

CERTIFICATION OF ENROLLMENT

SENATE BILL 5207

63rd Legislature
2013 Regular Session

Passed by the Senate March 5, 2013
YEAS 49 NAYS 0

President of the Senate

Passed by the House April 9, 2013
YEAS 94 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5207** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5207

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By Senators Fain, Benton, Hobbs, Roach, Nelson, Mullet, Hatfield, and Keiser; by request of Department of Financial Institutions

Read first time 01/23/13. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to making technical corrections and updating
2 licensing and enforcement provisions of the consumer loan act; and
3 amending RCW 31.04.015, 31.04.025, 31.04.027, 31.04.035, 31.04.093,
4 31.04.102, 31.04.105, 31.04.155, 31.04.221, 31.04.290, 31.04.293, and
5 31.04.297.

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

7 **Sec. 1.** RCW 31.04.015 and 2010 c 35 s 1 are each amended to read
8 as follows:

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

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

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

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

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

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

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

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

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

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

33 (10) "Licensee" means a person to whom one or more licenses have
34 been issued.

35 (11) "Loan" means a sum of money lent at interest or for a fee or
36 other charge and includes both open-end and closed-end loan
37 transactions.

1 (12) "Loan processor or underwriter" means an individual who
2 performs clerical or support duties as an employee at the direction of
3 and subject to the supervision and instruction of a person licensed, or
4 exempt from licensing, under this chapter ((19.146-RCW)).

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

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

12 (15)(a) "Mortgage loan originator" means an individual who for
13 compensation or gain (i) takes a residential mortgage loan application,
14 or (ii) offers or negotiates terms of a residential mortgage loan.
15 "Mortgage loan originator" does not include any individual who performs
16 purely administrative or clerical tasks; and does not include a person
17 or entity solely involved in extensions of credit relating to timeshare
18 plans, as that term is defined in section 101(53D) of Title 11, United
19 States Code. For the purposes of this definition, administrative or
20 clerical tasks means the receipt, collection, and distribution of
21 information common for the processing of a loan in the mortgage
22 industry and communication with a consumer to obtain information
23 necessary for the processing of a residential mortgage loan.

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

28 (c) "Mortgage loan originator" does not include a person or entity
29 that only performs real estate brokerage activities and is licensed or
30 registered in accordance with applicable state law, unless the person
31 or entity is compensated by a lender, a mortgage broker, or other
32 mortgage loan originator or by any agent of such a lender, mortgage
33 broker, or other mortgage loan originator. For the purposes of chapter
34 120, Laws of 2009, the term "real estate brokerage activity" means any
35 activity that involves offering or providing real estate brokerage
36 services to the public, including:

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

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

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

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

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

12 ~~(d) ((This subsection does not apply to an individual servicing a
13 mortgage loan before July 1, 2011.~~

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

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

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

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

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

34 (20) "Registered mortgage loan originator" means any individual who
35 meets the definition of mortgage loan originator and is an employee of
36 a depository institution; a subsidiary that is owned and controlled by
37 a depository institution and regulated by a federal banking agency; or

1 an institution regulated by the farm credit administration and is
2 registered with, and maintains a unique identifier through, the
3 nationwide ((mortgage)) multistate licensing system ((and registry)).

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

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

16 (23) "Residential mortgage loan modification services" includes
17 negotiating, attempting to negotiate, arranging, attempting to arrange,
18 or otherwise offering to perform a residential mortgage loan
19 modification for compensation or gain. "Residential mortgage loan
20 modification services" also includes the collection of data for
21 submission to an entity performing mortgage loan modification services.
22 (~~"Residential mortgage loan modification services" do not include~~
23 ~~actions by individuals servicing a mortgage loan before July 1, 2011.~~)

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

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

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

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

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

10 (a) On a nonresidential loan each payment is applied first to any
11 unpaid penalties, fees, or charges, then to accumulated interest, and
12 the remainder of the payment applied to the unpaid balance of the
13 principal until paid in full. In using such method, interest shall not
14 be payable in advance nor compounded ~~((, except that on a loan secured
15 by real estate, a licensee may collect at the time of the loan closing
16 up to but not exceeding forty five days of prepaid interest))~~. The
17 prohibition on compounding interest does not apply to reverse mortgage
18 loans made in accordance with the Washington state reverse mortgage
19 act. The director may adopt by rule a more detailed explanation of the
20 meaning and use of this method.

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

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

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

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

36 **Sec. 2.** RCW 31.04.025 and 2012 c 17 s 1 are each amended to read
37 as follows:

1 (1) Each loan made to a resident of this state by a licensee, or
2 persons subject to this chapter, is subject to the authority and
3 restrictions of this chapter(~~(, unless such loan is made under the~~
4 ~~authority of chapter 63.14 RCW)~~).

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

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

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

11 (c) Entities conducting transactions under chapter 63.14 RCW
12 (retail installment sales of goods and services), unless (~~the goods~~
13 ~~being sold in a retail installment sale consist of open loop prepaid~~
14 ~~access (prepaid access as defined in 31 C.F.R. Part 1010.100(ww) and~~
15 ~~not closed loop prepaid access as defined in 31 C.F.R. Part~~
16 ~~1010.100(kkk))~~) credit is extended to purchase merchandise
17 certificates, coupons, open or closed loop stored value, or other
18 similar items issued and redeemable by a retail seller other than the
19 retail seller extending the credit;

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

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

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

28 (g) Entities making loans under chapter 43.185 RCW (housing trust
29 fund);

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

35 (i) Nonprofit housing organizations making loans, or loans made,
36 under housing programs that are funded in whole or in part by federal
37 or state programs if the primary purpose of the programs is to assist

1 low-income borrowers with purchasing or repairing housing or the
2 development of housing for low-income Washington state residents;
3 ((and))

4 (j) Entities making loans which are not residential mortgage loans
5 under a credit card plan; and

6 (k) Individuals employed by a licensed residential loan servicing
7 company, unless so required by federal law or regulation.

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

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

18 **Sec. 3.** RCW 31.04.027 and 2012 c 17 s 2 are each amended to read
19 as follows:

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

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

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

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

30 (4) Solicit or enter into a contract with a borrower that provides
31 in substance that the consumer loan company may earn a fee or
32 commission through the consumer loan company's best efforts to obtain
33 a loan even though no loan is actually obtained for the borrower;

34 (5) Solicit, advertise, or enter into a contract for specific
35 interest rates, points, or other financing terms unless the terms are
36 actually available at the time of soliciting, advertising, or
37 contracting;

1 (6) Fail to make disclosures to loan applicants as required by RCW
2 31.04.102 and any other applicable state or federal law;

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

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

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

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

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

23 (12) Advertise any rate of interest without conspicuously
24 disclosing the annual percentage rate implied by that rate of interest
25 (~~or otherwise fail to comply with any requirement of the truth in~~
26 ~~lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Sec. 226,~~
27 ~~the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and~~
28 ~~regulation X, 24 C.F.R. Sec. 3500, or the equal credit opportunity act,~~
29 ~~15 U.S.C. Sec. 1691 and regulation B, Sec. 202.9, 202.11, and 202.12,~~
30 ~~or any other applicable state or federal statutes or regulations; or));~~

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

33 (14) Make loans from any unlicensed location.

34 **Sec. 4.** RCW 31.04.035 and 2010 c 35 s 2 are each amended to read
35 as follows:

36 (1) No person may ((engage in the business of making)) make secured
37 or unsecured loans of money((τ)) or things in action, or extend credit,

1 (~~or things in action,~~) or (~~servicing~~) service or modify the terms
2 or conditions of residential mortgage loans, without first obtaining
3 and maintaining a license in accordance with this chapter, except those
4 exempt under RCW 31.04.025.

5 (2) If a transaction violates subsection (1) of this section, any:

6 (a) Nonthird-party fees charged in connection with the origination
7 of the residential mortgage loan must be refunded to the borrower,
8 excluding interest charges; and

9 (b) Fees or interest charged in the making of a nonresidential loan
10 must be refunded to the borrower.

11 **Sec. 5.** RCW 31.04.093 and 2012 c 17 s 4 are each amended to read
12 as follows:

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

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

17 (a) Failure of the applicant to demonstrate within its application
18 for a license that it meets the requirements for licensing in RCW
19 31.04.045 and 31.04.055;

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

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

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

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

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

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

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

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

21 (a) Any violation of this chapter; or

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

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

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

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

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

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

37 (a) False statements or omission of material information from an

1 application for a license that, if known, would have allowed the
2 director to deny the original application for a license;

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

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

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

11 (e) A violation of RCW 31.04.027, 31.04.102, 31.04.155, or
12 31.04.221; or

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

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

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

35 (9) A licensee may surrender a license by delivering to the
36 director written notice of surrender, but the surrender does not affect
37 the licensee's civil or criminal liability, if any, for acts committed
38 before the surrender, including any administrative action initiated by

1 the director to suspend or revoke a license, impose fines, compel the
2 payment of restitution to borrowers or other persons, or exercise any
3 other authority under this chapter.

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

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

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

21 **Sec. 6.** RCW 31.04.102 and 2009 c 120 s 6 are each amended to read
22 as follows:

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

27 (2) For all loans made by a licensee that are secured by a lien on
28 real property, the licensee shall provide to each borrower within three
29 business days following receipt of a loan application a written
30 disclosure containing an itemized estimation and explanation of all
31 fees and costs that the borrower is required to pay in connection with
32 obtaining a loan from the licensee. A good faith estimate of a fee or
33 cost shall be provided if the exact amount of the fee or cost is not
34 available when the disclosure is provided. Disclosure in a form which
35 complies with the requirements of the truth in lending act, 15 U.S.C.
36 Sec. 1601 and regulation Z, 12 C.F.R. Part 226, the real estate
37 settlement procedures act and regulation X, 24 C.F.R. Sec. 3500, and

1 all other applicable federal laws and regulations, as now or hereafter
2 amended, shall be deemed to constitute compliance with this disclosure
3 requirement. Each licensee shall comply with all other applicable
4 federal and state laws and regulations.

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

20 (4) In addition for all consumer loans made by the licensee that
21 are secured by a lien on real property, the licensee must (~~provide the~~
22 ~~borrower with the one page disclosure summary required in~~) comply with
23 RCW 19.144.020.

24 **Sec. 7.** RCW 31.04.105 and 2009 c 120 s 7 are each amended to read
25 as follows:

26 Every licensee may:

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

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

36 (3) Agree with the borrower for the payment of fees to third
37 parties other than the licensee who provide goods or services to the

1 licensee in connection with the preparation of the borrower's loan,
2 including, but not limited to, credit reporting agencies, title
3 companies, appraisers, structural and pest inspectors, and escrow
4 companies, when such fees are actually paid by the licensee to a third
5 party for such services or purposes and may include such fees in the
6 amount of the loan. However, no charge may be collected unless a loan
7 is made, except for reasonable fees properly incurred in connection
8 with the appraisal of property by a qualified, independent,
9 professional, third-party appraiser selected by the borrower and
10 approved by the lender or in the absence of borrower selection,
11 selected by the lender;

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

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

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

23 ((+6)) (7) Collect from the debtor reasonable attorneys' fees,
24 actual expenses, and costs incurred in connection with the collection
25 of a delinquent debt, a repossession, or a foreclosure when a debt is
26 referred for collection to an attorney who is not a salaried employee
27 of the licensee;

28 ((+7)) (8) Make open-end loans as provided in this chapter;

29 ((+8)) (9) Charge and collect a fee for dishonored checks in an
30 amount approved by the director; and

31 ((+9)) (10) In accordance with Title 48 RCW, sell insurance
32 covering real and personal property, covering the life or disability or
33 both of the borrower, and covering the involuntary unemployment of the
34 borrower.

35 **Sec. 8.** RCW 31.04.155 and 2001 c 81 s 12 are each amended to read
36 as follows:

37 The licensee shall keep and use in the business such books,

1 accounts, records, papers, documents, files, and other information as
2 will enable the director to determine whether the licensee is complying
3 with this chapter and with the rules adopted by the director under this
4 chapter. The director shall have free access to such books, accounts,
5 records, papers, documents, files, and other information wherever
6 located. Every licensee shall preserve the books, accounts, records,
7 papers, documents, files, and other information relevant to a loan for
8 at least (~~twenty-five months~~) three years after making the final
9 entry on any loan. No licensee or person subject to examination or
10 investigation under this chapter shall withhold, abstract, remove,
11 mutilate, destroy, or secrete any books, accounts, records, papers,
12 documents, files, or other information.

13 Each licensee shall, on or before the first day of March of each
14 year, file a report with the director giving such relevant information
15 as the director may reasonably require concerning the business and
16 operations of each licensed place of business conducted during the
17 preceding calendar year. The report must be made under oath and must
18 be in the form prescribed by the director, who shall make and publish
19 annually an analysis and recapitulation of the reports. Every licensee
20 that fails to file a report that is required to be filed by this
21 chapter within the time required under this chapter is subject to a
22 penalty of fifty dollars per day for each day's delay. The attorney
23 general may bring a civil action in the name of the state for recovery
24 of any such penalty.

25 **Sec. 9.** RCW 31.04.221 and 2009 c 120 s 10 are each amended to read
26 as follows:

27 An individual defined as a mortgage loan originator shall not
28 engage in the business of a mortgage loan originator without first
29 obtaining and maintaining annually a license under this chapter (~~(120-~~
30 ~~Laws of 2009)~~). Each licensed mortgage loan originator must register
31 with and maintain a valid unique identifier issued by the nationwide
32 (~~(mortgage)~~) multistate licensing system (~~(and registry)~~).

33 **Sec. 10.** RCW 31.04.290 and 2010 c 35 s 9 are each amended to read
34 as follows:

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

1 (a) The requirements of chapter 19.148 RCW;

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

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

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

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

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

35 (ii) Must provide a written statement to the borrower within
36 fifteen business days of receipt of a written request from the
37 borrower. The borrower's request must include the name and account
38 number, if any, of the borrower, a statement that the account is or may

1 be in error, and sufficient detail regarding the information sought by
2 the borrower to permit the servicer to comply. At a minimum, the
3 servicer's response to the borrower's request must include the
4 following information:

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

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

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

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

19 ~~((iii) May charge a fee for preparing and furnishing the statement
20 in (e)(ii) of this subsection not exceeding thirty dollars per
21 statement; and))~~

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

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

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

35 (b) A statement that identifies and itemizes all fees and charges
36 assessed under the loan transaction and provides a full payment history
37 identifying in a clear and conspicuous manner all of the debits,
38 credits, application of and disbursement of all payments received from

1 or for the benefit of the borrower, and other activity on the
2 residential mortgage loan including escrow account activity and
3 suspense account activity, if any. The period of the account history
4 shall cover at a minimum the two-year period prior to the date of the
5 receipt of the request for information. If the servicer has not
6 serviced the residential mortgage loan for the entire two-year time
7 period the servicer shall provide the information going back to the
8 date on which the servicer began servicing the home loan, and identify
9 the previous servicer, if known. If the servicer claims that any
10 delinquent or outstanding sums are owed on the home loan prior to the
11 two-year period or the period during which the servicer has serviced
12 the residential mortgage loan, the servicer shall provide an account
13 history beginning with the month that the servicer claims any
14 outstanding sums are owed on the residential mortgage loan up to the
15 date of the request for the information. The borrower may request
16 annually one statement free of charge.

17 **Sec. 11.** RCW 31.04.293 and 2010 c 35 s 10 are each amended to read
18 as follows:

19 (1) In addition to any other requirements under federal or state
20 law, an advance fee may not be collected for residential mortgage loan
21 modification services ~~((unless a))~~.

22 (2) A written disclosure summary of all material terms~~((, in the
23 format adopted by the department under subsection (2) of this section,
24 has been))~~ of the services to be provided must be provided to the
25 borrower.

26 ~~((+2))~~ (3) The department shall adopt by rule a model written
27 ~~((fee agreement))~~ disclosure summary, and any other rules necessary to
28 implement this section. This may include, but is not limited to, usual
29 and customary fees for residential mortgage loan modification services.

30 **Sec. 12.** RCW 31.04.297 and 2010 c 35 s 11 are each amended to read
31 as follows:

32 (1) In addition to complying with federal law and all requirements
33 for loan originators under this chapter, third-party residential
34 mortgage loan modification services providers must:

35 (a) Provide a written ~~((fee))~~ disclosure summary as described in
36 RCW 31.04.293 ~~((before accepting any advance fee));~~

1 (b) Not receive ((an)) advance ((~~fee greater than seven hundred~~
2 ~~fifty dollars~~)) fees;

3 (c) Not charge total fees in excess of usual and customary charges,
4 or total fees that are not reasonable in light of the service provided;
5 and

6 (d) Immediately inform the borrower in writing if the owner of the
7 loan requires additional information from the borrower, or if it
8 becomes apparent that a residential mortgage loan modification is not
9 possible.

10 (2) As a condition for providing a loan modification or loan
11 modification services, third-party residential mortgage loan
12 modification services providers and individuals servicing a residential
13 mortgage loan must not require or encourage a borrower to:

14 (a) Sign a waiver of his or her legal defenses, counterclaims, and
15 other legal rights against the servicer for future acts;

16 (b) Sign a waiver of his or her right to contest a future
17 foreclosure;

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

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

22 (e) Cease communication with the lender, investor, or loan
23 servicer.

24 (3) Failure to comply with subsection (1) of this section is a
25 violation of RCW 19.144.080.

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