

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5210

63rd Legislature
2013 Regular Session

Passed by the Senate March 12, 2013
YEAS 46 NAYS 3

President of the Senate

Passed by the House April 9, 2013
YEAS 93 NAYS 1

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 **SUBSTITUTE SENATE BILL 5210** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5210

Passed Legislature - 2013 Regular Session

State of Washington

63rd Legislature

2013 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Nelson and Hatfield; by request of Department of Financial Institutions)

READ FIRST TIME 02/20/13.

1 AN ACT Relating to the department of financial institutions'
2 regulation of mortgage brokers and clarifying the department's existing
3 regulatory authority regarding residential mortgage loan modification
4 services; and amending RCW 19.146.010, 19.146.020, 19.146.0201,
5 19.146.060, 19.146.220, and 19.146.240.

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

7 **Sec. 1.** RCW 19.146.010 and 2010 c 35 s 13 are each amended to read
8 as follows:

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

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

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

16 (3) "Borrower" means any person who consults with or retains a
17 mortgage broker or loan originator in an effort to obtain or seek
18 advice or information on obtaining or applying to obtain a residential

1 mortgage loan, or a residential mortgage loan modification, for
2 himself, herself, or persons including himself or herself, regardless
3 of whether the person actually obtains such a loan.

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

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

10 (6) "Designated broker" means a natural person designated as the
11 person responsible for activities of the licensed mortgage broker in
12 conducting the business of a mortgage broker under this chapter and who
13 meets the experience and examination requirements set forth in RCW
14 19.146.210(1)(e).

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

16 (8) "Employee" means an individual who has an employment
17 relationship with a mortgage broker, and the individual is treated as
18 an employee by the mortgage broker for purposes of compliance with
19 federal income tax laws.

20 (9) "Federal banking agencies" means the board of governors of the
21 federal reserve system, comptroller of the currency, director of the
22 office of thrift supervision, national credit union administration, and
23 federal deposit insurance corporation.

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

30 (11)(a) "Loan originator" means a natural person who for direct or
31 indirect compensation or gain, or in the expectation of direct or
32 indirect compensation or gain (i) takes a residential mortgage loan
33 application for a mortgage broker, or (ii) offers or negotiates terms
34 of a mortgage loan. "Loan originator" also includes a person who holds
35 themselves out to the public as able to perform any of these
36 activities. "Loan originator" does not mean persons performing purely
37 administrative or clerical tasks for a mortgage broker. For the
38 purposes of this subsection, "administrative or clerical tasks" means

1 the receipt, collection, and distribution of information common for the
2 processing of a loan in the mortgage industry and communication with a
3 borrower to obtain information necessary for the processing of a loan.
4 A person who holds himself or herself out to the public as able to
5 obtain a loan is not performing administrative or clerical tasks.

6 (b) "Loan originator" also includes a natural person who for direct
7 or indirect compensation or gain or in the expectation of direct or
8 indirect compensation or gain performs residential mortgage loan
9 modification services or holds himself or herself out as being able to
10 perform residential mortgage loan modification services.

11 (c) "Loan originator" does not include a person or entity that only
12 performs real estate brokerage activities and is licensed or registered
13 in accordance with applicable state law, unless the person or entity is
14 compensated by a lender, a mortgage broker, or other mortgage loan
15 originator or by any agent of such a lender, mortgage broker, or other
16 mortgage loan originator. For purposes of this chapter, the term "real
17 estate brokerage activity" means any activity that involves offering or
18 providing real estate brokerage services to the public, including:

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

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

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

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

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

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

35 (e) This subsection does not apply to employees of a housing
36 counseling agency approved by the United States department of housing
37 and urban development unless the employees of a housing counseling

1 agency are required under federal law to be licensed individually as
2 loan originators.

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

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

12 (14) "Mortgage broker" means any person who for direct or indirect
13 compensation or gain, or in the expectation of direct or indirect
14 compensation or gain (a) assists a person in obtaining or applying to
15 obtain a residential mortgage loan or performs residential mortgage
16 loan modification services or (b) holds himself or herself out as being
17 able to assist a person in obtaining or applying to obtain a
18 residential mortgage loan or provide residential mortgage loan
19 modification services.

20 (15) "Mortgage loan originator" has the same meaning as "loan
21 originator."

22 (16) "Nationwide mortgage licensing system and registry" means a
23 mortgage licensing system developed and maintained by the conference of
24 state bank supervisors and the American association of residential
25 mortgage regulators for the licensing and registration of mortgage loan
26 originators.

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

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

34 (19) "Residential mortgage loan" means any loan primarily for
35 personal, family, or household use secured by a mortgage or deed of
36 trust on residential real estate upon which is constructed or intended
37 to be constructed a single-family dwelling or multiple-family dwelling
38 of four or less units.

1 (20) "Residential mortgage loan modification" means a change in one
2 or more of a residential mortgage loan's terms or conditions. Changes
3 to a residential mortgage loan's terms or conditions include but are
4 not limited to forbearances; repayment plans; changes in interest
5 rates, loan terms, or loan types; capitalizations of arrearages; or
6 principal reductions.

7 (21) "Residential mortgage loan modification services" includes
8 negotiating, attempting to negotiate, arranging, attempting to arrange,
9 or otherwise offering to perform a residential mortgage loan
10 modification. "Residential mortgage loan modification services" also
11 includes the collection of data for submission to any entity performing
12 mortgage loan modification services.

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

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

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

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

27 **Sec. 2.** RCW 19.146.020 and 2009 c 528 s 2 are each amended to read
28 as follows:

29 (1) The following are exempt from all provisions of this chapter:

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

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

4 (c) An attorney licensed to practice law in this state (~~who is not~~
5 ~~principally engaged in the business of negotiating residential mortgage~~
6 ~~loans when such attorney renders services in the course of his or her~~
7 ~~practice as an attorney~~). However, (i) all mortgage broker or loan
8 originator services must be performed by the attorney while engaged in
9 the practice of law; (ii) all mortgage broker or loan originator
10 services must be performed under a business that is publicly identified
11 and operated as a law practice; and (iii) all funds associated with the
12 transaction and received by the attorney must be deposited in,
13 maintained in, and disbursed from a trust account to the extent
14 required by rules enacted by the Washington supreme court regulating
15 the conduct of attorneys;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 **Sec. 3.** RCW 19.146.0201 and 2009 c 528 s 3 are each amended to
33 read as follows:

34 It is a violation of this chapter for a loan originator or mortgage
35 broker required to be licensed under this chapter to:

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

- 1 (2) Engage in any unfair or deceptive practice toward any person;
- 2 (3) Obtain property by fraud or misrepresentation;
- 3 (4) Solicit or enter into a contract with a borrower that provides
4 in substance that the mortgage broker may earn a fee or commission
5 through the mortgage broker's "best efforts" to obtain a loan even
6 though no loan is actually obtained for the borrower;
- 7 (5) Solicit, advertise, or enter into a contract for specific
8 interest rates, points, or other financing terms unless the terms are
9 actually available at the time of soliciting, advertising, or
10 contracting from a person exempt from licensing under RCW
11 19.146.020(1)(f) or a lender with whom the mortgage broker maintains a
12 written correspondent or loan broker agreement under RCW 19.146.040;
- 13 (6) Fail to make disclosures to loan applicants and
14 noninstitutional investors as required by RCW 19.146.030 and any other
15 applicable state or federal law;
- 16 (7) Make, in any manner, any false or deceptive statement or
17 representation with regard to the rates, points, or other financing
18 terms or conditions for a residential mortgage loan or engage in bait
19 and switch advertising;
- 20 (8) Negligently make any false statement or knowingly and willfully
21 make any omission of material fact in connection with any reports filed
22 by a mortgage broker or in connection with any investigation conducted
23 by the department;
- 24 (9) Make any payment, directly or indirectly, to any appraiser of
25 a property, for the purposes of influencing the independent judgment of
26 the appraiser with respect to the value of the property;
- 27 (10) Advertise any rate of interest without conspicuously
28 disclosing the annual percentage rate implied by such rate of interest;
- 29 (11) Fail to comply with (~~any requirement of the truth in lending
30 act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226; the real
31 estate settlement procedures act, 12 U.S.C. Sec. 2601 and Regulation X,
32 24 C.F.R. Sec. 3500; the equal credit opportunity act, 15 U.S.C. Sec.
33 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12; Title V,
34 Subtitle A of the financial modernization act of 1999 (known as the
35 "Gramm Leach Bliley act"), 12 U.S.C. Secs. 6801-6809; the federal trade
36 commission's privacy rules, 16 C.F.R. Parts 313-314, mandated by the
37 Gramm Leach Bliley act; the home mortgage disclosure act, 12 U.S.C.
38 Sec. 2801 et seq. and Regulation C, home mortgage disclosure; the~~

1 ~~federal trade commission act, 12 C.F.R. Part 203, 15 U.S.C. Sec. 45(a);~~
2 ~~the telemarketing and consumer fraud and abuse act, 15 U.S.C. Secs.~~
3 ~~6101 to 6108; and the federal trade commission telephone sales rule, 16~~
4 ~~C.F.R. Part 310, as these acts existed on January 1, 2007, or such~~
5 ~~subsequent date as may be provided by the department by rule, in any~~
6 ~~advertising of residential mortgage loans, or any other applicable~~
7 ~~mortgage broker or loan originator activities covered by the acts. The~~
8 ~~department may adopt by rule requirements that mortgage brokers and~~
9 ~~loan originators comply with other applicable federal statutes and~~
10 ~~regulations in any advertising of residential mortgage loans, or any~~
11 ~~other mortgage broker or loan originator activity)) state and federal~~
12 ~~laws applicable to the activities governed by this chapter;~~

13 (12) Fail to pay third-party providers no later than thirty days
14 after the recording of the loan closing documents or ninety days after
15 completion of the third-party service, whichever comes first, unless
16 otherwise agreed or unless the third-party service provider has been
17 notified in writing that a bona fide dispute exists regarding the
18 performance or quality of the third-party service;

19 (13) Collect, charge, attempt to collect or charge or use or
20 propose any agreement purporting to collect or charge any fee
21 prohibited by RCW 19.146.030 or 19.146.070;

22 (14)(a) Except when complying with (b) and (c) of this subsection,
23 act as a loan originator in any transaction (i) in which the loan
24 originator acts or has acted as a real estate broker or salesperson or
25 (ii) in which another person doing business under the same licensed
26 real estate broker acts or has acted as a real estate broker or
27 salesperson;

28 (b) Prior to providing mortgage services to the borrower, a loan
29 originator, in addition to other disclosures required by this chapter
30 and other laws, shall provide to the borrower the following written
31 disclosure:

32 THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES
33 HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON
34 REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO
35 YOU. I AM ALSO A LOAN ORIGINATOR, AND WOULD LIKE TO PROVIDE
36 MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO
37 PURCHASE THE PROPERTY.
38 YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN

1 CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON
2 SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY
3 MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

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

22 (15) Fail to comply with any provision of RCW 19.146.030 through
23 19.146.080 or any rule adopted under those sections.

24 **Sec. 4.** RCW 19.146.060 and 2006 c 19 s 7 are each amended to read
25 as follows:

26 (1) A mortgage broker shall use generally accepted accounting
27 principles.

28 (2) Except as otherwise provided in subsection (3) of this section,
29 a mortgage broker shall maintain accurate and current books and records
30 which shall be readily available at a location available to the
31 director until at least (~~twenty-five months~~) three years have elapsed
32 following the effective period to which the books and records relate.

33 (3) Where a mortgage broker's usual business location is outside of
34 the state of Washington, the mortgage broker shall, as determined by
35 the director by rule, either maintain its books and records at a
36 location in this state, or reimburse the director for his or her

1 expenses, including but not limited to transportation, food, and
2 lodging expenses, relating to any examination or investigation
3 resulting under this chapter.

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

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

17 (b) Copies of all documents, notes, computer records if not stored
18 in printed form, correspondence or memoranda relating to a borrower
19 from whom the mortgage broker has accepted a deposit or other funds, or
20 accepted a residential mortgage loan application or with whom the
21 mortgage broker has entered into an agreement to assist in obtaining a
22 residential mortgage loan.

23 **Sec. 5.** RCW 19.146.220 and 2006 c 19 s 13 are each amended to read
24 as follows:

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

28 (2) The director may impose fines or order restitution against
29 licensees or other persons subject to this chapter, or deny, suspend,
30 decline to renew, or revoke licenses for:

31 (a) Violations of orders, including cease and desist orders;

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

35 (c) Failure to pay a fee required by the director or maintain the
36 required bond;

1 (d) Failure to comply with any directive, order, or subpoena of the
2 director; or

3 (e) Any violation of this chapter.

4 (3) The director may impose fines on an employee, loan originator,
5 independent contractor, or agent of the licensee, or other person
6 subject to this chapter for:

7 (a) Any violations of (~~RCW 19.146.0201 (1) through (9) or (13),~~
8 ~~19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or~~
9 ~~19.146.265)~~) this chapter; or

10 (b) Failure to comply with any directive or order of the director.

11 (4) The director may issue orders directing a licensee, its
12 employee, loan originator, independent contractor, agent, or other
13 person subject to this chapter to cease and desist from conducting
14 business.

15 (5) The director may issue orders removing from office or
16 prohibiting from participation in the conduct of the affairs of a
17 licensed mortgage broker, or both, any officer, principal, employee, or
18 loan originator of any licensed mortgage broker or any person subject
19 to licensing under this chapter for:

20 (a) Any violation of (~~(19.146.0201 (1) through (9) or (13),~~
21 ~~19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or~~
22 ~~19.146.265)~~) this chapter;

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

26 (c) Conviction of a gross misdemeanor involving dishonesty or
27 financial misconduct or a felony after obtaining a license; or

28 (d) Failure to comply with any directive or order of the director.

29 (6) Each day's continuance of a violation or failure to comply with
30 any directive or order of the director is a separate and distinct
31 violation or failure.

32 (7) The director shall establish by rule standards for licensure of
33 applicants licensed in other jurisdictions.

34 (8) The director shall immediately suspend the license or
35 certificate of a person who has been certified pursuant to RCW
36 74.20A.320 by the department of social and health services as a person
37 who is not in compliance with a support order. If the person has
38 continued to meet all other requirements for reinstatement during the

1 suspension, reissuance of the license or certificate shall be automatic
2 upon the director's receipt of a release issued by the department of
3 social and health services stating that the licensee is in compliance
4 with the order.

5 **Sec. 6.** RCW 19.146.240 and 1997 c 106 s 15 are each amended to
6 read as follows:

7 (1) The director or any person injured by a violation of this
8 chapter may bring an action against the surety bond or approved
9 alternative of the licensed mortgage broker who committed the violation
10 or who employed or engaged the loan originator who committed the
11 violation.

12 (2)(a) The director or any person who is damaged by the licensee's
13 or its loan originator's violation of this chapter, or rules adopted
14 under this chapter, may bring suit upon the surety bond or approved
15 alternative in the superior court of any county in which jurisdiction
16 over the licensee may be obtained. Jurisdiction shall be exclusively
17 in the superior court. (~~Any such action must be brought not later~~
18 ~~than one year after the alleged violation of this chapter or rules~~
19 ~~adopted under this chapter.~~) Except as provided in subsection (2)(b)
20 of this section, in the event valid claims of borrowers against a bond
21 or deposit exceed the amount of the bond or deposit, each borrower
22 claimant shall only be entitled to a pro rata amount, based on the
23 amount of the claim as it is valid against the bond or deposit, without
24 regard to the date of filing of any claim or action. If, after all
25 valid borrower claims are paid, valid claims by nonborrower claimants
26 exceed the remaining amount of the bond or deposit, each nonborrower
27 claimant shall only be entitled to a pro rata amount, based on the
28 amount of the claim as it is valid against the bond or deposit, without
29 regard to the date of the filing or any claim or action. A judgment
30 arising from a violation of this chapter or rule adopted under this
31 chapter shall be entered for actual damages and in no case be less than
32 the amount paid by the borrower to the licensed mortgage broker plus
33 reasonable attorneys' fees and costs. In no event shall the surety
34 bond or approved alternative provide payment for any trebled or
35 punitive damages.

36 (b) Borrowers shall be given priority over the director and other
37 persons in distributions in actions against the surety bond. The

1 director and other third parties shall then be entitled to distribution
2 to the extent of their claims as found valid against the remainder of
3 the bond. In the case of claims made by any person or entity who is
4 not a borrower, no final judgment may be entered prior to one hundred
5 eighty days following the date the claim is filed. This provision
6 regarding priority shall not restrict the right of any claimant to file
7 a claim (~~within one year~~).

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

--- END ---