

2 **SHB 1678 - H AMD 117 ADOPTED 3-12-97**

3 By Representative L. Thomas

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 19.146.010 and 1994 c 33 s 3 are each amended to read
8 as follows:

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

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

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

19 (3) "Computer loan (~~(origination)~~) information systems" or "~~(ELO)~~
20 CLI system" means the real estate mortgage financing information system
21 defined by rule of the director.

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

23 (5) "Designated broker" means a natural person designated by the
24 applicant for a license or licensee who meets the experience,
25 education, and examination requirements set forth in RCW
26 19.146.210(1)(e).

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

28 (~~(+6)~~) (7) "Employee" means an individual who has an employment
29 relationship acknowledged by both the employee and the licensee, and
30 the individual is treated as an employee by the licensee for purposes
31 of compliance with federal income tax laws.

32 (~~(+7)~~) (8) "Independent contractor" or "person who independently
33 contracts" means any person that expressly or impliedly contracts to
34 perform mortgage brokering services for another and that with respect
35 to its manner or means of performing the services is not subject to the

1 other's right of control, and that is not treated as an employee by the
2 other for purposes of compliance with federal income tax laws.

3 ~~((+8+))~~ (9) "Investigation" means an examination undertaken for the
4 purpose of detection of violations of this chapter or securing
5 information lawfully required under this chapter.

6 (10) "Loan originator" means a person employed, either directly or
7 indirectly, or retained as an independent contractor by a person
8 required to be licensed as a mortgage broker, or a natural person who
9 represents a person required to be licensed as a mortgage broker, in
10 the performance of any act specified in subsection ~~((+10+))~~ (12) of
11 this section.

12 ~~((+9+))~~ (11) "Lock-in agreement" means an agreement with a borrower
13 made by a mortgage broker or loan originator, in which the mortgage
14 broker or loan originator agrees that, for a period of time, a specific
15 interest rate or other financing terms will be the rate or terms at
16 which it will make a loan available to that borrower.

17 ~~((+10+))~~ (12) "Mortgage broker" means any person who for
18 compensation or gain, or in the expectation of compensation or gain (a)
19 makes a residential mortgage loan or assists a person in obtaining or
20 applying to obtain a residential mortgage loan or (b) holds himself or
21 herself out as being able to make a residential mortgage loan or assist
22 a person in obtaining or applying to obtain a residential mortgage
23 loan.

24 ~~((+11+))~~ (13) "Person" means a natural person, corporation,
25 company, limited liability corporation, partnership, or association.

26 ~~((+12+))~~ (14) "Residential mortgage loan" means any loan primarily
27 for personal, family, or household use secured by a mortgage or deed of
28 trust on residential real estate upon which is constructed or intended
29 to be constructed a single family dwelling or multiple family dwelling
30 of four or less units.

31 ~~((+13+))~~ (15) "Third-party provider" means any person other than a
32 mortgage broker or lender who provides goods or services to the
33 mortgage broker in connection with the preparation of the borrower's
34 loan and includes, but is not limited to, credit reporting agencies,
35 title companies, appraisers, structural and pest inspectors, or escrow
36 companies.

37 **Sec. 2.** RCW 19.146.020 and 1994 c 33 s 5 are each amended to read
38 as follows:

1 (1) Except as provided under subsections (2) and (3) of this
2 section, the following are exempt from all provisions of this chapter:

3 (a) Any person doing business under the laws of (~~this~~) the state
4 of Washington or the United States relating to commercial banks, bank
5 holding companies, savings banks, trust companies, savings and loan
6 associations, credit unions, consumer loan companies, insurance
7 companies, or real estate investment trusts as defined in 26 U.S.C.
8 Sec. 856 and the affiliates, subsidiaries, and service corporations
9 thereof;

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

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

17 (d) Any person making or acquiring a residential mortgage loan
18 solely with his or her own funds for his or her own investment without
19 intending to resell the residential mortgage loans;

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

25 (f) Any mortgage broker approved and subject to auditing by the
26 federal national mortgage association(~~(, the government national~~
27 ~~mortgage association,~~)) or the federal home loan mortgage corporation;

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

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

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

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

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

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

10 (v) Provides the disclosure required by RCW 19.146.030(1).

11 (2) Those persons otherwise exempt under subsection (1)(d) or (f)
12 of this section must comply with RCW 19.146.0201 and shall be subject
13 to the director's authority to issue a cease and desist order for any
14 violation of RCW 19.146.0201 and shall be subject to the director's
15 authority to obtain and review books and records that are relevant to
16 any allegation of such a violation.

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

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

28 (b) Any licensee under this subsection who would otherwise be
29 exempted from the requirements of licensing by RCW 19.146.020 may apply
30 to the director for exemption from licensing. The director shall adopt
31 rules for reviewing such applications and shall grant exemptions from
32 licensing to applications which are consistent with those rules and
33 consistent with the other provisions of this chapter.

34 **Sec. 3.** RCW 19.146.0201 and 1994 c 33 s 6 are each amended to read
35 as follows:

36 It is (~~unlawful~~) a violation of this chapter for a loan
37 originator, mortgage broker required to be licensed under this chapter,
38 or mortgage broker otherwise exempted from this chapter under RCW

1 19.146.020(1) (d) or (f) in connection with a residential mortgage loan
2 to:

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

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

6 (3) Obtain property by fraud or misrepresentation;

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

11 (5) Solicit, advertise, or enter into a contract for specific
12 interest rates, points, or other financing terms unless the terms are
13 actually available at the time of soliciting, advertising, or
14 contracting from a person exempt from licensing under RCW 19.146.020(1)
15 (f) or (g) or a lender with whom the mortgage broker maintains a
16 written correspondent or loan brokerage agreement under RCW 19.146.040;

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

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

24 (8) Negligently make any false statement or knowingly and willfully
25 make any omission of material fact in connection with any reports filed
26 by a ((licensee,)) mortgage broker or in connection with any
27 ((examination of the licensee's business)) investigation conducted by
28 the department;

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

32 ~~(10) ((Fail to include the words "licensed mortgage broker" in any~~
33 ~~advertising for the broker's services that is directed at the general~~
34 ~~public if the person is required to be licensed under this chapter;~~

35 ~~((11)) Advertise any rate of interest without conspicuously~~
36 ~~disclosing the annual percentage rate implied by such rate of interest~~
37 ~~or otherwise fail to comply with any requirement of the truth-in-~~
38 ~~lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226,~~
39 ~~the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 and~~

1 Regulation X, 24 C.F.R. Sec. 3500, or the equal credit opportunity act,
2 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12,
3 as now or hereafter amended, in any advertising of residential mortgage
4 loans or any other mortgage brokerage activity;

5 ~~((12))~~ (11) Fail to pay third-party providers no later than
6 thirty days after the recording of the loan closing documents or ninety
7 days after completion of the third-party service, whichever comes
8 first, unless otherwise agreed or unless the third-party service
9 provider has been notified in writing that a bona fide dispute exists
10 regarding the performance or quality of the third-party service;

11 ~~((13))~~ (12) Collect, charge, attempt to collect or charge or use
12 or propose any agreement purporting to collect or charge any fee
13 prohibited by RCW 19.146.030 or 19.146.070;

14 ~~((14))~~ (13)(a) Except when complying with (b) and (c) of this
15 subsection, to act as a mortgage broker in any transaction (i) in which
16 the mortgage broker acts or has acted as a real estate broker or
17 salesperson or (ii) in which another person doing business under the
18 same licensed real estate broker acts or has acted as a real estate
19 broker or salesperson;

20 (b) Prior to providing mortgage broker services to the borrower,
21 the mortgage broker, in addition to other disclosures required by this
22 chapter and other laws, shall provide to the borrower the following
23 written disclosure:

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

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

34 (c) A real estate broker or salesperson licensed under chapter
35 18.85 RCW who also acts as a mortgage broker shall carry on such
36 mortgage brokerage business activities and shall maintain such person's
37 mortgage brokerage business records separate and apart from the real
38 estate brokerage activities conducted pursuant to chapter 18.85 RCW.

1 Such activities shall be deemed separate and apart even if they are
2 conducted at an office location with a common entrance and mailing
3 address, so long as each business is clearly identified by a sign
4 visible to the public, each business is physically separated within the
5 office facility, and no deception of the public as to the separate
6 identities of the brokerage business firms results. This subsection
7 ~~((+14))~~ (13)(c) shall not require a real estate broker or salesperson
8 licensed under chapter 18.85 RCW who also acts as a mortgage broker to
9 maintain a physical separation within the office facility for the
10 conduct of its real estate and mortgage brokerage activities where the
11 director determines that maintaining such physical separation would
12 constitute an undue financial hardship upon the mortgage broker and is
13 unnecessary for the protection of the public; or

14 ~~((+15))~~ (14) Fail to comply with any provision of RCW 19.146.030
15 through ~~((19.146.090))~~ 19.146.080 or any rule adopted under those
16 sections.

17 **Sec. 4.** RCW 19.146.030 and 1994 c 33 s 18 are each amended to read
18 as follows:

19 (1) ~~((Upon))~~ Within three business days following receipt of a loan
20 application ~~((and before the receipt of))~~ or any moneys from a
21 borrower, a mortgage broker shall provide to each borrower a full
22 written disclosure containing an itemization and explanation of all
23 fees and costs that the borrower is required to pay in connection with
24 obtaining a residential mortgage loan, and specifying the fee or fees
25 which inure to the benefit of the mortgage broker and other such
26 disclosures as may be required by rule. A good faith estimate of a fee
27 or cost shall be provided if the exact amount of the fee or cost is not
28 determinable. This subsection shall not be construed to require
29 disclosure of the distribution or breakdown of loan fees, discount, or
30 points between the mortgage broker and any lender or investor.

31 (2) The written disclosure shall contain the following information:

32 (a) The annual percentage rate, finance charge, amount financed,
33 total amount of all payments, number of payments, amount of each
34 payment, amount of points or prepaid interest and the conditions and
35 terms under which any loan terms may change between the time of
36 disclosure and closing of the loan; and if a variable rate, the
37 circumstances under which the rate may increase, any limitation on the
38 increase, the effect of an increase, and an example of the payment

1 terms resulting from an increase. Disclosure in compliance with the
2 requirements of the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 and
3 Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be
4 deemed to comply with the disclosure requirements of this subsection;

5 (b) The itemized costs of any credit report, appraisal, title
6 report, title insurance policy, mortgage insurance, escrow fee,
7 property tax, insurance, structural or pest inspection, and any other
8 third-party provider's costs associated with the residential mortgage
9 loan. Disclosure through good faith estimates of settlement services
10 and special information booklets in compliance with the requirements of
11 the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601, and
12 Regulation X, 24 C.F.R. Sec. 3500, as now or hereafter amended, shall
13 be deemed to comply with the disclosure requirements of this
14 subsection;

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

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

27 (~~The name of the lender and the nature of the business
28 relationship between the lender providing the residential mortgage loan
29 and the mortgage broker, if any: PROVIDED, That this disclosure may be
30 made at any time up to the time the borrower accepts the lender's
31 commitment~~) Whether and under what conditions any lock-in fees are
32 refundable to the borrower; and

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

37 (3) If subsequent to the written disclosure being provided under
38 this section, a mortgage broker enters into a lock-in agreement with a
39 borrower or represents to the borrower that the borrower has entered

1 into a lock-in agreement, then no less than three business days
2 thereafter including Saturdays, the mortgage broker shall deliver or
3 send by first-class mail to the borrower a written confirmation of the
4 terms of the lock-in agreement, which shall include a copy of the
5 disclosure made under subsection (2)(c) of this section.

6 ~~(4) ((A violation of the Truth in Lending Act, Regulation Z, the~~
7 ~~Real Estate Settlement Procedures Act, and Regulation X is a violation~~
8 ~~of this section for purposes of this chapter.~~

9 ~~(5))~~ A mortgage broker shall not charge any fee that inures to the
10 benefit of the mortgage broker if it exceeds the fee disclosed on the
11 written disclosure pursuant to this section, unless (a) the need to
12 charge the fee was not reasonably foreseeable at the time the written
13 disclosure was provided and (b) the mortgage broker has provided to the
14 borrower, no less than three business days prior to the signing of the
15 loan closing documents, a clear written explanation of the fee and the
16 reason for charging a fee exceeding that which was previously
17 disclosed. However, if the borrower's closing costs, excluding prepaid
18 escrowed costs of ownership as defined by rule, does not exceed the
19 total closing costs in the most recent good faith estimate, no other
20 disclosures shall be required by this subsection.

21 **Sec. 5.** RCW 19.146.050 and 1987 c 391 s 7 are each amended to read
22 as follows:

23 All moneys received by a mortgage broker from a borrower for
24 payment of third-party provider services shall be deemed as held in
25 trust immediately upon receipt by the mortgage broker. A mortgage
26 broker shall deposit, prior to the end of the ~~((next))~~ third business
27 day following receipt of such trust funds, all ~~((moneys received from~~
28 ~~borrowers for third party provider services))~~ such trust funds in a
29 trust account of a federally insured financial institution located in
30 this state. All trust account funds collected under this chapter must
31 remain on deposit in a trust account in the state of Washington until
32 disbursement. The trust account shall be designated and maintained for
33 the benefit of borrowers. Moneys maintained in the trust account shall
34 be exempt from execution, attachment, or garnishment. A mortgage
35 broker shall not in any way encumber the corpus of the trust account or
36 commingle any other operating funds with trust account funds.
37 Withdrawals from the trust account shall be only for the payment of
38 bona fide services rendered by a third-party provider or for refunds to

1 borrowers. The director shall make rules which: (1) Direct mortgage
2 brokers how to handle checks and other instruments that are received by
3 the broker and that combine trust funds with other funds; and (2)
4 permit transfer of trust funds out of the trust account for payment of
5 other costs only when necessary and only with the prior express written
6 permission of the borrower. Any interest earned on the trust account
7 shall be refunded or credited to the borrowers at closing. Trust
8 accounts that are operated in a manner consistent with this section and
9 any rules adopted by the director, are considered exempt from taxation
10 under chapter 82.04 RCW.

11 **Sec. 6.** RCW 19.146.060 and 1994 c 33 s 20 are each amended to read
12 as follows:

13 (1) A mortgage broker shall use generally accepted accounting
14 principles.

15 (2) Except as otherwise provided in subsection (3) of this section,
16 a mortgage broker shall maintain accurate(~~(7)~~) and current(~~(7~~—and
17 readily available)) books and records which shall be readily available
18 at the mortgage broker's usual business location until at least (~~four~~
19 years)) twenty-five months have elapsed following the effective period
20 to which the books and records relate.

21 (3) Where a mortgage broker's usual business location is outside of
22 the state of Washington, the mortgage broker shall, as determined by
23 the director by rule, either maintain its books and records at a
24 location in this state, or reimburse the director for his or her
25 expenses, including but not limited to transportation, food, and
26 lodging expenses, relating to any examination or investigation
27 resulting under this chapter.

28 (4) "Books and records" includes but is not limited to:

29 (a) Copies of all advertisements placed by or at the request of the
30 mortgage broker which mention rates or fees. In the case of radio or
31 television advertisements, or advertisements placed on a telephonic
32 information line or other electronic source of information including
33 but not limited to a computer data base or electronic bulletin board,
34 a mortgage broker shall keep copies of the precise script for the
35 advertisement. All advertisement records shall include for each
36 advertisement the date or dates of publication and name of each
37 periodical, broadcast station, or telephone information line which
38 published the advertisement or, in the case of a flyer or other

1 material distributed by the mortgage broker, the dates, methods, and
2 areas of distribution; and

3 (b) Copies of all documents, notes, computer records if not stored
4 in printed form, correspondence or memoranda relating to a borrower
5 from whom the mortgage broker has accepted a deposit or other funds, or
6 accepted a residential mortgage loan application or with whom the
7 mortgage broker has entered into an agreement to assist in obtaining a
8 residential mortgage loan.

9 **Sec. 7.** RCW 19.146.080 and 1987 c 391 s 10 are each amended to
10 read as follows:

11 Except as otherwise required by the United States Code or the Code
12 of Federal Regulations, now or as amended, if a borrower is unable to
13 obtain a loan for any reason and the borrower has paid for an
14 appraisal, title report, or credit report in full, the mortgage broker
15 shall give a copy of the appraisal, title report, or credit report to
16 the borrower and transmit the originals to any other mortgage broker or
17 lender to whom the borrower directs that the documents be transmitted.
18 Regardless of whether the borrower has obtained a loan, the mortgage
19 broker must provide the copies or transmit the documents within five
20 days after the borrower has made the request in writing.

21 **Sec. 8.** RCW 19.146.200 and 1994 c 33 s 7 are each amended to read
22 as follows:

23 (1) A person may not engage in the business of a mortgage broker,
24 except as an employee of a person licensed or exempt from licensing,
25 without first obtaining and maintaining a license under this chapter.
26 However, a person who independently contracts with a licensed mortgage
27 broker need not be licensed if the licensed mortgage broker and the
28 independent contractor have on file with the director a binding written
29 agreement under which the licensed mortgage broker assumes
30 responsibility for the independent contractor's violations of any
31 provision of this chapter or rules adopted under this chapter; and if
32 the licensed mortgage broker's bond or other security required under
33 this chapter runs to the benefit of the state and any person who
34 suffers loss by reason of the independent contractor's violation of any
35 provision of this chapter or rules adopted under this chapter.

36 (2) A person may not bring a suit or action for the collection of
37 compensation as a mortgage broker unless the plaintiff alleges and

1 proves that he or she was a duly licensed mortgage broker, or exempt
2 from the license requirement of this chapter, at the time of offering
3 to perform or performing any such an act or service regulated by this
4 chapter. This subsection does not apply to suits or actions for the
5 collection or compensation for services performed prior to the
6 effective date of section 5, chapter 468, Laws of 1993.

7 (3) The license must be prominently displayed in the mortgage
8 broker's place of business.

9 **Sec. 9.** RCW 19.146.205 and 1994 c 33 s 8 are each amended to read
10 as follows:

11 (1) Application for a mortgage broker license under this chapter
12 shall be in writing and in the form prescribed by the director.
13 (~~Unless waived by the director,~~) The application shall contain at
14 least the following information:

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

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

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

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

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

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

4 (2) The director may exchange fingerprint data with the federal
5 bureau of investigation.

6 (3) At the time of filing an application for a license under this
7 chapter, each applicant shall pay to the director the appropriate
8 application fee in an amount determined by rule of the director in
9 accordance with RCW 43.24.086 to cover, but not exceed, the cost of
10 processing and reviewing the application. The director shall deposit
11 the moneys in the banking examination fund, unless the consumer
12 services account is created as a dedicated, nonappropriated account, in
13 which case the director shall deposit the moneys in the consumer
14 services account.

15 (~~(3)~~) (4)(a) Each applicant for a mortgage broker's license shall
16 file and maintain a surety bond, in an amount of not greater than sixty
17 thousand dollars nor less than twenty thousand dollars which the
18 director deems adequate to protect the public interest, executed by the
19 applicant as obligor and by a surety company authorized to do a surety
20 business in this state as surety. The bonding requirement as
21 established by the director may take the form of a uniform bond amount
22 for all licensees or the director may establish by rule a schedule
23 establishing a range of bond amounts which shall vary according to the
24 annual average number of loan originators or independent contractors of
25 a licensee. The bond shall run to the state of Washington as obligee,
26 and shall run first to the benefit of the borrower and then to the
27 benefit of the state and any person or persons who suffer loss by
28 reason of the applicant's or its loan originator's violation of any
29 provision of this chapter or rules adopted under this chapter. The
30 bond shall be conditioned that the obligor as licensee will faithfully
31 conform to and abide by this chapter and all rules adopted under this
32 chapter, and shall reimburse all persons who suffer loss by reason of
33 a violation of this chapter or rules adopted under this chapter.
34 Borrowers shall be given priority over the state and other persons.
35 The state and other third parties shall be allowed to receive
36 distribution pursuant to a valid claim against the remainder of the
37 bond. In the case of claims made by any person or entity who is not a
38 borrower, no final judgment may be entered prior to one hundred eighty
39 days following the date the claim is filed. The bond shall be

1 continuous and may be canceled by the surety upon the surety giving
2 written notice to the director of its intent to cancel the bond. The
3 cancellation shall be effective thirty days after the notice is
4 received by the director. Whether or not the bond is renewed,
5 continued, reinstated, reissued, or otherwise extended, replaced, or
6 modified, including increases or decreases in the penal sum, it shall
7 be considered one continuous obligation, and the surety upon the bond
8 shall not be liable in an aggregate or cumulative amount exceeding the
9 penal sum set forth on the face of the bond. In no event shall the
10 penal sum, or any portion thereof, at two or more points in time be
11 added together in determining the surety's liability. The bond shall
12 not be liable for any penalties imposed on the licensee, including, but
13 not limited to, any increased damages or attorneys' fees, or both,
14 awarded under RCW 19.86.090. The applicant may obtain the bond
15 directly from the surety or through a group bonding arrangement
16 involving a professional organization comprised of mortgage brokers if
17 the arrangement provides at least as much coverage as is required under
18 this subsection.

19 (b) In lieu of a surety bond, the applicant may, upon approval by
20 the director, file with the director a certificate of deposit, an
21 irrevocable letter of credit, or such other instrument as approved by
22 the director by rule, drawn in favor of the director for an amount
23 equal to the required bond.

24 (c) In lieu of the surety bond or compliance with (b) of this
25 subsection, an applicant may obtain insurance or coverage from an
26 association comprised of mortgage brokers that is organized as a mutual
27 corporation for the sole purpose of insuring or self-insuring claims
28 that may arise from a violation of this chapter. An applicant may only
29 substitute coverage under this subsection for the requirements of (a)
30 or (b) of this subsection if the director, with the consent of the
31 insurance commissioner, has authorized such association to organize a
32 mutual corporation under such terms and conditions as may be imposed by
33 the director to ensure that the corporation is operated in a
34 financially responsible manner to pay any claims within the financial
35 responsibility limits specified in (a) of this subsection.

36 **Sec. 10.** RCW 19.146.210 and 1994 c 33 s 10 are each amended to
37 read as follows:

1 (1) The director shall issue and deliver a mortgage broker license
2 to an applicant if, after investigation, the director makes the
3 following findings:

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

5 (b) The applicant has complied with RCW 19.146.205;

6 (c) Neither the applicant (~~((not))~~), any of its principals (~~((has))~~),
7 or the designated broker have had a license issued under this chapter
8 or any similar state statute suspended or revoked within five years of
9 the filing of the present application;

10 (d) Neither the applicant (~~((not))~~), any of its principals (~~((has))~~),
11 or the designated broker have been convicted of a gross misdemeanor
12 involving dishonesty or financial misconduct or a felony within seven
13 years of the filing of the present application;

14 (e) (~~Either the applicant or one of its principals, who may be~~
15 ~~designated by the applicant)) The designated broker, (i) has at least
16 two years of experience in the residential mortgage loan industry or
17 has completed the educational requirements established by rule of the
18 director and (ii) has passed a written examination whose content shall
19 be established by rule of the director; and~~

20 (f) The applicant has demonstrated financial responsibility,
21 character, and general fitness such as to command the confidence of the
22 community and to warrant a belief that the business will be operated
23 honestly, fairly, and efficiently within the purposes of this chapter.

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

30 (3) The director shall issue a license under this chapter to any
31 licensee issued a license under chapter 468, Laws of 1993, that has a
32 valid license and is otherwise in compliance with the provisions of
33 this chapter.

34 (4) A license issued pursuant to this chapter is valid from the
35 date of issuance with no fixed date of expiration.

36 (5) A licensee may surrender a license by delivering to the
37 director written notice of surrender, but the surrender does not affect
38 the licensee's civil or criminal liability arising from acts or
39 omissions occurring before such surrender.

1 (6) To prevent undue delay in the issuance of a license and to
2 facilitate the business of a mortgage broker, an interim license with
3 a fixed date of expiration may be issued when the director determines
4 that the mortgage broker has substantially fulfilled the requirements
5 for licensing as defined by rule.

6 **Sec. 11.** RCW 19.146.215 and 1994 c 33 s 11 are each amended to
7 read as follows:

8 ~~((Either the applicant or one of its principals, who may be~~
9 ~~designated by the applicant, and every branch manager)) The designated~~
10 broker of every licensee shall complete an annual continuing education
11 requirement, which the director shall define by rule.

12 **Sec. 12.** RCW 19.146.220 and 1996 c 103 s 1 are each amended to
13 read as follows:

14 (1) The director shall enforce all laws and rules relating to the
15 licensing of mortgage brokers, grant or deny licenses to mortgage
16 brokers, and hold hearings.

17 (2) The director may impose the following sanctions:

18 (a) Deny applications for licenses for: (i) Violations of orders,
19 including cease and desist orders issued under this chapter; or (ii)
20 any violation of RCW 19.146.050 or 19.146.0201 (1) through (9);

21 (b) Suspend or revoke licenses for:

22 (i) False statements or omission of material information on the
23 application that, if known, would have allowed the director to deny the
24 application for the original license;

25 (ii) Failure to pay a fee required by the director or maintain the
26 required bond;

27 (iii) Failure to comply with any directive or order of the
28 director; or

29 (iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201
30 (1) through (9) or ~~((+13))~~ (12), 19.146.205~~((+3))~~ (4), or 19.146.265;

31 (c) Impose fines on the licensee, employee or loan originator of
32 the licensee, or other person subject to this chapter for:

33 (i) Any violations of RCW 19.146.0201 (1) through (9) or ~~((+13))~~
34 (12), 19.146.030 through ~~((19.146.090))~~ 19.146.080, 19.146.200,
35 19.146.205~~((+3))~~ (4), or 19.146.265; or

36 (ii) Failure to comply with any directive or order of the director;

1 (d) Issue orders directing a licensee, its employee or loan
2 originator, or other person subject to this chapter to:

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

5 (ii) Pay restitution to an injured borrower; or

6 (e) Issue orders removing from office or prohibiting from
7 participation in the conduct of the affairs of a licensed mortgage
8 broker, or both, any officer, principal, employee, or loan originator
9 of any licensed mortgage broker or any person subject to licensing
10 under this chapter for:

11 (i) Any violation of 19.146.0201 (1) through (9) or ~~((+13))~~ (12),
12 19.146.030 through ~~((19.146.090))~~ 19.146.080, 19.146.200,
13 19.146.205~~((+3))~~ (4), or 19.146.265; or

14 (ii) False statements or omission of material information on the
15 application that, if known, would have allowed the director to deny the
16 application for the original license;

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

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

20 (3) Each day's continuance of a violation or failure to comply with
21 any directive or order of the director is a separate and distinct
22 violation or failure.

23 (4) The director shall establish by rule standards for licensure of
24 applicants licensed in other jurisdictions. ~~((Every licensed mortgage
25 broker that does not maintain a physical office within the state must
26 maintain a registered agent within the state to receive service of any
27 lawful process in any judicial or administrative noncriminal suit,
28 action, or proceeding, against the licensed mortgage broker which
29 arises under this chapter or any rule or order under this chapter, with
30 the same force and validity as if served personally on the licensed
31 mortgage broker. Service upon the registered agent shall be effective
32 if the plaintiff, who may be the director in a suit, action, or
33 proceeding instituted by him or her, sends notice of the service and a
34 copy of the process by registered mail to the defendant or respondent
35 at the last address of the respondent or defendant on file with the
36 director. In any judicial action, suit, or proceeding arising under
37 this chapter or any rule or order adopted under this chapter between
38 the department or director and a licensed mortgage broker who does not~~

1 maintain a physical office in this state, venue shall be exclusively in
2 the superior court of Thurston county.))

3 **Sec. 13.** RCW 19.146.228 and 1994 c 33 s 9 are each amended to read
4 as follows:

5 The director shall establish fees by rule in accordance with RCW
6 43.24.086 sufficient to cover, but not exceed, the costs of
7 administering this chapter. These fees may include:

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

10 (2) An ((examination)) investigation fee to cover the costs of any
11 ((examination)) investigation of the books and records of a licensee or
12 other person subject to this chapter; and

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

15 Mortgage brokers shall not be charged investigation fees for the
16 processing of complaints when the investigation determines that no
17 violation of this chapter occurred or when the mortgage broker provides
18 a remedy satisfactory to the complainant and the director and no order
19 of the director is issued. All moneys, fees, and penalties collected
20 under the authority of this chapter shall be deposited into the banking
21 examination fund, unless the consumer services account is created as a
22 dedicated, nonappropriated account, in which case all moneys, fees, and
23 penalties collected under this chapter shall be deposited in the
24 consumer services account.

25 **Sec. 14.** RCW 19.146.235 and 1994 c 33 s 17 are each amended to
26 read as follows:

27 For the purposes of investigating complaints arising under this
28 chapter, the director may at any time, either personally or by a
29 designee, examine the business, including but not limited to the books,
30 accounts, records, and files used therein, of every licensee and of
31 every person engaged in the business of mortgage brokering, whether
32 such a person shall act or claim to act under or without the authority
33 of this chapter. For that purpose the director and designated
34 representatives shall have access during regular business hours to the
35 offices and places of business, books, accounts, papers, records,
36 files, safes, and vaults of all such persons. The director or
37 designated person may ((require)) direct or order the attendance of and

1 examine under oath all persons whose testimony may be required about
2 the loans or the business or subject matter of any such examination or
3 investigation, and may direct or order such person to produce books,
4 accounts, records, files, and any other documents the director or
5 designated person deems relevant to the inquiry. If a person who
6 receives such a directive or order does not attend and testify, or does
7 not produce the requested books, records, files, or other documents
8 within the time period established in the directive or order, then the
9 director or designated person may issue a subpoena requiring attendance
10 or compelling production of books, records, files, or other documents.
11 No person subject to examination or investigation under this chapter
12 shall withhold, abstract, remove, mutilate, destroy, or secrete any
13 books, records, computer records, or other information.

14 Once during the first two years of licensing, the director may
15 visit, either personally or by designee, the licensee's place or places
16 of business to conduct a compliance examination. The director may
17 examine, either personally or by designee, a sample of the licensee's
18 loan files, interview the licensee or other designated employee or
19 independent contractor, and undertake such other activities as
20 necessary to ensure that the licensee is in compliance with the
21 provisions of this chapter. For those licensees issued licenses prior
22 to March 21, 1994, the cost of such an examination shall be considered
23 to have been prepaid in their license fee. After this one visit within
24 the two-year period subsequent to issuance of a license, the director
25 or a designee may visit the licensee's place or places of business only
26 to ensure that corrective action has been taken or to investigate a
27 complaint.

28 **Sec. 15.** RCW 19.146.240 and 1994 c 33 s 21 are each amended to
29 read as follows:

30 (1) The director or any person injured by a violation of this
31 chapter may bring an action against the surety bond or approved
32 alternative of the licensed mortgage broker who committed the violation
33 or who employed or engaged the loan originator who committed the
34 violation.

35 (2) ((A)) (a) The director or any person who is damaged by the
36 licensee's or its loan originator's violation of this chapter, or rules
37 adopted under this chapter, may bring suit upon the surety bond or
38 approved alternative in the superior court of any county in which

1 jurisdiction over the licensee may be obtained. Jurisdiction shall be
2 exclusively in the superior court. Any such action must be brought not
3 later than one year after the alleged violation of this chapter or
4 rules adopted under this chapter. Except as provided in subsection
5 (2)(b) of this section, in the event valid claims of borrowers against
6 a bond or deposit exceed the amount of the bond or deposit, each
7 borrower claimant shall only be entitled to a pro rata amount, based on
8 the amount of the claim as it is valid against the bond or deposit,
9 without regard to the date of filing of any claim or action. If, after
10 all valid borrower claims are paid, valid claims by nonborrower
11 claimants exceed the remaining amount of the bond or deposit, each
12 nonborrower claimant shall only be entitled to a pro rata amount, based
13 on the amount of the claim as it is valid against the bond or deposit,
14 without regard to the date of the filing or any claim or action. A
15 judgment arising from a violation of this chapter or rule adopted under
16 this chapter shall be entered for actual damages and in no case be less
17 than the amount paid by the borrower to the licensed mortgage broker
18 plus reasonable attorneys' fees and costs. In no event shall the
19 surety bond or approved alternative provide payment for any trebled or
20 punitive damages.

21 (b) Borrowers shall be given priority over the director and other
22 persons in distributions in actions against the surety bond. The
23 director and other third parties shall then be entitled to distribution
24 to the extent of their claims as found valid against the remainder of
25 the bond. In the case of claims made by any person or entity who is
26 not a borrower, no final judgment may be entered prior to one hundred
27 eighty days following the date the claim is filed. This provision
28 regarding priority shall not restrict the right of any claimant to file
29 a claim within one year.

30 (3) The remedies provided under this section are cumulative and
31 nonexclusive and do not affect any other remedy available at law.

32 **Sec. 16.** RCW 19.146.245 and 1994 c 33 s 22 are each amended to
33 read as follows:

34 A licensed mortgage broker is liable for any conduct violating this
35 chapter by the designated broker, a loan originator, or other licensed
36 mortgage broker while employed or engaged by the licensed mortgage
37 broker. ~~((In addition, a branch office manager is liable for any~~

1 ~~conduct violating this chapter by a loan originator or other licensed~~
2 ~~mortgage broker employed or engaged at the branch office.))~~

3 **Sec. 17.** RCW 19.146.250 and 1993 c 468 s 16 are each amended to
4 read as follows:

5 No license issued under the provisions of this chapter shall
6 authorize any person other than the person to whom it is issued to do
7 any act by virtue thereof nor to operate in any other manner than under
8 his or her own name except:

9 (1) A licensed mortgage broker may operate or advertise under a
10 name other than the one under which the license is issued by obtaining
11 the written consent of the director to do so; and

12 (2) A broker may establish one or more branch offices under a name
13 or names different from that of the main office if the name or names
14 are approved by the director, so long as each branch office is clearly
15 identified as a branch or division of the main office. ~~((No broker may~~
16 ~~establish branch offices under more than three names.))~~ Both the name
17 of the branch office and of the main office must clearly appear on the
18 sign identifying the office, if any, and in any advertisement or on any
19 letterhead of any stationery or any forms, or signs used by the
20 mortgage firm on which either the name of the main or branch offices
21 appears.

22 **Sec. 18.** RCW 19.146.260 and 1994 c 33 s 23 are each amended to
23 read as follows:

24 ~~((Every licensed mortgage broker must have and maintain an office~~
25 ~~in this state, or within thirty miles of the border of this state,~~
26 ~~accessible to the public and which shall serve as his or her office for~~
27 ~~the transaction of business. The broker's license must be prominently~~
28 ~~displayed.))~~ Every licensed mortgage broker that does not maintain a
29 physical office within the state must maintain a registered agent
30 within the state to receive service of any lawful process in any
31 judicial or administrative noncriminal suit, action, or proceeding
32 against the licensed mortgage broker which arises under this chapter or
33 any rule or order under this chapter, with the same force and validity
34 as if served personally on the licensed mortgage broker. Service upon
35 the registered agent shall not be effective unless the plaintiff, who
36 may be the director in a suit, action, or proceeding instituted by him
37 or her, no later than the next business day sends notice of the service

1 and a copy of the process by registered mail to the defendant or
2 respondent at the last address of the respondent or defendant on file
3 with the director. In any judicial action, suit, or proceeding arising
4 under this chapter or any rule or order adopted under this chapter
5 between the department or director and a licensed mortgage broker who
6 does not maintain a physical office in this state, venue shall be
7 exclusively in the superior court of the Thurston county.

8 **Sec. 19.** RCW 19.146.265 and 1994 c 33 s 24 are each amended to
9 read as follows:

10 A licensed mortgage broker may apply to the director for authority
11 to establish one or more branch offices under the same or different
12 name as the main office upon the payment of a fee as prescribed by the
13 director by rule. Provided that the applicant is in good standing with
14 the department, as defined in rule by the director, the director shall
15 promptly issue a duplicate license for each of the branch offices
16 showing the location of the main office and the particular branch.
17 Each duplicate license shall be prominently displayed in the office for
18 which it is issued. ~~((Each branch office shall be required to have a~~
19 ~~branch manager who meets the experience and educational requirements~~
20 ~~for branch managers as established by rule of the director.))~~

21 **Sec. 20.** RCW 19.146.280 and 1994 c 33 s 26 are each amended to
22 read as follows:

23 (1) There is established the mortgage brokerage commission
24 consisting of five commission members who shall act in an advisory
25 capacity to the director on mortgage brokerage issues.

26 (2) The director shall appoint the members of the commission,
27 weighing the recommendations from professional organizations
28 representing mortgage brokers. At least three of the commission
29 members shall be mortgage brokers ~~((required to apply for a mortgage~~
30 ~~brokers license))~~ licensed under this chapter and at least one shall be
31 exempt from licensure under RCW 19.146.020(1)(f). No commission member
32 shall be appointed who has had less than five years' experience in the
33 business of residential mortgage lending. In addition, the director or
34 a designee shall serve as an ex officio, nonvoting member of the
35 commission. Voting members of the commission shall serve for two-year
36 terms with three of the initial commission members serving one-year
37 terms. The department shall provide staff support to the commission.

1 (3) The commission may establish a code of conduct for its members.
2 Any commissioner may bring a motion before the commission to remove a
3 commissioner for failing to conduct themselves in a manner consistent
4 with the code of conduct. The motion shall be in the form of a
5 recommendation to the director to dismiss a specific commissioner and
6 shall enumerate causes for doing so. The commissioner in question
7 shall recuse himself or herself from voting on any such motion. Any
8 such motion must be approved unanimously by the remaining four
9 commissioners. Approved motions shall be immediately transmitted to
10 the director for review and action.

11 (4) Members of the commission shall be reimbursed for their travel
12 expenses incurred in carrying out the provisions of this chapter in
13 accordance with RCW 43.03.050 and 43.03.060. All costs and expenses
14 associated with the commission shall be paid from the banking
15 examination fund, unless the consumer services account is created as a
16 dedicated, nonappropriated account, in which case all costs and
17 expenses shall be paid from the consumer services account.

18 ~~((+4))~~ (5) The commission shall advise the director on the
19 characteristics and needs of the mortgage brokerage profession.

20 ~~((+5))~~ (6) The department, in consultation with other applicable
21 agencies of state government, shall conduct a continuing review of the
22 number and type of consumer complaints arising from residential
23 mortgage lending in the state. The department shall report its
24 findings to the senate committee on ~~((labor and commerce))~~ financial
25 institutions and house of representatives committee on financial
26 institutions and insurance along with recommendations for any changes
27 in the licensing requirements of this chapter, ~~((no later than December~~
28 ~~1, 1996))~~ biennially by December 1st of each even-numbered year.

29 NEW SECTION. Sec. 21. A new section is added to chapter 82.04 RCW
30 to read as follows:

31 This chapter shall not apply to amounts received from trust
32 accounts that are operated in a manner consistent with RCW 19.146.050
33 and any rules adopted by the director of financial institutions.

34 NEW SECTION. Sec. 22. If any provision of this act or its
35 application to any person or circumstance is held invalid, the
36 remainder of the act or the application of the provision to other
37 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 23.** RCW 19.146.090 and 1987 c 391 s 11 are each
2 repealed."

3 EFFECT: The striking amendment: (1) Makes clarifications
4 regarding giving borrowers priority over the state and third parties in
5 accessing the surety bond; (2) gives the Department of Financial
6 Institutions subpoena power when conducting examinations or
7 investigations if the mortgage broker does not comply with an order to
8 provide information related to the examination or investigation; and
9 (3) makes technical corrections.

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