue of unclaimed funds from multiple transactions. Such disbursements must be made for each specific account with unclaimed funds;

(b) To any person or for any reason before the closing of an escrow transaction, or before the happening of a condition set forth in the escrow instructions. You may make a disbursement before the closing of a transaction or before a triggering condition if you receive a written release from all principal parties of the escrow transaction or collection account. Unless the disbursement is disputed under WAC 208-680-560, you are permitted to disburse earnest money funds without a written release if the earnest money agreement terminates according to its own terms prior to closing and provides for such disbursement.

(c) Relating to a specific escrow transaction or collection account in excess of the actual amount held in your trust account in connection with such transaction or collection account;

(d) To pay any fee owed to your employees or for your own business expenses. Such fees or expenses must be paid from your own regular business bank account and not from your trust account or accounts;

(e) For bank charges of any nature. You must make arrangements with your bank to have any bank charges applicable to the trust accounts charged to your regular business bank account, or to provide a separate statement of bank charges so they may be paid from your regular business bank account. However, you may pay bank charges from the interest you receive on trust accounts allowed under subsection (2)(c) or (d) of this section;

(f) For preauthorization of payments by the financial institution for recurring expenses such as mortgage payments on behalf of the owner if the account contains tenant security deposits or funds belonging to more than one client;

(g) Of funds received as a damage or security deposit involving a lease or rental contract, to the property owner or any other person or persons, without the written authority of the lessee. You must hold these funds until the end of the tenancy, at which point you must disburse them to the person or persons entitled to the funds under the terms of the rental or lease agreement, and as consistent with the provisions of RCW 59.18.270, Residential Landlord-Tenant Act, or other appropriate statute.

(h) If the financial institution's automated system does not have the ability to charge fees to another account, or does not provide a separate statement for the service fees as required by (e) of this subsection, and the account is debited for service fees, you must deposit funds from your general business or other nontrust account to cover the service fee charged within one banking day after receipt of notice.

**(17) If I choose to use a computer accounting system, what additional requirements do I need to meet?** The provisions of this section apply to both manual and computerized accounting systems. However, there are some additional requirements if you choose to use a computer accounting system.

(a) Your computer accounting system must provide a capability to back-up all data files;

(b) You must print receipt and check registers at least once monthly. You must retain printed records as permanent records. Reconciliations and trial balances must be conducted at least once monthly, and then printed and retained as a permanent record;

(c) You must maintain a printed, dated source document file to support any changes to existing accounting records;

(d) If your computer accounting system has the ability to write checks by filling in fields on existing checks, the check number must be preprinted on the check or a voucher copy retained by the supplier. Your computer accounting system may assign suffixes or subaccount codes before or after the check number for identification purposes;

(e) If your computer accounting system has the ability to print entire checks on blank check stock using MICR toner or a similar system, it must track all checks that are printed. Those checks must be verifiable against your check register to ensure no duplication or skipping of check numbers;

(f) The check number must appear in the magnetic coding which also identifies the account number for readability by the financial institution's computer; and

(g) All checks you write must be included within the computer accounting system.

**(18) I have unclaimed funds in my trust account. What do I need to do with them?** Unclaimed funds are governed by and defined in the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW. If you have unclaimed funds in your trust account, your designated escrow officer or branch designated escrow officer must contact the department of revenue for disposition instructions. You must maintain a record of the correspondence relating to unclaimed funds for at least five years.

You must dispose of unclaimed funds in accordance with this section on a rolling basis to ensure that you do not have unclaimed funds in your trust account. You must examine your books at least once a quarter to determine if you have unclaimed funds. If you have unclaimed funds in your trust account, they must be purged at least quarterly in order to comply with the completed quarterly reconciliation as required in WAC 208-680-425.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-410, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-425 What are the requirements for my quarterly reports?** (1) In order to determine compliance with chapter 18.44 RCW and chapter 208-680 WAC, each escrow agent must file with the director, within thirty days following the end of each fiscal quarter, the following in a form prescribed by the director:

(a) A report concerning its operations, including the number of escrow transactions conducted and the total dollar volume of those transactions;

(b) A report concerning the trust account administration; and

(c) A one page summary of the completed three way reconciliation from the last month of the quarter.

(2) A three way reconciliation is completed if it demonstrates:

(a) You have no unclaimed funds in your trust account;

(b) You have no overdue instruments; and

(c) You have no outstanding balances more than nine months old, unless:

(i) The outstanding balance is authorized by valid instructions from the principal parties stating a finite period the funds should be held; or

(ii) You have conducted a quarterly examination of your records to ensure compliance with the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW.

(3) For trust account matters, your designated escrow officer must certify that he or she has reviewed the trust account report and any exhibits filed with it and that the information contained in the report and any exhibits is true and correct. This certification must be under penalty of perjury in a manner consistent with RCW 9A.72.085. The chief executive officer or chief financial officer of the escrow agent, or other knowledgeable person acceptable to the director, may certify the information on the report not related to trust account matters.

(4) Failure to file these reports within the time period specified in this rule is a violation of RCW 18.44.430 and may result in legal action by the department. False certifications of compliance may result in revocation of your license and referral to a prosecuting attorney.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-425, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-510 What are the designated escrow officer's responsibilities?** (1) The designated escrow officer is responsible for the custody, safety, and correctness of entries of all required escrow records. He or she retains this responsibility even if he or she has assigned the duties of preparation, custody, recording or disbursing to another person or persons. The designated escrow officer also bears responsibility for all actions of branch designated escrow officers.

(2) The branch designated escrow officer bears responsibility for the custody, safety and correctness of entries of all required escrow records at his or her assigned branch office. The designated escrow officer bears responsibility for all actions of the branch designated escrow officer.

(3) Before issuing a new license reflecting a change of the designated escrow officer or branch designated escrow officer of a licensed escrow agent, the department must receive evidence that the responsibility for preexisting escrows is being transferred to the incoming designated escrow officer or incoming branch designated escrow officer. Such evidence must be demonstrated by a statement signed by both the outgoing designated escrow officer and the incoming designated escrow officer that lists all outstanding trust liabilities and certifies that funds in the trust account maintained by the agent are adequate to meet all trust liabilities. This statement must be received by the department before the changeover can occur. In the case of a change in branch designated escrow officer, the outgoing and incoming branch designated escrow officers must sign the statement.

(4) If the department is concerned that the licensee's trust accounting records may not comply with the requirements of WAC 208-680-410, and before accepting a new designated

escrow officer or branch designated escrow officer, the department may retain or instruct the licensee to retain a certified public accountant, or other person acceptable to the department, to reconcile the trust account or accounts and report whether they have been maintained in compliance with WAC 208-680-410 and to report on the adequacy of the licensee's internal routines and controls to ensure continuing compliance with WAC 208-680-410.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-510, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-520 What records am I required to keep?** (1) You are required to keep the following trust account records:

(a) Copies of all duplicate deposit slips, validated by the bank or bearing the signature of the designated escrow officer or branch designated escrow officer, and including the date of actual deposit; wires; separate receipts; or other evidence of the deposit of funds into the trust account;

(b) Copies of all checks, wires, or other evidence of any disbursement from the trust account;

(c) Copies of all bank statements for the trust account, including all paid checks or copies of paid checks, electronic or otherwise, provided that such copies are made in such a manner that the endorsement on the paid check is visible and readable;

(d) A client's ledger containing an individual ledger sheet for each escrow transaction or collection account, unless you use a computer accounting system. If you use a computer accounting system, an individual ledger sheet does not need to be maintained in the transaction files until the closing of the escrow transaction or collection account as long as the computer accounting system records provide the status of the escrow transaction or collection account funds on a daily basis;

(e) Copies of all written receipts and prenumbered checks, if you use a manual trust accounting system to administer the trust account.

(2) In addition to trust account records, you are required to keep additional records, including:

(a) Transaction files containing all agreements, contracts, documents, leases, escrow instructions, closing statements and correspondence for each transaction;

(b) Reconciled bank statements and canceled checks for all bank accounts of the escrow agent, including but not limited to the pooled escrow trust accounts, individual escrow trust accounts, and general business operating accounts of the agent;

(c) All checks and receipts produced by any computer accounting system. These checks and receipts must be sequentially numbered. You must retain the original of any voided or incomplete sequentially numbered check or receipt which was not issued.

(3) All records other than the reconciled bank statements must identify the transaction they relate to, either by escrow number or some other clear identifying information.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-520, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-530 Records.** (1) **What requirements are there for my records?** All of your records must be accurate, posted, and kept current to the date of the most recent activity.

(2) **How long do I need to retain my records?** You must keep required records and make them available for inspection by the department for a minimum of six years from completion of a transaction. Records must be retained in their original format until the related transaction is completed and the client's trust account balance is zero.

(3) **Where do I need to retain my records?** You must at all times maintain your records in a location that is reasonably likely to preserve them. For the first year after completion, records of a transaction must be maintained at an address where you are licensed to maintain an escrow office. Records of transactions that have been completed for more than one year may be stored at another location within the state of Washington. Records stored at a remote location must be available during business hours upon demand of the department and must be maintained in a manner that is readily retrievable.

(4) **When can I convert my records to an electronic format?** Once a transaction is completed and a client's trust account balance is zero, you may convert that client's file into a permanent storage format and destroy the originals.

(5) **How can I store my records electronically?** Records stored electronically must be electronically imaged and stored on permanent storage media like optical disks or microfilm. The storage media must meet the following requirements:

(a) The retrieval process must provide the ability to view and print the records on-site in their original form, including any signatures or other writings placed on the records prior to imaging;

(b) The equipment must be made available on- and off-site to the department for the purposes of an examination or investigation;

(c) The records must be stored exclusively in a nonrewritable and nonerasable format;

(d) The hardware and software necessary to display and print the records must be maintained by the escrow agent during the required retention period under subsection (2) of this section.

Permanent storage does not affect your duties under subsection (3) of this section to maintain files in your licensed location for the first year.

(6) **Are there records that I cannot store in an unlicensed location or in an electronic format?** Transactions and accounting records may not be stored at a remote location or on permanent storage media as described under this section if there are funds relating to the transaction, including reconveyances or holdbacks, remaining in the trust account.

(7) **I am closing my escrow agent business. What are my obligations regarding my records?** You must ensure that all records retention requirements are met and that records are properly destroyed when appropriate. You also have an ongoing duty to ensure the department is informed about who has your records and where they are being maintained.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-530, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-540 What are my obligations regarding escrow transactions?** The escrow agent is responsible for conducting escrow agreements between the principal parties. The agent must at a minimum:

(1) **Escrow instructions.** Prepare or accept an instrument of escrow instructions from and agreed to by the principal parties and the escrow agent. The escrow instructions must be signed by the principal parties. Escrow instructions must contain any and all agreements between the principal parties and the escrow agent or incorporate other written agreements by reference. The escrow instructions must not be modified except by written agreement signed by all principal parties and accepted by the escrow agent.

(2) **Fee disclosures.** Disclose in writing to the principal parties when fees for services provided may be earned by the escrow agent. The disclosure must specifically identify the fees using the same terminology as that provided on the closing statement (for example the HUD-1 or HUD-1A), and reflect the dollar amount associated with each item identified as a fee payable to the escrow agent. For purposes of this section, fees payable to the escrow agent mean any item payable directly to the escrow agent whether accounted for by the escrow agent as profit, potential for profit, or the offset of justifiable costs.

(3) **Justifiable fees.** Ensure that all fees are for bona fide services and bear a reasonable relationship in value to the services performed, regardless of whether the services are performed by the escrow agent or by a third party under contract with the escrow agent. No charges known at the time of closing for services performed by a third party to the transaction may exceed the actual cost of the third-party service. When the cost of a third-party service cannot be known with certainty at the time of closing, an escrow agent may:

(a) Provide an estimate of the charge for the third-party service on the preliminary closing statement, disclose the actual charge for the third-party service on the final disclosure statement, and refund any amounts collected in excess of the actual charge for the third-party service to the principal parties;

(b) Assume responsibility for performing the service and charge the principal parties a one-time fee for performing the service. The one-time fee must be reasonably related to the value of the service provided. The escrow agent may contract with a third party to perform the service. The escrow agent must disclose to the principal parties in the preliminary and final settlement statement that the fee is being paid to the escrow agent. The escrow agent may transfer such fees earned into the general account in compliance with WAC 208-680-410; or

(c) If conducting a subescrow transaction, charge the principal parties the average charges as determined by the master escrow agent or title insurance company.

(4) **Escrow instructions.** Comply with the escrow instructions for completing the closing statement. All funds disbursed on the closing statement should be bona fide and supported with adequate documents.

(5) **Recordkeeping.** Maintain copies of the escrow instructions and closing statement (for example, HUD-1 or HUD-1A) in the escrow transaction file.

(6) **Addendums.** Require an addendum to the purchase agreement for any and all material changes in the terms of the escrow transaction, including but not limited to, changes in the financing of the transaction.

(7) **Services.** Provide the services and perform all acts pursuant to the escrow instructions.

(8) **Closing statements.** Provide a complete detailed closing statement (for example HUD-1 or HUD-1A) as it applies to each principal at the time the transaction is closed. The escrow agent must retain a copy of all closing statements in the transaction file, even if funds are not handled by the agent. The closing statements must show, at a minimum:

(a) The date of closing;

(b) The total purchase price;

(c) An itemization of all adjustments, moneys or things of value received or paid in compliance with requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2601, and Regulation X, 24 C.F.R. Section 3500, and all other applicable rules and regulations. Such itemization must include the name of the person or company to whom each individual amount is paid, or from whom each individual amount is received. If there is not enough room on the closing statement for a full itemization, itemization may be provided on an addendum as long as a copy of the addendum was also provided to the principal parties and is included in the transaction file;

(d) A detail of debits and credits identified to each principal party; and

(e) Names of payees, makers and assignees of all notes paid, made or assumed.

(9) **Payment of proceeds.** Pay the net proceeds of sale directly to the seller unless otherwise provided in writing by the seller or a court of competent jurisdiction.

(10) **Obtain signatures.** Obtain original signatures of the principal parties on either the preliminary or final closing statement and maintain a copy of the signed closing statement in the escrow transaction file, unless the escrow instructions authorize use of faxed or electronic signatures. If an escrow agent completes a transaction based on faxed signatures in accordance with the escrow instructions, it must obtain original signatures for the file only if the escrow instructions so require.

(11) **Final closing statements.** Provide a copy of the final closing statement to each principal party and to each real estate broker or agent involved with the transaction.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-540, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-550 Am I obligated to conduct escrow transactions within the time period specified in the escrow instructions?** Yes. An escrow agent must perform all acts required of the escrow agent as expeditiously as possible and within any time period identified in the escrow instructions. Intentional or negligent delay in such performance is a violation of RCW 18.44.430 (1)(i), and may result in enforcement action by the department.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-550, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-560 What requirements must I follow when disbursing funds or other things of value?** (1) The escrow agent must disburse funds as set forth in the escrow instructions. Disbursement of any money or other or other things of value in violation before the happening of the conditions of the escrow instructions is a violation of RCW 18.44.430 (1)(e). Funds and other items or documents must be paid and/or disbursed immediately upon closing of the transaction or as specifically agreed to in writing by the principal parties, and all funds must be disbursed in compliance with RCW 18.44.400(3).

(2) Upon written notice from any principal party that the ownership of the funds is in dispute or is unclear based on the written agreements of the parties, the escrow agent must hold such funds until it receives written notice from all principal parties that the dispute has been resolved. In lieu of holding such funds, the escrow agent may interplead the funds into a court of competent jurisdiction pursuant to chapter 4.08 RCW. Upon notification of a bona fide dispute between the principal parties, the department may, at its discretion, order the escrow agent to interplead the funds into a court of competent jurisdiction. If the department orders an escrow agent to interplead funds, the escrow agent may deduct only the actual costs of interpleading from the escrow funds.

(3) Except as provided otherwise in this section, at no time may an escrow agent disburse or delay the disbursement of funds without the written consent of the principal parties unless the delay is necessary to ensure the funds being disbursed are good funds.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-560, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-570 When do I have to notify the department about a lawsuit or complaint against me?** Every escrow agent and escrow officer must, within twenty days after service or knowledge of a suit or complaint, notify the department of the following:

(1) Any criminal complaint, information, indictment, or conviction (including a plea of guilty or nolo contendere) in which the licensee is named as a defendant.

(2) Entry of a civil court order, verdict, or judgment, against the licensee in any court of competent jurisdiction in which the subject matter involves any escrow or business related activity by the licensee. Notification is required regardless of any pending appeal.

(3) Any administrative action or Washington state bar association disciplinary action taken against an escrow officer or any of an escrow agent's employees for subject matter involving escrow or related business activities, if the designated or branch designated escrow officer is aware of such action. Notification is required regardless of any pending appeal.

(4) If an escrow agent or escrow officer is aware of it, any criminal complaint, information, indictment, or conviction of any of a licensee's employees where the complaint, information, indictment, or conviction is for a felony or a

gross misdemeanor involving dishonesty. Notification is required regardless of any pending appeal, and notifying the department under this section does not change an escrow agent's responsibilities under WAC 208-680-275.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-570, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-580 What are the responsibilities of a licensed escrow officer?** (1) It is the responsibility of every licensed escrow officer to be knowledgeable of and keep current with chapter 18.44 RCW and the rules implementing chapter 18.44 RCW.

(2) It is the responsibility of every licensed escrow officer to keep the department informed of his or her current home address.

(3) It is the responsibility of every licensed escrow officer to ensure accessibility of their escrow agent's offices and records to representatives of the department.

(4) It is the responsibility of every licensed escrow officer to promptly inform the department if he or she loses his or her affiliation with an escrow agent, and to stop conducting escrow transactions until he or she associates with a licensed escrow agent.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-580, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-590 What practices are violations of the act?** It is a violation of the act for you or your employees 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) Knowingly make, publish, or disseminate any false, deceptive, or misleading information in the conduct of the business of escrow, or relative to the business of escrow or relative to any person engaged therein;

(5) Knowingly receive or take possession for personal use of any property of any escrow business, other than in payment authorized by this chapter, and with intent to defraud, omit to make, or cause or direct to be made, a full and true entry thereof in the books and accounts of the business;

(6) Make or concur in making any false entry, or omit or concur in omitting to make any material entry, in its books or accounts;

(7) Knowingly make or publish, or concur in making or publishing, any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein;

(8) Willfully fail to make any proper entry in the books of the escrow business required by law;

(9) Fail to disclose in a timely manner to the other officers, directors, controlling persons, designated escrow officer, or other licensed escrow officers the receipt of service of a notice of an application for an injunction or other legal pro-

cess affecting the property or business of an escrow agent, including in the case of a licensed escrow agent an order to cease and desist or other order of the director;

(10) Fail to make any report or statement lawfully required by the director or other public official;

(11) Fail to comply with any requirement of any applicable federal or state act as described in RCW 18.44.301;

(12) Collect a fee for tracking unclaimed funds that is not a bona fide out-of-pocket expense;

(13) Convert unclaimed funds for personal use; or

(14) Receive compensation or any thing of value from any party for assisting in "real estate flopping." "Real estate flopping" is a short sale transaction where the value of a property is misrepresented to the lender, who then authorizes sale of the property for less than market value. The property is resold to another person at market value or closer to market value, creating a profit. The failure to disclose the nature of the transactions or the true value of the property to the lender constitutes fraud on the lender, the original property owner, or the second buyer, and is a violation of this chapter.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-590, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-610 What are the department's examination powers under the act?** (1) For the purposes of determining compliance with chapter 18.44 RCW and chapter 208-680 WAC, the department may examine, wherever located, the records used in the business of every licensee and any person who must be licensed under the act.

(2) The department may make necessary inquiry of the business or personal affairs of each person identified in subsection (1) of this section for the purposes of determining compliance with the act and these rules. In conducting examinations, the department may:

(a) Access, during reasonable business hours, the offices and places of business, books, accounts, papers, files, records, including electronic records, computers, safes, and vaults of all such persons. Access must be given to both the trust account records and general business account records;

(b) Interview or take sworn testimony of any person subject to RCW 18.44.021, or any employee or independent contractor of any person subject to RCW 18.44.021;

(c) Interview or take sworn testimony of any principal party or agent to the transaction;

(d) Require the filing of statements in writing by any person, under oath or otherwise, as to all facts and circumstances concerning the matters under examination;

(e) Copy, or request to be copied, any items described in this section;

(f) Analyze and review any items described in this section;

(g) Require assistance, as necessary, from any employee or person subject to the act;

(h) Conduct meetings and exit reviews with owners, management, officers, or employees of any person subject to the act; and

(i) Prepare and deliver, as necessary, a report of examination requiring a response from the recipient.

(3) The department may make examinations as frequently as it deems necessary or appropriate; and

(4) The department may charge an appropriate hourly audit fee for examination under RCW 18.44.121(5).

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-610, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-620 What are the department's investigatory powers under the act?** (1) The department may make at any time public or private investigations within or outside of this state to determine whether any person has violated or is about to violate chapter 18.44 RCW, or any rule, regulation, or order under chapter 18.44 RCW, or to aid in the enforcement of chapter 18.44 RCW. For that purpose, the department may conduct inquiries, interviews, and examinations of any person deemed relevant to the investigation.

(2) The department may investigate the escrow business or other business or personal financial records of any person subject to investigation under subsection (1) of this section. In conducting investigations, the department may:

(a) Access, during reasonable business hours, any location where any escrow business records are or may be located, including offices, places of business, personal residences, storage facilities, computers, safes, and vaults, for the purposes of obtaining, reviewing, or copying books, accounts, papers, files, or records, including electronic records, or records stored in any format;

(b) Administer oaths or affirmations;

(c) Subpoena witnesses and compel their attendance at a time and place determined by the director or designated person;

(d) Subpoena the production of any evidence or matter which is relevant to the investigation, including the taking of such evidence;

(e) Subpoena any person to determine the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence;

(f) Interview, publicly or privately, under administration of oath or otherwise, or take the sworn testimony of: Any principal party, any agent to the transaction, any employee or independent contractor of any person subject to the act, or any other person whose testimony is deemed relevant to the department's investigation;

(g) Require the filing of statements, affidavits, or declarations in writing by any person, under administration of oath, notary or otherwise, as to all facts and circumstances concerning the matters under investigation;

(h) Copy, or request to be copied, any items described in this section, or if the department makes a determination that there is a danger that original records may be destroyed, altered, or removed to deny the director access, or that original documents are necessary for the preparation of a criminal referral, the department may take originals of any items described in this section, regardless of the source of such items. Originals and copies taken by the department may be held, returned, or forwarded to other regulatory or law enforcement officials as deemed necessary;

(i) Analyze and review any items described in this section;

(j) Receive assistance, as necessary, from any employee or other person subject to RCW 18.44.021;

(k) Conduct meetings and exit reviews with owners, management, officers, or employees of any person subject to RCW 18.44.021;

(l) Conduct meetings and share information with other regulatory or law enforcement agencies;

(m) Prepare and deliver, as necessary, a report of investigation requiring a response from the recipient.

(3) For purposes of this section and RCW 18.44.420(1), "public" means open to the public as determined by the department.

(4) For purposes of this section and RCW 18.44.420(1), "private" means closed to the public or any person, including attorneys for witnesses, as determined by the department.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-620, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-630 What are the department's enforcement powers under the act?** The department may conduct the following types of enforcement activity:

(1) Enter orders, including temporary orders to cease and desist, compelling any person to cease and desist from an unlawful practice, and to take such affirmative action as in the judgment of the department will carry out the purposes of this chapter;

(2) Enter charges for violations of chapter 18.44 RCW and chapter 208-680 WAC;

(3) Bring an action, with or without prior administrative proceedings, in the superior court to enjoin conduct or to enforce compliance with chapter 18.44 RCW, or any rule, regulation, or order of the department;

(4) Appoint a receiver or conservator to take over, operate, or liquidate any licensed escrow agent;

(5) Hold hearings;

(6) Make referrals to other regulatory or law enforcement agencies; or

(7) Under specific circumstances, take control of an escrow agent. See WAC 208-680-645.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-630, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-640 Sanctions. (1) What sanctions may the department impose on a licensed escrow agent or officer?** The department may take any or all of the following actions against escrow licensees:

(a) Deny, suspend, or revoke the escrow agent's license for any violation of RCW 18.44.430;

(b) Remove or prohibit any corporate officer, controlling person, director, employee, or licensed escrow officer from participation in the conduct of the affairs of any licensed escrow agent, for any violation of RCW 18.44.430;

(c) Order a licensed escrow agent or officer to pay restitution to an injured party; or

(d) Impose a fine of up to one hundred dollars per day against any escrow officer or agent for each day's violation of chapter 18.44 RCW or these rules.

**(2) I work as an escrow agent, but I am excepted from licensure. What sanctions may the department impose on**

**me for violations of the act?** The department may deny a future application for a license under the act.

**(3) I have been sanctioned in the past for providing unlicensed escrow services in Washington. May I apply for an escrow license?** Yes, if you were sanctioned more than five years ago. Under RCW 18.44.430, the department may deny a license to anyone who has violated the act or its implementing rules, including the licensure requirements. The department will not issue a license to a person who has provided unlicensed escrow services within the last five years, but may issue a license to a person whose unlicensed activity took place more than five years before his or her application. If your unlicensed activity was particularly widespread or egregious, or if it posed a particular risk to the public interest, the department may still deny you an escrow license even if your unlicensed activity took place more than five years before your application.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-640, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-645 Seizure of business. (1) When may the department take control of my escrow business?** The department may take control of a licensed escrow agent if, as a result of an examination, report, investigation, or complaint, it appears to the department that the licensee:

(a) Is conducting business in an unsafe and unsound manner that poses a risk to the public;

(b) Has suspended payment of its trust obligations;

(c) Has refused to comply with a lawfully issued order of the department and one or more consumers are likely to be harmed by noncompliance.

A licensee may be considered to be conducting its business in an unsafe and unsound manner that is injurious to the public if it refuses to file a valid claim against its fidelity bond or errors and omissions policy for claims that affect a consumer and his or her property.

**(2) What can the department do with a business it has taken control of?** The department may take any action that the licensee would be able to take. At a minimum, the department may:

(a) Work with other licensees to complete pending escrow transactions;

(b) Discontinue unsafe or unsound practices and violations of laws or regulations;

(c) Make good any deficiencies;

(d) Make claims against the licensee's fidelity or surety bonds or errors and omissions insurance to make consumers harmed by employee activities whole;

(e) Make restitution to injured parties;

(f) Renew the licensee's license;

(g) Renew or make premium payments to maintain the licensee's bonds and insurance; and

(h) Take necessary steps to wind down the business of the escrow agent where it is clear that the escrow agent cannot be safely operated.

**(3) How long may the department keep control of a business?** The department may maintain control over a business until the licensee is able to resume business or the business is fully liquidated.

(4) **I also conduct nonescrow business through my licensed escrow agent business. If the department seizes my escrow business, will it also seize these other areas of business?** When possible, the department will only take control of the portion of a business related to escrow. If the portions of a business are not clearly divisible, the department will determine its actions on a case-by-case basis, based in part on the relationship between and degree of commingling of the business lines.

(5) **I am an attorney whose law practice is licensed as an escrow agent. Will the department seize my law practice under this section?** Where an attorney's law practice is excepted from licensure, the law practice is not subject to seizure under the act. For attorneys with a business entity licensed under the act, the department will generally not exercise its seizure authority against a business entity or portion of a business entity supervised by the Washington state bar association. In any event, the department will only take control of the portion of a business related to escrow as set forth in subsection (4) of the section.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-645, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-647 Seizure of business—Notice to licensee.** Under the circumstances set forth in WAC 208-680-645, the department may give the licensee notice to correct an unsafe or unsound condition. If the licensee fails to comply with the terms of the notice within thirty days of its issuance or within such further time as the department may allow, then the department may take possession of the licensee.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-647, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-648 What can I do if the department takes possession of my business without cause?** You may challenge the department's decision to take possession of your business under the Administrative Procedure Act, chapter 34.05 RCW.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-648, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-650 What examination and investigation fees may the department charge me, and what specialists may the department retain in connection to its examination or investigation of an escrow agent or officer?** (1) The director may retain attorneys, appraisers, independent certified public accountants, or other professionals and specialists as examiners, auditors, or investigators, the cost of which shall be borne by the person who is the subject of the examination, audit, or investigation.

(2) The expense of an examination or investigation pursuant to WAC 208-680-610 or 208-680-620 inside or outside this state shall be borne by the person examined or investigated.

(3) The expenses of an examination or investigation pursuant to this section may include, but are not limited to, staff time, travel, lodging, per diem, and any other expenses related to the examination or investigation. At a reasonable

time following each examination or investigation performed, the director must provide the person examined with an invoice for the expenses incurred during the examination or investigation. Payment of the invoiced amount is due within thirty days of the date of the invoice.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-650, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-660 Abandoned escrow records. What happens if I fail to maintain my records after closing?** If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic formats, or proper destruction.

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-660, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-710 Organization of commission. (1) What is the escrow commission, and what are its duties?**

The escrow commission is composed of the director or his or her designee and five board members appointed by the director. The commission provides advice on the escrow officer examination, acts in an advisory capacity to the department regarding the activities of escrow agents and escrow officers, and performs such other duties and functions as prescribed by chapter 18.44 RCW.

(2) **Are escrow commission meetings open to the public?** Yes. Meetings of the escrow commission are open to the public. Records, minutes, and recordings of each meeting are also available on the department's web site, [www.dfi.wa.gov](http://www.dfi.wa.gov).

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-710, filed 10/5/10, effective 11/5/10.]

**WAC 208-680-720 Escrow commission meeting notice. I would like to know when the next meeting of the escrow commission will be held. How can I get this information?** If you would like to know about the date, time, place and agenda of the escrow commission meetings, you may make a request of the department, or may join the department's escrow e-mail distribution list, the listserv, at <http://dfi.wa.gov/about/listservs.htm>.

Dates and times of the escrow commission's meetings are also posted on the department's web site, [www.dfi.wa.gov](http://www.dfi.wa.gov).

[Statutory Authority: RCW 43.320.040 and chapter 18.44 RCW (as amended by 2010 c 34). 10-20-124, § 208-680-720, filed 10/5/10, effective 11/5/10.]

## Chapter 208-690 WAC

### REGULATION OF MONEY SERVICES PROVIDERS

#### WAC

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#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

208-690-160	Late fees. [Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-160, filed 7/7/04, effective 8/7/04.] Repealed by 10-12-038, filed 5/25/10, effective 6/25/10. Statutory Authority: RCW 43.320.-040, chapter 19.230 RCW, and 2010 c 73.
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**WAC 208-690-010 Definitions.** What definitions are applicable to these rules? The definitions in RCW 19.230.010 and this section apply throughout this chapter unless the context clearly requires otherwise.

"Act" means the Uniform Money Services Act, chapter 19.230 RCW.

"Audited financial statement" means a statement prepared by an independent accountant according to generally accepted accounting principles.

"Authorized delegate" means a person a licensee designates to provide money services on behalf of the licensee. A person that is exempt from licensing under this chapter cannot have an authorized delegate. An authorized delegate must only perform the contractual duties as authorized by the licensee in the contract between the licensee and the authorized delegate.

"Bill payment" service means a type of money transmission when an intermediary accepts funds from a consumer for transmission to a merchant for payment on a consumer's account. The intermediary may or may not charge a fee for this service.

"Money transmission" means receiving money or its equivalent value to transmit, deliver, or instruct to be delivered the money or its equivalent value to another location, inside or outside the United States, by any means including, but not limited to, by wire, facsimile, or electronic transfer. Money transmission does not include the provision solely of connection services to the internet, telecommunications services, or network access. Money transmission includes selling, issuing, or acting as an intermediary for open-loop stored value devices and payment instruments, but not closed-loop stored value devices.

"Payment instrument" means a check, draft, money order, or traveler's check for the transmission or payment of money or its equivalent value, whether or not negotiable. Payment instrument does not include a credit card voucher,

letter of credit, or instrument that is redeemable by the issuer in goods or services.

"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, corporation, or association, or the owner of a sole proprietorship.

"RCW" means the *Revised Code of Washington*.

"Stored value" means the recognition of value or credit stored on a device. Stored value is either open loop, meaning the value is redeemable at multiple, unaffiliated merchants or service providers, or closed loop meaning the value is primarily intended to be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the stored value, its affiliates, or others involved in transactions functionally related to the issuer or its affiliates.

"Stored value device" means a card or other device that electronically stores or provides access to funds and is available for transferring the funds or value to others.

"Subdelegate" means a person that provides money services on behalf of an authorized delegate without having a direct contractual relationship with a licensee.

"Tangible net worth" means the physical worth of a licensee, calculated by taking a licensee's assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property, and goodwill.

"Unsafe or unsound practice" means a practice or conduct by a person licensed or required to be licensed by the act to provide money services, or an authorized delegate of such a person, which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the financial condition of the licensee or the interests of its customers.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-010, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-010, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-015 What are some activities that are exempt from the act?** (1) The issuance, sale, use, redemption, or exchange of closed-loop stored value devices.

(2) The issuance, sale, use, redemption, or exchange of payment instruments by a person licensed under chapter 31.45 RCW.

(3) The selling or issuing of open-loop stored value devices when the value on the devices are covered by federal deposit insurance immediately upon sale or issue. See the Federal Deposit Insurance Corporation (FDIC) Financial Institution Letter 129-2008 dated November 13, 2008, to determine if the underlying funds of stored value devices are covered by FDIC insurance immediately upon sale or issue.

(4) See also RCW 19.230.020.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-015, filed 10/5/10, effective 11/5/10.]

**WAC 208-690-016 Can the director waive the licensing provisions of the act?** Yes. The director has the authority to waive the licensing provisions of the act upon a determination the waiver facilitates commerce and protects consumers.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-016, filed 10/5/10, effective 11/5/10.]

**WAC 208-690-020 Voluntary license application.**

May I apply for and receive a license under this chapter even though I am exempt from licensing?

(1) Any person otherwise exempt from licensing under the provisions of the act may voluntarily submit an application to the director for a money transmitter or currency exchange license. The director shall review such application and may grant or deny licenses to such applicants upon the same grounds and subject to payment of the same fees as are applicable to persons required to be licensed.

(2) Upon receipt of a license under this section, the licensee is required to maintain a valid license and is subject to all the provisions of the act and these rules until the license is surrendered or revoked.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37, 10-20-123, § 208-690-020, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040, 04-15-005, § 208-690-020, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-030 License application.** What must I do to apply for a license? You must file:

(1) A completed application in a form and in a medium prescribed by the director. The application must contain:

(a) The legal name, business address, and residential address, if applicable, of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(b) The legal name, residential and business address, date of birth, Social Security number, employment history for the five-year period preceding the submission of the application of the applicant's proposed responsible individual, and documentation that the proposed responsible individual is a citizen of the United States or has obtained legal immigration status to work in the United States. In addition, the applicant must provide the fingerprints of the proposed responsible individual and a personal credit report from a recognized independent credit reporting agency on the proposed responsible individual;

(c) For the ten-year period preceding submission of the application, a list of any criminal convictions of the proposed responsible individual of the applicant, any material litigation in which the applicant has been involved, and any litigation involving the proposed responsible individual relating to the provision of money services;

(d) A description of any money services previously provided by the applicant and the money services the applicant seeks to provide in this state;

(e) A list of the applicant's authorized delegates including the business name and any additional names by which the business may be known, the business address and name of the primary contact person for each authorized delegate, and the locations in this state where the applicant and its authorized delegates propose to engage in the provision of money services;

(f) A list of other states in which the applicant is licensed to engage in money transmission, or provide other money services, and any license revocations, suspensions, restrictions, or other disciplinary action taken against the applicant in another state;

(g) A list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money

services business involving the proposed responsible individual;

(h) Information concerning any bankruptcy or receivership proceedings involving or affecting the applicant or the proposed responsible individual;

(i) A sample form of the contract for authorized delegates, if applicable;

(j) A description of the source of money and credit to be used by the applicant to provide money services; and

(k) A full description of the screening process used by the applicant in selecting authorized delegates, including a sample of any forms used, and the method used to screen for criminal history.

(2) If the applicant is a corporation, limited liability company, partnership, or other entity, the applicant must also provide:

(a) The date of the applicant's incorporation or formation and the state or country of incorporation or formation;

(b) If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(c) A brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(d) The legal name, any fictitious or trade name, all business and residential addresses, date of birth, Social Security number, and employment history in the ten-year period preceding the submission of the application for each executive officer, board director, or person that has control of the applicant;

(e) If the applicant or its corporate parent is not a publicly traded entity, the fingerprints of each executive officer, board director, or person that has control of the applicant;

(f) A list of any criminal convictions, material litigation, and any litigation related to the provision of money services, in the ten-year period preceding the submission of the application in which any executive officer, board director, or person in control of the applicant has been involved;

(g) A copy of the applicant's audited financial statements for the most recent fiscal year or, if the applicant is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the applicant's most recent audited consolidated annual financial statement, and in each case, if available, for the two-year period preceding the submission of the application;

(h) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period preceding the submission of the application;

(i) If the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m);

(j) If the applicant is a wholly owned subsidiary of:

(i) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m); or

(ii) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(k) If the applicant has a registered agent in this state, the name and address of the applicant's registered agent in this state.

(3) If the application is for money transmission, a surety bond as required by WAC 208-690-040 or an assignment of a certificate of deposit, as required by WAC 208-690-045.

(4) An application fee as prescribed by WAC 208-690-130(1). The application fee is not refundable.

(5) An initial license fee as prescribed by WAC 208-690-130(2). The initial license fee will be refunded if the license application is denied.

(6) If the application is for money transmission, a certification that the applicant's investment portfolio includes only permissible investments under RCW 19.230.200 and 19.230.210.

The director may waive one or more requirements of subsection (1) or (2) of this section or permit an applicant to submit other information in lieu of the required information.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-030, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-030, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-031 What will happen if I abandon my license application?** If you do not respond as directed within forty-five days to the department's request for additional required information, your money transmission or currency exchange license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-031, filed 10/5/10, effective 11/5/10.]

**WAC 208-690-035 Authorized delegates.** What are the rules for having authorized delegates?

(1) Only a licensee may designate an authorized delegate. A person that is exempt or excluded from licensing under RCW 19.230.020 cannot have an authorized delegate. A person accepting consumers' funds for transmission through an exempt or excluded entity under RCW 19.230.020 is a money transmitter and must be licensed under the act.

(2) An authorized delegate, or any other person exempt or excluded from the licensing requirements of chapter 19.230 RCW, cannot have an authorized delegate.

(3) Any person who is designated by a licensee to provide money services on behalf of the licensee is an authorized delegate, regardless of whether that person would be exempt or excluded from the application of chapter 19.230 RCW if they provided money services on their own behalf.

(4) A written contract between a licensee and an authorized delegate must contain, among all the other contract provisions, provisions with language substantially similar to the following:

(a) The authorized delegate must operate in full compliance with chapter 19.230 RCW and the rules adopted under this chapter.

(b) The authorized delegate is prohibited from using sub-delegates or conducting business from locations not authorized by the department.

(c) A description of the specific money services the licensee has permitted the authorized delegate to perform on behalf of the licensee.

(5) The authorized delegate may only conduct activities authorized by the licensee in the written agreement, unless the authorized delegate is also a licensee.

(6) You may contract with another licensee to use that other licensee's existing authorized delegates to load funds onto your existing open-loop stored value cards. If the shared authorized delegate sells new open-loop stored value cards for you, you must add the authorized delegate to your authorized delegate roster.

(7) You must maintain your authorized delegate agreements and contracts with other licensees to share existing authorized delegates as part of your books and records pursuant to RCW 19.230.170 and make them available to the department upon request.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-035, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-035, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-040 Surety bond.** What are the bonding requirements?

(1) Each money transmitter licensee must continuously maintain a surety bond as required by RCW 19.230.050, issued by a company authorized to do surety business in this state, as a surety. The surety may not be a wholly owned subsidiary or affiliate of the applicant or licensee.

(2) The penal sum of the bond must be calculated quarterly during the first year of licensing and thereafter annually. The calculation must be based on the previous twelve months' money transmission and payment instrument dollar volume. The bond amount must be calculated at ten thousand dollars for every one million dollars of money transmission and payment instrument dollar volume. The minimum surety bond amount is ten thousand dollars. The maximum surety bond amount is five hundred fifty thousand dollars.

(3) The initial bond amount will be ten thousand dollars and must be reevaluated based on the schedule set forth in subsection (2) of this section.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-040, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-040, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-045 Alternatives to the surety bond.** May I hold a certificate of deposit instead of the bond? In lieu of the surety bond required under WAC 208-690-040, an applicant or licensee may substitute an assignment of a certificate of deposit in favor of the director in a form provided by the director. The certificate of deposit must be issued by a financial institution in the state of Washington whose shares or deposits are insured by an agency of the government of the United States. The depositor is entitled to receive all interest

and dividends on the certificate of deposit. The assignment of a certificate of deposit will be held for at least five years after the date when a replacement security instrument is filed with the director, or at least five years after the date the money transmitter licensee ceases to provide money services in this state.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37, 10-20-123, § 208-690-045, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040, 04-15-005, § 208-690-045, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-050 Increase of security.** Will DFI ever require me to increase the amount of security I hold? The director may increase the amount of security required, to a maximum of one million dollars, if the financial condition of a money transmitter licensee so requires. The director may consider, without limitation, the following criteria:

- (1) Significant reduction of net worth.
- (2) Financial losses.
- (3) Potential losses resulting from violations of chapter 19.230 RCW, or these rules;
- (4) Licensee filing for bankruptcy.
- (5) The initiation of any proceedings against the licensee in any state or foreign country.
- (6) The filing of a state or federal criminal charge against the licensee, person in control, responsible individual, executive officer, board director, employee, authorized delegate or principal, based on conduct related to providing money services or money laundering.
- (7) A licensee, executive officer, board director, person in control, responsible individual, principal or authorized delegate being convicted of a crime.
- (8) Any unsafe or unsound practice.
- (9) A judicial or administrative finding against a money transmitter licensee under chapter 19.86 RCW, or an examination report finding that the money transmitter licensee engaged in an unfair or deceptive act or practice in the conduct of its business.
- (10) Other events and circumstances that, in the judgment of the director, impair the ability of the licensee to meet its obligations to its money services customers.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37, 10-20-123, § 208-690-050, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040, 04-15-005, § 208-690-050, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-060 Tangible net worth.** What are the rules for my tangible net worth requirements?

(1) A money transmitter applicant or licensee must demonstrate and maintain a tangible net worth calculated at ten thousand dollars for every one million dollars of money transmission and payment instrument dollar volume. The minimum tangible net worth is ten thousand dollars; the maximum three million dollars.

(2) Determinations of tangible net worth must be made according to generally accepted accounting principles.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37, 10-20-123, § 208-690-060, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040, 04-15-005, § 208-690-060, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-070 License denial.** When may DFI deny my license application?

(1) Director may deny a money services license if the director determines that:

- (a) The application is incomplete;
- (b) The surety bond or net worth requirements of WAC 208-690-040 through 208-690-060 have not been met;
- (c) The general fitness and character requirements of RCW 19.230.070 or 19.230.100 have not been met as demonstrated by findings including, but not limited to, the following:

(i) The applicant, an executive officer, proposed responsible person, board director, person in control or authorized delegate has been convicted of any felony within the past ten years;

(ii) The applicant, an executive officer, proposed responsible person, board director, person in control or authorized delegate has been convicted of a crime involving a financial transaction within the past ten years;

(iii) The applicant, an executive officer, proposed responsible person, board director or person in control has criminal, civil, or administrative charges issued against him/them in any jurisdiction for violations relating to a financial transaction(s) within the past ten years;

(iv) The applicant, an executive officer, proposed responsible person, board director, or person in control has falsified any information supplied in connection with the application;

(v) The applicant, or any proposed authorized delegate thereof, has had an adverse action taken against any business license related to providing financial services by a jurisdiction within the United States within the past five years;

(vi) The applicant has allowed a business under its control to deteriorate to a condition of insolvency determined by the fact that its liabilities exceed its assets or it cannot meet its liabilities as they mature;

(d) The applicant, or any authorized delegate thereof, fails to respond to a request for information from the director;

(e) The description of the screening process used by the applicant in selecting authorized delegates supplied by the applicant describes a process that is ineffective in determining the fitness of proposed authorized delegates;

(f) The applicant has failed to register with the United States Department of the Treasury as required by 31 U.S.C. Section 5330;

(g) The applicant, an executive officer, proposed responsible individual, board director, or person in control is listed on the specially designated nationals and blocked persons list prepared by the United States Department of the Treasury as a potential threat to commit terrorist acts or to finance terrorist acts.

(2) In lieu of denying an application as authorized by any of the findings in subsection (1) of this section, the director may return the application or extend the review period if the director determines that the condition or circumstances that would likely lead to denial may be temporary and resolved satisfactorily within a reasonable period of time. The director may resume processing the application if the director determines that a favorable resolution of the disqualifying condition has occurred.

(3) The director may revoke or suspend a license and issue an order to cease and desist operations as a money services licensee if:

(a) Another jurisdiction initiates an adverse action against the money services license of the licensee; or

(b) Upon finding the existence of any condition or fact that would have led to denial of a license if known by the director during the processing of the application.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-070, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-070, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-075 Transaction records.** Must I keep records pursuant to federal law in addition to keeping them for Washington law? Yes. In addition to the records required to be retained under RCW 19.230.170, you must maintain a record of money transmittals in accordance with applicable sections of Financial Recordkeeping and Reporting of Currency and Foreign Transactions, Title 31, Code of Federal Regulations, Part 103, as now appearing or hereafter amended.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-075, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-075, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-080 Audited annual financial statement.** Am I required to have audited financial statements? Yes. You are required to have an audited financial statement prepared annually in accordance with generally accepted accounting principles.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-080, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-080, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-085 Permissible investments.** How do I structure permissible investments? You must maintain permissible investment levels pursuant to RCW 19.230.200 and 19.230.210.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-085, filed 10/5/10, effective 11/5/10.]

**WAC 208-690-090 Annual report and annual assessment.** What are the annual report and assessment requirements? Every licensee must submit a completed annual report and annual license assessment fee prescribed by WAC 208-690-140. The completed report and the fee must be received in the department office no later than 5:00 p.m. July 1, or 5:00 p.m. the next business day if July 1 is not a business day. A form for the preparation of the annual report and license assessment will be made available by the department by electronic transmission or mailed upon request. The report must include the following:

(1) If the licensee is a money transmitter, a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent company.

(2) A list of current authorized delegates in a form and in a medium prescribed by the director.

(3) If the licensee is a money transmitter, a certification that the licensee's investment portfolio includes only permissible investments under RCW 19.230.200 and 19.230.210.

(4) If the licensee is a money transmitter, proof that the licensee has an adequate surety bond or assignment of a certificate of deposit and net worth as required by WAC 208-690-040 through 208-690-060.

(5) A description of each material change, as defined by WAC 208-690-110, which has not been previously reported to the director.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-090, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-090, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-100 Is there a penalty for not filing my annual report and annual assessment on time?** (1) If you fail to submit the required annual report or annual assessment fee by August 2, 2010, or by July 1, each year thereafter, the director may suspend your license and assess a late fee. The late fee is ten percent of the annual assessment if paid thirty or fewer days late and twenty-five percent of the annual assessment if paid more than thirty days late. If your license has been suspended under this section and you submit a completed annual report, the annual assessment and the late fee to the department office no later than 5:00 p.m., thirty calendar days after the original due date, the license suspension may be removed. If the delay extends past thirty days, your license has expired effective thirty-one days after the original due date.

(2) The director may reinstate an expired license under this section if, within forty-five days after the original due date, you:

(a) File the complete annual report and pay both the annual license assessment and the late fee; and

(b) You or your delegates did not engage in providing money services during the period the license was expired.

(3) If any of the deadlines in this section occur on a day that is not a business day, the deadline shall be the next business day.

[Statutory Authority: RCW 43.320.040, chapter 19.230 RCW, and 2010 c 73. 10-12-038, § 208-690-100, filed 5/25/10, effective 6/25/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-100, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-110 Report of material change.** What must I report to DFI if something about my business changes? Material changes described in this section must be reported to the director within thirty business days of the occurrence of the change. "Material change" means any change that is not trivial, and that, if not reported, would cause an investigation or examination to be misled or delayed. Such changes include, but are not limited to:

(1) A change of the physical and/or mailing address;

(2) A change of the responsible individual, compliance officer, or other executive officers or board members;

(3) A change of the licensee's name or DBA (doing business as);

(4) A change in the location where the records of the licensee that are required to be retained under RCW 19.230.170 are kept;

(5) The obtaining, revocation or surrender of a money services license in any other jurisdiction;

(6) The conviction of the licensee, an executive officer, responsible individual, board director, principal, or person in control of a misdemeanor or gross misdemeanor involving a financial transaction; and

(7) Other similar activities or events.

The fee prescribed by WAC 208-690-150 must accompany each report.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-110, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-110, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-112 Other reports.** What events about my business must I report to DFI? You must file a report with the director within one business day after you have reason to know of the occurrence of any of the following events:

(1) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, under the United States Bankruptcy Code (11 U.S.C. 101-110) for bankruptcy or reorganization;

(2) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of creditors;

(3) The commencement of a proceeding to revoke, suspend, restrict, or condition its license, or otherwise discipline or sanction the licensee, in a state or country in which the licensee engages in business or is licensed;

(4) The cancellation or other impairment of the licensee's bond or other security;

(5) A charge or conviction of the licensee or of an executive officer, responsible individual, board director of the licensee, principal, or person in control of the licensee, for a felony; or

(6) A charge or conviction of an authorized delegate for a felony.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-112, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-112, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-115 Request for approval of change of control.** What must I do to request approval for a change of control of my business? You must request approval of a change of control at least thirty days prior to the proposed change of control. The request for approval must include:

(1) A comprehensive description of the proposed change that sets forth:

(a) The identity of all persons acquiring control under the proposed change;

(b) The ownership interest and managerial authority of all persons in control under the proposed change.

(2) For each new person in control under the proposed change:

(a) Biographical information, including employment history for the immediate previous five years;

(b) A personal credit report issued by a recognized independent credit reporting agency;

(c) A signed authorization for a background investigation on a form prescribed by the director.

(3) A transaction fee as prescribed by WAC 208-690-150.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-115, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-115, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-120 Quarterly reports—Deletion of authorized delegates, locations—Address or name change.** When must I notify DFI of certain changes to information about my business?

(1) You must file with the director within forty-five days after the end of each fiscal quarter:

(a) Any addition or deletion of licensee-owned locations where money services are provided, including mobile locations;

(b) Any change in the name or trade name (DBA or doing business as) or business address of an existing authorized delegate;

(c) Any additions or deletions from its roster of authorized delegates; and

(d) The fee required by WAC 208-690-150.

(2) If there is no change in the roster of authorized delegates or locations where money services are provided, or no changes in the name or trade name (DBA or doing business as) or business address of any authorized delegate during a fiscal quarter, no report is required.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-120, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-120, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-130 License fees.** What are the fees I must pay to get a license? You must pay the following fees:

(1) A license fee of one thousand dollars.

(2) An additional license fee of one hundred dollars for each additional location where you or an authorized delegate will provide money services, up to a maximum of five thousand dollars.

(3) The license fee in subsection (1) of this section may be partially refundable if the application is withdrawn or denied.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-130, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-130, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-140 How is the annual assessment calculated and when is the annual assessment due?** (1) The annual assessment is calculated by multiplying 0.0004 by the previous year's adjusted Washington volume of money transmission, currency exchange, stored value sales, and payment instrument sales, with a minimum assessment of one thousand dollars and a maximum assessment of one hundred thousand dollars.

(a) For purposes of this section, "adjusted Washington volume" means:

(i) For money transmission, ninety-five percent of all funds transmitted;

(ii) For currency exchange, five percent of all currency exchanged;

(iii) For stored value sales, ninety-five percent of all funds loaded onto open-loop stored value devices; and

(iv) For payment instrument sales, seventy percent of the first ten million dollars of payment instrument sales, twenty percent of the volume over ten million through five hundred million dollars, and one percent of any amount over five hundred million dollars.

(b) For the assessment paid on the adjusted Washington volume for 2009 and 2010, any examination fees (excluding actual travel expenses) paid to the department during those years will be subtracted from the total amount owed.

(2) The annual assessment is due August 2, 2010, and July 1 each year thereafter.

[Statutory Authority: RCW 43.320.040, chapter 19.230 RCW, and 2010 c 37. 10-12-038, § 208-690-140, filed 5/25/10, effective 6/25/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-140, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-150 Transaction fee.** What fees must I pay to make changes to my license?

(1) You must pay fifty dollars to add an authorized delegate to your quarterly roster of authorized delegates. The fee for adding authorized delegates is capped at five thousand dollars.

(2) You must pay thirty dollars for the following changes to your license:

(a) Change of physical or mailing address, name or trade name (DBA or doing business as);

(b) Request for approval of a change in control;

(c) Change of the responsible individual;

(d) Change in the business/trade name, location of an existing authorized delegate, company-owned location; or

(e) Material change. Material changes include, but are not limited to, the addition or deletion of executive officers or board directors.

(3) Transaction fees are separate, distinct from, and in addition to investigation and examination fees under WAC 208-690-170.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-150, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-150, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-170 Investigation fee.** What fee will I be charged if DFI investigates my business?

(1) The director will collect fees of seventy-five dollars per hour for investigations, including, but not limited to, the following services:

(a) The review and attendant investigation of:

(i) Changes in control changes in the responsible individual;

(ii) Changes in the identity or location of authorized delegates; and

(iii) Other material changes.

(b) The review and attendant investigation of permissible investments.

(2) The licensee, applicant or person subject to licensing under this chapter who is the subject of an examination or investigation must pay the actual expenses of required out-of-

state travel including, but not limited to, travel, lodging and per diem expense.

(3) Investigation fees are separate, distinct from, and in addition to transaction fees imposed by WAC 208-690-150.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-170, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-170, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-180 Authority to conduct examinations and investigations.** When may DFI examine or investigate my business?

(1) For the purposes of discovering violations of chapter 19.230 RCW or these rules, discovering unsafe and unsound practices, or securing information lawfully required under chapter 19.230 RCW, the director may at any time, either personally or by designee, investigate or examine the business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in the business of every licensee or its authorized delegates, and of every person who is engaged in the business of providing money services, whether the person acts or claims to act under or without the authority of chapter 19.230 RCW. For these purposes, the director or designated representative must have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons. The director may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of any investigation, examination, or hearing and may require such person to produce books, accounts, papers, documents, records, files and any other information the director or designated person declares is relevant to the inquiry. The director may require the production of original books, accounts, papers, documents, records, files, and other information; may require that such original books, accounts, papers, documents, records, files, and other information be copied; or make copies himself or herself or by designee of such original books, accounts, papers, documents, records, files, or other information. If the director determines that there is a danger that original records may be destroyed, altered, or removed to deny access, or hinder an examination or investigation, or that original documents are necessary for the preparation of a criminal referral, the director may take possession of originals of any items described in this section, regardless of the source of such items. Originals and copies taken by the director may be held, returned, or forwarded to other regulatory or law enforcement officials as determined necessary by the director. The director or designated person may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, documents, records, files, or other information.

(2) The licensee, applicant, or person subject to licensing under this chapter must pay the cost of examinations and investigations as specified in RCW 19.230.320 and WAC 208-690-170.

(3) Information obtained during an examination or investigation under these rules may be disclosed only as provided in RCW 19.230.190.

(4) The director may retain attorneys, accountants, or other professionals and specialists as examiners, auditors or

investigators, to conduct or assist in the conduct or examinations or investigations. The cost of these services must be borne by the person who is the subject of the examination or investigation.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-180, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 19.230.310 and 43.320.040. 04-15-005, § 208-690-180, filed 7/7/04, effective 8/7/04.]

**WAC 208-690-200 What documentation must I provide to consumers to be in compliance with RCW 19.230-330(2)?** (1) For general money transmission transactions, the receipt must include the name, address, and phone number of the licensee in addition to the fee and exchange rate disclosure information as required by RCW 19.230.330(2).

(2) For stored value transactions the receipt may include the name, address, and telephone number of the authorized delegate, provided that the licensee's contact information is provided in or on the stored value device packaging or on the stored value device itself.

(3) For bill payment transactions, the receipt may include the name, address, and telephone number of the authorized delegate; provided the licensee's name accompanies the authorized delegate's information on the receipt.

[Statutory Authority: RCW 43.320.040, 19.230.310, 2010 c 37. 10-20-123, § 208-690-200, filed 10/5/10, effective 11/5/10.]