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SENATE BILL 5575

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State of Washington

55th Legislature

1997 Regular Session

By Senators Winsley, Prentice and Hale

Read first time 01/31/97. Referred to Committee on Financial Institutions, Insurance & Housing.

1 AN ACT Relating to standards for licensing mortgage brokers;  
2 amending RCW 19.146.010, 19.146.020, 19.146.0201, 19.146.030,  
3 19.146.050, 19.146.060, 19.146.080, 19.146.200, 19.146.205, 19.146.210,  
4 19.146.215, 19.146.220, 19.146.228, 19.146.235, 19.146.240, 19.146.245,  
5 19.146.250, 19.146.260, 19.146.265, and 19.146.280; adding a new  
6 section to chapter 82.04 RCW; and repealing RCW 19.146.090.

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

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

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

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

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

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

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

5       (5) "Designated broker" means a natural person designated by the  
6 applicant for a license or licensee who meets the experience,  
7 education, and examination requirements set forth in RCW  
8 19.146.210(1)(e).

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

10       (~~(+6)~~) (7) "Employee" means an individual who has an employment  
11 relationship acknowledged by both the employee and the licensee, and  
12 the individual is treated as an employee by the licensee for purposes  
13 of compliance with federal income tax laws.

14       (~~(+7)~~) (8) "Independent contractor" or "person who independently  
15 contracts" means any person that expressly or impliedly contracts to  
16 perform mortgage brokering services for another and that with respect  
17 to its manner or means of performing the services is not subject to the  
18 other's right of control, and that is not treated as an employee by the  
19 other for purposes of compliance with federal income tax laws.

20       (~~(+8)~~) (9) "Investigation" means an examination undertaken for the  
21 purpose of detection of violations of this chapter or securing  
22 information lawfully required under this chapter.

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

29       (~~(+9)~~) (11) "Lock-in agreement" means an agreement with a borrower  
30 made by a mortgage broker or loan originator, in which the mortgage  
31 broker or loan originator agrees that, for a period of time, a specific  
32 interest rate or other financing terms will be the rate or terms at  
33 which it will make a loan available to that borrower.

34       (~~(+10)~~) (12) "Mortgage broker" means any person who for  
35 compensation or gain, or in the expectation of compensation or gain (a)  
36 makes a residential mortgage loan or assists a person in obtaining or  
37 applying to obtain a residential mortgage loan or (b) holds himself or  
38 herself out as being able to make a residential mortgage loan or assist

1 a person in obtaining or applying to obtain a residential mortgage  
2 loan.

3 ~~((11))~~ (13) "Person" means a natural person, corporation,  
4 company, limited liability corporation, partnership, or association.

5 ~~((12))~~ (14) "Residential mortgage loan" means any loan primarily  
6 for personal, family, or household use secured by a mortgage or deed of  
7 trust on residential real estate upon which is constructed or intended  
8 to be constructed a single family dwelling or multiple family dwelling  
9 of four or less units.

10 ~~((13))~~ (15) "Third-party provider" means any person other than a  
11 mortgage broker or lender who provides goods or services to the  
12 mortgage broker in connection with the preparation of the borrower's  
13 loan and includes, but is not limited to, credit reporting agencies,  
14 title companies, appraisers, structural and pest inspectors, or escrow  
15 companies.

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

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

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

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

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

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

37 (e) A real estate broker or salesperson licensed by the state who  
38 obtains financing for a real estate transaction involving a bona fide

1 sale of real estate in the performance of his or her duties as a real  
2 estate broker and who receives only the customary real estate broker's  
3 or salesperson's commission in connection with the transaction;

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

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

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

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

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

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

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

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

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

35 (3) Any person otherwise exempted from the licensing provisions of  
36 this chapter may voluntarily submit an application to the director for  
37 a mortgage broker's license. The director shall review such  
38 application and may grant or deny licenses to such applicants upon the

1 same grounds and with the same fees as may be applicable to persons  
2 required to be licensed under this chapter.

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

8 (b) Any licensee under this subsection who would otherwise be  
9 exempted from the requirements of licensing by RCW 19.146.020 may apply  
10 to the director for exemption from licensing. The director shall adopt  
11 rules for reviewing such applications and shall grant exemptions from  
12 licensing to applications which are consistent with those rules and  
13 consistent with the other provisions of this chapter.

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

16 It is (~~unlawful~~) a violation of this chapter for a loan  
17 originator, mortgage broker required to be licensed under this chapter,  
18 or mortgage broker otherwise exempted from this chapter under RCW  
19 19.146.020(1) (d) or (f) in connection with a residential mortgage loan  
20 to:

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

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

24 (3) Obtain property by fraud or misrepresentation;

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

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

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

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

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

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

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

16 ~~((11))~~ Advertise any rate of interest without conspicuously  
17 disclosing the annual percentage rate implied by such rate of interest  
18 or otherwise fail to comply with any requirement of the truth-in-  
19 lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226,  
20 the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 and  
21 Regulation X, 24 C.F.R. Sec. 3500, or the equal credit opportunity act,  
22 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12,  
23 as now or hereafter amended, in any advertising of residential mortgage  
24 loans or any other mortgage brokerage activity;

25 ~~((12))~~ (11) Fail to pay third-party providers no later than  
26 thirty days after the recording of the loan closing documents or ninety  
27 days after completion of the third-party service, whichever comes  
28 first, unless otherwise agreed or unless the third-party service  
29 provider has been notified in writing that a bona fide dispute exists  
30 regarding the performance or quality of the third-party service;

31 ~~((13))~~ (12) Collect, charge, attempt to collect or charge or use  
32 or propose any agreement purporting to collect or charge any fee  
33 prohibited by RCW 19.146.030 or 19.146.070;

34 ~~((14))~~ (13)(a) Except when complying with (b) and (c) of this  
35 subsection, to act as a mortgage broker in any transaction (i) in which  
36 the mortgage broker acts or has acted as a real estate broker or  
37 salesperson or (ii) in which another person doing business under the  
38 same licensed real estate broker acts or has acted as a real estate  
39 broker or salesperson;

1 (b) Prior to providing mortgage broker services to the borrower,  
2 the mortgage broker, in addition to other disclosures required by this  
3 chapter and other laws, shall provide to the borrower the following  
4 written disclosure:

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

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

15 (c) A real estate broker or salesperson licensed under chapter  
16 18.85 RCW who also acts as a mortgage broker shall carry on such  
17 mortgage brokerage business activities and shall maintain such person's  
18 mortgage brokerage business records separate and apart from the real  
19 estate brokerage activities conducted pursuant to chapter 18.85 RCW.  
20 Such activities shall be deemed separate and apart even if they are  
21 conducted at an office location with a common entrance and mailing  
22 address, so long as each business is clearly identified by a sign  
23 visible to the public, each business is physically separated within the  
24 office facility, and no deception of the public as to the separate  
25 identities of the brokerage business firms results. This subsection  
26 ~~((+14))~~ (13)(c) shall not require a real estate broker or salesperson  
27 licensed under chapter 18.85 RCW who also acts as a mortgage broker to  
28 maintain a physical separation within the office facility for the  
29 conduct of its real estate and mortgage brokerage activities where the  
30 director determines that maintaining such physical separation would  
31 constitute an undue financial hardship upon the mortgage broker and is  
32 unnecessary for the protection of the public; or

33 ~~((+15))~~ (14) Fail to comply with any provision of RCW 19.146.030  
34 through ~~((19.146.090))~~ 19.146.080 or any rule adopted under those  
35 sections.

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

1 (1) (~~Upon~~) Within three business days following receipt of a loan  
2 application ((and before the receipt of)) or any moneys from a  
3 borrower, a mortgage broker shall provide to each borrower a full  
4 written disclosure containing an itemization and explanation of all  
5 fees and costs that the borrower is required to pay in connection with  
6 obtaining a residential mortgage loan, and specifying the fee or fees  
7 which inure to the benefit of the mortgage broker and other such  
8 disclosures as may be required by rule. A good faith estimate of a fee  
9 or cost shall be provided if the exact amount of the fee or cost is not  
10 determinable. This subsection shall not be construed to require  
11 disclosure of the distribution or breakdown of loan fees, discount, or  
12 points between the mortgage broker and any lender or investor.

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

14 (a) The annual percentage rate, finance charge, amount financed,  
15 total amount of all payments, number of payments, amount of each  
16 payment, amount of points or prepaid interest and the conditions and  
17 terms under which any loan terms may change between the time of  
18 disclosure and closing of the loan; and if a variable rate, the  
19 circumstances under which the rate may increase, any limitation on the  
20 increase, the effect of an increase, and an example of the payment  
21 terms resulting from an increase. Disclosure in compliance with the  
22 requirements of the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 and  
23 Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be  
24 deemed to comply with the disclosure requirements of this subsection;

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

35 (c) If applicable, the cost, terms, duration, and conditions of a  
36 lock-in agreement and whether a lock-in agreement has been entered, and  
37 whether the lock-in agreement is guaranteed by the mortgage broker or  
38 lender, and if a lock-in agreement has not been entered, disclosure in

1 a form (~~approved by~~) acceptable to the director that the disclosed  
2 interest rate and terms are subject to change;

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

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

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

19 (3) If subsequent to the written disclosure being provided under  
20 this section, a mortgage broker enters into a lock-in agreement with a  
21 borrower or represents to the borrower that the borrower has entered  
22 into a lock-in agreement, then no less than three business days  
23 thereafter including Saturdays, the mortgage broker shall deliver or  
24 send by first-class mail to the borrower a written confirmation of the  
25 terms of the lock-in agreement, which shall include a copy of the  
26 disclosure made under subsection (2)(c) of this section.

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

30 (~~5~~)) A mortgage broker shall not charge any fee that inures to the  
31 benefit of the mortgage broker if it exceeds the fee disclosed on the  
32 written disclosure pursuant to this section, unless (a) the need to  
33 charge the fee was not reasonably foreseeable at the time the written  
34 disclosure was provided and (b) the mortgage broker has provided to the  
35 borrower, no less than three business days prior to the signing of the  
36 loan closing documents, a clear written explanation of the fee and the  
37 reason for charging a fee exceeding that which was previously  
38 disclosed. However, if the borrower's closing costs, excluding prepaid  
39 escrowed costs of ownership as defined by rule, does not exceed the

1 total closing costs in the most recent good faith estimate, no other  
2 disclosures shall be required by this subsection.

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

5 All moneys received by a mortgage broker from a borrower for  
6 payment of third-party provider services shall be deemed as held in  
7 trust immediately upon receipt by the mortgage broker. A mortgage  
8 broker shall deposit, prior to the end of the ~~((next))~~ third business  
9 day following receipt of such trust funds, all ~~((moneys received from~~  
10 ~~borrowers for third party provider services))~~ such trust funds in a  
11 trust account of a federally insured financial institution located in  
12 this state. All trust account funds collected under this chapter must  
13 remain on deposit in a trust account in the state of Washington until  
14 disbursement. The trust account shall be designated and maintained for  
15 the benefit of borrowers. Moneys maintained in the trust account shall  
16 be exempt from execution, attachment, or garnishment. A mortgage  
17 broker shall not in any way encumber the corpus of the trust account or  
18 commingle any other operating funds with trust account funds.  
19 Withdrawals from the trust account shall be only for the payment of  
20 bona fide services rendered by a third-party provider or for refunds to  
21 borrowers. The director shall make rules which: (1) Direct mortgage  
22 brokers how to handle checks and other instruments that are received by  
23 the broker and that combine trust funds with other funds; and (2)  
24 permit transfer of trust funds out of the trust account for payment of  
25 other costs only when necessary and only with the prior express written  
26 permission of the borrower. Any interest earned on the trust account  
27 shall be refunded or credited to the borrowers at closing. Trust  
28 accounts that are operated in a manner consistent with this section and  
29 any rules adopted by the director, are considered exempt from taxation  
30 under chapter 82.04 RCW.

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

33 (1) A mortgage broker shall use generally accepted accounting  
34 principles.

35 (2) Except as otherwise provided in subsection (3) of this section,  
36 a mortgage broker shall maintain accurate~~((7))~~ and current~~((7—and~~  
37 ~~readily available))~~ books and records which shall be readily available

1 at the mortgage broker's usual business location until at least ((four  
2 years)) twenty-five months have elapsed following the effective period  
3 to which the books and records relate.

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

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

12 (a) Copies of all advertisements placed by or at the request of the  
13 mortgage broker which mention rates or fees. In the case of radio or  
14 television advertisements, or advertisements placed on a telephonic  
15 information line or other electronic source of information including  
16 but not limited to a computer data base or electronic bulletin board,  
17 a mortgage broker shall keep copies of the precise script for the  
18 advertisement. All advertisement records shall include for each  
19 advertisement the date or dates of publication and name of each  
20 periodical, broadcast station, or telephone information line which  
21 published the advertisement or, in the case of a flyer or other  
22 material distributed by the mortgage broker, the dates, methods, and  
23 areas of distribution; and

24 (b) Copies of all documents, notes, computer records if not stored  
25 in printed form, correspondence or memoranda relating to a borrower  
26 from whom the mortgage broker has accepted a deposit or other funds, or  
27 accepted a residential mortgage loan application or with whom the  
28 mortgage broker has entered into an agreement to assist in obtaining a  
29 residential mortgage loan.

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

32 Except as otherwise required by the United States Code or the Code  
33 of Federal Regulations, now or as amended, if a borrower is unable to  
34 obtain a loan for any reason and the borrower has paid for an  
35 appraisal, title report, or credit report in full, the mortgage broker  
36 shall give a copy of the appraisal, title report, or credit report to  
37 the borrower and transmit the originals to any other mortgage broker or  
38 lender to whom the borrower directs that the documents be transmitted.

1 Regardless of whether the borrower has obtained a loan, the mortgage  
2 broker must provide the copies or transmit the documents within five  
3 days after the borrower has made the request in writing.

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

6 (1) A person may not engage in the business of a mortgage broker,  
7 except as an employee of a person licensed or exempt from licensing,  
8 without first obtaining and maintaining a license under this chapter.  
9 However, a person who independently contracts with a licensed mortgage  
10 broker need not be licensed if the licensed mortgage broker and the  
11 independent contractor have on file with the director a binding written  
12 agreement under which the licensed mortgage broker assumes  
13 responsibility for the independent contractor's violations of any  
14 provision of this chapter or rules adopted under this chapter; and if  
15 the licensed mortgage broker's bond or other security required under  
16 this chapter runs to the benefit of the state and any person who  
17 suffers loss by reason of the independent contractor's violation of any  
18 provision of this chapter or rules adopted under this chapter.

19 (2) A person may not bring a suit or action for the collection of  
20 compensation as a mortgage broker unless the plaintiff alleges and  
21 proves that he or she was a duly licensed mortgage broker, or exempt  
22 from the license requirement of this chapter, at the time of offering  
23 to perform or performing any such an act or service regulated by this  
24 chapter. This subsection does not apply to suits or actions for the  
25 collection or compensation for services performed prior to the  
26 effective date of section 5, chapter 468, Laws of 1993.

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

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

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

35 (a) The name, address, date of birth, and social security number of  
36 the applicant, and any other names, dates of birth, or social security

1 numbers previously used by the applicant, unless waived by the  
2 director;

3 (b) If the applicant is a partnership or association, the name,  
4 address, date of birth, and social security number of each general  
5 partner or principal of the association, and any other names, dates of  
6 birth, or social security numbers previously used by the members,  
7 unless waived by the director;

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

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

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

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

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

26 (3) At the time of filing an application for a license under this  
27 chapter, each applicant shall pay to the director the appropriate  
28 application fee in an amount determined by rule of the director in  
29 accordance with RCW 43.24.086 to cover, but not exceed, the cost of  
30 processing and reviewing the application. The director shall deposit  
31 the moneys in the banking examination fund, unless the consumer  
32 services account is created as a dedicated, nonappropriated account, in  
33 which case the director shall deposit the moneys in the consumer  
34 services account.

35 (~~(+3+)~~) (4)(a) Each applicant for a mortgage broker's license shall  
36 file and maintain a surety bond, in an amount of not greater than sixty  
37 thousand dollars nor less than twenty thousand dollars which the  
38 director deems adequate to protect the public interest, executed by the  
39 applicant as obligor and by a surety company authorized to do a surety

1 business in this state as surety. The bonding requirement as  
2 established by the director may take the form of a uniform bond amount  
3 for all licensees or the director may establish by rule a schedule  
4 establishing a range of bond amounts which shall vary according to the  
5 annual average number of loan originators or independent contractors of  
6 a licensee. The bond shall run to the state of Washington as obligee,  
7 and shall run to the benefit of the state and any (~~person or persons~~)  
8 borrower who suffers loss by reason of the applicant's or its loan  
9 originator's violation of any provision of this chapter or rules  
10 adopted under this chapter. The bond shall be conditioned that the  
11 obligor as licensee will faithfully conform to and abide by this  
12 chapter and all rules adopted under this chapter, and shall reimburse  
13 all persons who suffer loss by reason of a violation of this chapter  
14 or rules adopted under this chapter. The bond shall be continuous and  
15 may be canceled by the surety upon the surety giving written notice to  
16 the director of its intent to cancel the bond. The cancellation shall  
17 be effective thirty days after the notice is received by the director.  
18 Whether or not the bond is renewed, continued, reinstated, reissued, or  
19 otherwise extended, replaced, or modified, including increases or  
20 decreases in the penal sum, it shall be considered one continuous  
21 obligation, and the surety upon the bond shall not be liable in an  
22 aggregate or cumulative amount exceeding the penal sum set forth on the  
23 face of the bond. In no event shall the penal sum, or any portion  
24 thereof, at two or more points in time be added together in determining  
25 the surety's liability. The bond shall not be liable for any penalties  
26 imposed on the licensee, including, but not limited to, any increased  
27 damages or attorneys' fees, or both, awarded under RCW 19.86.090. The  
28 applicant may obtain the bond directly from the surety or through a  
29 group bonding arrangement involving a professional organization  
30 comprised of mortgage brokers if the arrangement provides at least as  
31 much coverage as is required under this subsection.

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

37 (c) In lieu of the surety bond or compliance with (b) of this  
38 subsection, an applicant may obtain insurance or coverage from an  
39 association comprised of mortgage brokers that is organized as a mutual

1 corporation for the sole purpose of insuring or self-insuring claims  
2 that may arise from a violation of this chapter. An applicant may only  
3 substitute coverage under this subsection for the requirements of (a)  
4 or (b) of this subsection if the director, with the consent of the  
5 insurance commissioner, has authorized such association to organize a  
6 mutual corporation under such terms and conditions as may be imposed by  
7 the director to ensure that the corporation is operated in a  
8 financially responsible manner to pay any claims within the financial  
9 responsibility limits specified in (a) of this subsection.

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

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

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

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

17 (c) Neither the applicant ~~((nor))~~, any of its principals ~~((has))~~,  
18 or the designated broker have had a license issued under this chapter  
19 or any similar state statute suspended or revoked within five years of  
20 the filing of the present application;

21 (d) Neither the applicant ~~((nor))~~, any of its principals ~~((has))~~,  
22 or the designated broker have been convicted of a gross misdemeanor  
23 involving dishonesty or financial misconduct or a felony within seven  
24 years of the filing of the present application;

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

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

35 (2) If the director does not find the conditions of subsection (1)  
36 of this section have been met, the director shall not issue the  
37 license. The director shall notify the applicant of the denial and  
38 return to the applicant the bond or approved alternative and any

1 remaining portion of the license fee that exceeds the department's  
2 actual cost to investigate the license.

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

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

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

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

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

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

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

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

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

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

33 (b) Suspend or revoke licenses for:

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

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

3 (iii) Failure to comply with any directive or order of the  
4 director; or

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

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

9 (i) Any violations of RCW 19.146.0201 (1) through (9) or (~~(+13)~~)  
10 (12), 19.146.030 through (~~(19.146.090)~~) 19.146.080, 19.146.200,  
11 19.146.205(~~(+3)~~) (4), or 19.146.265; or

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

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

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

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

18 (e) Issue orders removing from office or prohibiting from  
19 participation in the conduct of the affairs of a licensed mortgage  
20 broker, or both, any officer, principal, employee, or loan originator  
21 of any licensed mortgage broker or any person subject to licensing  
22 under this chapter for:

23 (i) Any violation of 19.146.0201 (1) through (9) or (~~(+13)~~) (12),  
24 19.146.030 through (~~(19.146.090)~~) 19.146.080, 19.146.200,  
25 19.146.205(~~(+3)~~) (4), or 19.146.265; or

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

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

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

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

35 (4) The director shall establish by rule standards for licensure of  
36 applicants licensed in other jurisdictions. (~~Every licensed mortgage~~  
37 ~~broker that does not maintain a physical office within the state must~~  
38 ~~maintain a registered agent within the state to receive service of any~~  
39 ~~lawful process in any judicial or administrative noncriminal suit,~~

1 action, or proceeding, against the licensed mortgage broker which  
2 arises under this chapter or any rule or order under this chapter, with  
3 the same force and validity as if served personally on the licensed  
4 mortgage broker. Service upon the registered agent shall be effective  
5 if the plaintiff, who may be the director in a suit, action, or  
6 proceeding instituted by him or her, sends notice of the service and a  
7 copy of the process by registered mail to the defendant or respondent  
8 at the last address of the respondent or defendant on file with the  
9 director. In any judicial action, suit, or proceeding arising under  
10 this chapter or any rule or order adopted under this chapter between  
11 the department or director and a licensed mortgage broker who does not  
12 maintain a physical office in this state, venue shall be exclusively in  
13 the superior court of Thurston county.))

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

16 The director shall establish fees by rule in accordance with RCW  
17 43.24.086 sufficient to cover, but not exceed, the costs of  
18 administering this chapter. These fees may include:

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

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

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

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

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

1 For the purposes of investigating complaints arising under this  
2 chapter, the director may at any time, either personally or by a  
3 designee, examine the business, including but not limited to the books,  
4 accounts, records, and files used therein, of every licensee and of  
5 every person engaged in the business of mortgage brokering, whether  
6 such a person shall act or claim to act under or without the authority  
7 of this chapter. For that purpose the director and designated  
8 representatives shall have access during regular business hours to the  
9 offices and places of business, books, accounts, papers, records,  
10 files, safes, and vaults of all such persons. The director or  
11 designated person may require the attendance of and examine under oath  
12 all persons whose testimony may be required about the loans or the  
13 business or subject matter of any such examination and investigation.  
14 No person subject to examination or investigation under this chapter  
15 shall withhold, abstract, remove, mutilate, destroy, or secrete any  
16 books, records, computer records, or other information.

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

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

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

1           (2) (~~(A person)~~) The director or any borrower who is damaged by the  
2 licensee's or its loan originator's violation of this chapter, or rules  
3 adopted under this chapter, may bring suit upon the surety bond or  
4 approved alternative in the superior court of any county in which  
5 jurisdiction over the licensee may be obtained. Jurisdiction shall be  
6 exclusively in the superior court. Any such action must be brought not  
7 later than one year after the alleged violation of this chapter or  
8 rules adopted under this chapter. In the event valid claims against a  
9 bond or deposit exceed the amount of the bond or deposit, each claimant  
10 shall only be entitled to a pro rata amount, based on the amount of the  
11 claim as it is valid against the bond or deposit, without regard to the  
12 date of filing of any claim or action. A judgment arising from a  
13 violation of this chapter or rule adopted under this chapter shall be  
14 entered for actual damages and in no case be less than the amount paid  
15 by the borrower to the licensed mortgage broker plus reasonable  
16 attorneys' fees and costs. In no event shall the surety bond or  
17 approved alternative provide payment for any trebled or punitive  
18 damages.

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

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

23           A licensed mortgage broker is liable for any conduct violating this  
24 chapter by the designated broker, a loan originator, or other licensed  
25 mortgage broker while employed or engaged by the licensed mortgage  
26 broker. (~~(In addition, a branch office manager is liable for any~~  
27 ~~conduct violating this chapter by a loan originator or other licensed~~  
28 ~~mortgage broker employed or engaged at the branch office.)~~)

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

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

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

1 (2) A broker may establish one or more branch offices under a name  
2 or names different from that of the main office if the name or names  
3 are approved by the director, so long as each branch office is clearly  
4 identified as a branch or division of the main office. (~~No broker may~~  
5 ~~establish branch offices under more than three names.~~) Both the name  
6 of the branch office and of the main office must clearly appear on the  
7 sign identifying the office, if any, and in any advertisement or on any  
8 letterhead of any stationery or any forms, or signs used by the  
9 mortgage firm on which either the name of the main or branch offices  
10 appears.

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

13 (~~Every licensed mortgage broker must have and maintain an office~~  
14 ~~in this state, or within thirty miles of the border of this state,~~  
15 ~~accessible to the public and which shall serve as his or her office for~~  
16 ~~the transaction of business. The broker's license must be prominently~~  
17 ~~displayed.~~) Every licensed mortgage broker that does not maintain a  
18 physical office within the state must maintain a registered agent  
19 within the state to receive service of any lawful process in any  
20 judicial or administrative noncriminal suit, action, or proceeding  
21 against the licensed mortgage broker which arises under this chapter or  
22 any rule or order under this chapter, with the same force and validity  
23 as if served personally on the licensed mortgage broker. Service upon  
24 the registered agent shall not be effective unless the plaintiff, who  
25 may be the director in a suit, action, or proceeding instituted by him  
26 or her, no later than the next business day sends notice of the service  
27 and a copy of the process by registered mail to the defendant or  
28 respondent at the last address of the respondent or defendant on file  
29 with the director. In any judicial action, suit, or proceeding arising  
30 under this chapter or any rule or order adopted under this chapter  
31 between the department or director and a licensed mortgage broker who  
32 does not maintain a physical office in this state, venue shall be  
33 exclusively in the superior court of the Thurston county.

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

36 A licensed mortgage broker may apply to the director for authority  
37 to establish one or more branch offices under the same or different

1 name as the main office upon the payment of a fee as prescribed by the  
2 director by rule. Provided that the applicant is in good standing with  
3 the department, as defined in rule by the director, the director shall  
4 promptly issue a duplicate license for each of the branch offices  
5 showing the location of the main office and the particular branch.  
6 Each duplicate license shall be prominently displayed in the office for  
7 which it is issued. (~~Each branch office shall be required to have a~~  
8 ~~branch manager who meets the experience and educational requirements~~  
9 ~~for branch managers as established by rule of the director.~~)

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

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

15 (2) The director shall appoint the members of the commission,  
16 weighing the recommendations from professional organizations  
17 representing mortgage brokers. At least three of the commission  
18 members shall be mortgage brokers (~~required to apply for a mortgage~~  
19 ~~brokers license~~) licensed under this chapter and at least one shall be  
20 exempt from licensure under RCW 19.146.020(1)(f). No commission member  
21 shall be appointed who has had less than five years' experience in the  
22 business of residential mortgage lending. In addition, the director or  
23 a designee shall serve as an ex officio, nonvoting member of the  
24 commission. Voting members of the commission shall serve for two-year  
25 terms with three of the initial commission members serving one-year  
26 terms. The department shall provide staff support to the commission.

27 (3) The commission may establish a code of conduct for its members.  
28 Any commissioner may bring a motion before the commission to remove a  
29 commissioner for failing to conduct themselves in a manner consistent  
30 with the code of conduct. The motion shall be in the form of a  
31 recommendation to the director to dismiss a specific commissioner and  
32 shall enumerate causes for doing so. The commissioner in question  
33 shall recuse himself or herself from voting on any such motion. Any  
34 such motion must be approved unanimously by the remaining four  
35 commissioners. Approved motions shall be immediately transmitted to  
36 the director for review and action.

37 (4) Members of the commission shall be reimbursed for their travel  
38 expenses incurred in carrying out the provisions of this chapter in

1 accordance with RCW 43.03.050 and 43.03.060. All costs and expenses  
2 associated with the commission shall be paid from the banking  
3 examination fund, unless the consumer services account is created as a  
4 dedicated, nonappropriated account, in which case all costs and  
5 expenses shall be paid from the consumer services account.

6 ~~((4))~~ (5) The commission shall advise the director on the  
7 characteristics and needs of the mortgage brokerage profession.

8 ~~((5))~~ (6) The department, in consultation with other applicable  
9 agencies of state government, shall conduct a continuing review of the  
10 number and type of consumer complaints arising from residential  
11 mortgage lending in the state. The department shall report its  
12 findings to the senate committee on labor and commerce and house of  
13 representatives committee on financial institutions and insurance along  
14 with recommendations for any changes in the licensing requirements of  
15 this chapter, ~~((no later than December 1, 1996))~~ biennially by December  
16 1st of each even-numbered year.

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

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

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

26 NEW SECTION. Sec. 23. RCW 19.146.090 and 1987 c 391 s 11 are each  
27 repealed.

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