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**ENGROSSED SUBSTITUTE SENATE BILL 6166**

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**State of Washington**

**59th Legislature**

**2006 Regular Session**

**By** Senate Committee on Financial Institutions, Housing & Consumer Protection (originally sponsored by Senators Fairley, Benton, Prentice, Keiser, Franklin, Berkey, Brandland and Benson; by request of Department of Financial Institutions)

READ FIRST TIME 01/27/06.

1           AN ACT Relating to mortgage brokers and loan originators; amending  
2 RCW 19.146.005, 19.146.010, 19.146.020, 19.146.0201, 19.146.030,  
3 19.146.040, 19.146.060, 19.146.070, 19.146.200, 19.146.205, 19.146.210,  
4 19.146.215, 19.146.225, 19.146.228, 19.146.235, and 19.146.280;  
5 reenacting and amending RCW 19.146.220; adding new sections to chapter  
6 19.146 RCW; creating a new section; prescribing penalties; and  
7 providing an effective date.

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

9           **Sec. 1.** RCW 19.146.005 and 1994 c 33 s 1 are each amended to read  
10 as follows:

11           The legislature finds and declares that the brokering of  
12 residential real estate loans substantially affects the public  
13 interest. The practices of mortgage brokers and loan originators have  
14 had significant impact on the citizens of the state and the banking and  
15 real estate industries. It is the intent of the legislature to  
16 establish a state system of licensure in addition to rules of practice  
17 and conduct of mortgage brokers and loan originators to promote honesty  
18 and fair dealing with citizens and to preserve public confidence in the  
19 lending and real estate community.

1       **Sec. 2.** RCW 19.146.010 and 1997 c 106 s 1 are each amended to read  
2 as follows:

3       Unless the context clearly requires otherwise, the definitions in  
4 this section apply throughout this chapter.

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

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

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

15       ~~((+3))~~ (4) "Computer loan information systems" or "CLI system"  
16 means ~~((the real estate mortgage financing information system defined~~  
17 ~~by rule of the director))~~ a real estate mortgage financing information  
18 system that facilitates the provision of information to consumers by a  
19 mortgage broker, loan originator, lender, real estate agent, or other  
20 person regarding interest rates and other loan terms available from  
21 different lenders.

22       ~~((+4))~~ (5) "Department" means the department of financial  
23 institutions.

24       ~~((+5))~~ (6) "Designated broker" means a natural person designated  
25 ~~((by the applicant for a license or licensee))~~ as the person  
26 responsible for activities of the licensed mortgage broker in  
27 conducting the business of a mortgage broker under this chapter and who  
28 meets the experience~~((, education,))~~ and examination requirements set  
29 forth in RCW 19.146.210(1)(e).

30       ~~((+6))~~ (7) "Director" means the director of financial  
31 institutions.

32       ~~((+7))~~ (8) "Employee" means an individual who has an employment  
33 relationship ~~((acknowledged by both the employee and the licensee))~~  
34 with a mortgage broker, and the individual is treated as an employee by  
35 the ~~((licensee))~~ mortgage broker for purposes of compliance with  
36 federal income tax laws.

37       ~~((+8))~~ (9) "Independent contractor" or "person who independently  
38 contracts" means any person that expressly or impliedly contracts to

1 perform mortgage brokering services for another and that with respect  
2 to its manner or means of performing the services is not subject to the  
3 other's right of control, and that is not treated as an employee by the  
4 other for purposes of compliance with federal income tax laws.

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

8 (10) "Loan originator" means a natural person ~~((employed, either  
9 directly or indirectly, or retained as an independent contractor by a  
10 person required to be licensed as a mortgage broker, or a natural  
11 person who represents a person required to be licensed as a mortgage  
12 broker, in the performance of any act specified in subsection (12) of  
13 this section))~~ who (a) takes a residential mortgage loan application  
14 for a mortgage broker, or (b) offers or negotiates terms of a mortgage  
15 loan, for direct or indirect compensation or gain, or in the  
16 expectation of direct or indirect compensation or gain. "Loan  
17 originator" also includes a person who holds themselves out to the  
18 public as able to perform any of these activities. "Loan originator"  
19 does not mean persons performing purely administrative or clerical  
20 tasks for a mortgage broker. For the purposes of this subsection,  
21 "administrative or clerical tasks" means the receipt, collection, and  
22 distribution of information common for the processing of a loan in the  
23 mortgage industry and communication with a borrower to obtain  
24 information necessary for the processing of a loan. A person who holds  
25 himself or herself out to the public as able to obtain a loan is not  
26 performing administrative or clerical tasks.

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

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

1 (13) "Person" means a natural person, corporation, company, limited  
2 liability corporation, partnership, or association.

3 (14) "Principal" means any person who controls, directly or  
4 indirectly through one or more intermediaries, or alone or in concert  
5 with others, a ten percent or greater interest in a partnership,  
6 company, association, or corporation, and the owner of a sole  
7 proprietorship.

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

13 ((+15+)) (16) "Third-party provider" means any person other than a  
14 mortgage broker or lender who provides goods or services to the  
15 mortgage broker in connection with the preparation of the borrower's  
16 loan and includes, but is not limited to, credit reporting agencies,  
17 title companies, appraisers, structural and pest inspectors, or escrow  
18 companies.

19 **Sec. 3.** RCW 19.146.020 and 1997 c 106 s 2 are each amended to read  
20 as follows:

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

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

32 (ii) Subject to the director's written approval, the exclusive  
33 agents of an affiliate of a bank that is wholly owned by the bank  
34 holding company that owns the bank;

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

1        (c) An attorney licensed to practice law in this state who is not  
2 principally engaged in the business of negotiating residential mortgage  
3 loans when such attorney renders services in the course of his or her  
4 practice as an attorney;

5        ~~((+e))~~ (d) Any person doing any act under order of any court,  
6 except for a person subject to an injunction to comply with any  
7 provision of this chapter or any order of the director issued under  
8 this chapter;

9        ~~((+d))~~ (e) Any person making or acquiring a residential mortgage  
10 loan solely with his or her own funds for his or her own investment  
11 without intending to resell the residential mortgage loans;

12        ~~((+e))~~ (f) A real estate broker or salesperson licensed by the  
13 state who obtains financing for a real estate transaction involving a  
14 bona fide sale of real estate in the performance of his or her duties  
15 as a real estate broker and who receives only the customary real estate  
16 broker's or salesperson's commission in connection with the  
17 transaction;

18        ~~((+f))~~ (g) Any mortgage broker approved and subject to auditing by  
19 the federal national mortgage association or the federal home loan  
20 mortgage corporation;

21        ~~((+g))~~ (h) The United States of America, the state of Washington,  
22 any other state, and any Washington city, county, or other political  
23 subdivision, and any agency, division, or corporate instrumentality of  
24 any of the entities in this subsection (1)~~((+g))~~ (h); and

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

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

35        (ii) Accepts a loan application, or submits a loan application to  
36 a lender;

37        (iii) Accepts any deposit for third-party services or any loan fees

1 from a borrower, whether such fees are paid before, upon, or after the  
2 closing of the loan;

3 (iv) Negotiates rates or terms with a lender on behalf of a  
4 borrower; or

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

6 (2) Those persons and their loan originators otherwise exempt under  
7 subsection (1)((~~(d) or (f)~~) (e), (g), or (4) of this section must  
8 comply with RCW 19.146.0201 (~~(and shall be subject to the director's~~  
9 ~~authority to issue a cease and desist order for any violation of RCW~~  
10 ~~19.146.0201 and shall be subject to the director's authority)~~) through  
11 19.146.080. For violations of RCW 19.146.0201 through 19.146.080, the  
12 director has authority to issue a cease and desist order as provided in  
13 RCW 19.146.220 and 19.146.227, to impose penalties as provided in RCW  
14 19.146.220, and to obtain and review books and records that are  
15 relevant to any allegation of such a violation as provided in RCW  
16 19.146.235.

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

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

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

35 (4) The director may exempt an exclusive agent under subsection  
36 (1)(a) of this section provided that the affiliate in subsection (1)(a)  
37 of this section:

1 (a) Applies for and maintains a license as provided by subsection  
2 (3) of this section;

3 (b) Has on file with the director a binding written agreement under  
4 which the affiliate assumes responsibility for the exclusive agent's  
5 violations of this chapter or rules adopted under this chapter; and

6 (c) Maintains a bond or other security in an amount required by the  
7 director that runs to the benefit of the state and any person who  
8 suffers loss by reason of the exclusive agent's violation of this  
9 chapter or rules adopted under this chapter.

10 **Sec. 4.** RCW 19.146.0201 and 1997 c 106 s 3 are each amended to  
11 read as follows:

12 It is a violation of this chapter for a loan originator, mortgage  
13 broker required to be licensed under this chapter, or mortgage broker  
14 otherwise exempted from this chapter under RCW 19.146.020(1) (~~((d) or~~  
15 ~~(f) in connection with a residential mortgage loan)) (e), (g), or (4)  
16 to:~~

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

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

20 (3) Obtain property by fraud or misrepresentation;

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

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

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

35 (7) Make, in any manner, any false or deceptive statement or  
36 representation with regard to the rates, points, or other financing

1 terms or conditions for a residential mortgage loan or engage in bait  
2 and switch advertising;

3 (8) Negligently make any false statement or knowingly and willfully  
4 make any omission of material fact in connection with any reports filed  
5 by a mortgage broker or in connection with any investigation conducted  
6 by the department;

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

10 (10) Advertise any rate of interest without conspicuously  
11 disclosing the annual percentage rate implied by such rate of interest  
12 (~~(or otherwise)~~);

13 (11) Fail to comply with any requirement of the truth-in-lending  
14 act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226((7)); the  
15 real estate settlement procedures act, 12 U.S.C. Sec. 2601 and  
16 Regulation X, 24 C.F.R. Sec. 3500((7-8)); the equal credit opportunity  
17 act, 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and  
18 202.12((7, as now or hereafter amended, in any advertising of  
19 residential mortgage loans or any other mortgage brokerage activity));  
20 Title V, Subtitle A of the financial modernization act of 1999 (known  
21 as the "Gramm-Leach-Bliley act"), 12 U.S.C. Secs. 6801-6809; the  
22 federal trade commission's privacy rules, 16 C.F.R. Parts 313-314,  
23 mandated by the Gramm-Leach-Bliley act; the home mortgage disclosure  
24 act, 12 U.S.C. Sec. 2801 et seq. and Regulation C, home mortgage  
25 disclosure; the federal trade commission act, 12 C.F.R. Part 203, 15  
26 U.S.C. Sec. 45(a); the telemarketing and consumer fraud and abuse act,  
27 15 U.S.C. Secs. 6101 to 6108; and the federal trade commission  
28 telephone sales rule, 16 C.F.R. Part 310, as these acts existed on the  
29 effective date of this section, or such subsequent date as may be  
30 provided by the department by rule, in any advertising of residential  
31 mortgage loans, or any other applicable mortgage broker or loan  
32 originator activities covered by the acts. The department may adopt by  
33 rule requirements that mortgage brokers and loan originators comply  
34 with other applicable federal statutes and regulations in any  
35 advertising of residential mortgage loans, or any other mortgage broker  
36 or loan originator activity;

37 ((11)) (12) Fail to pay third-party providers no later than  
38 thirty days after the recording of the loan closing documents or ninety



1 days after completion of the third-party service, whichever comes  
2 first, unless otherwise agreed or unless the third-party service  
3 provider has been notified in writing that a bona fide dispute exists  
4 regarding the performance or quality of the third-party service;

5 ~~((+12))~~ (13) Collect, charge, attempt to collect or charge or use  
6 or propose any agreement purporting to collect or charge any fee  
7 prohibited by RCW 19.146.030 or 19.146.070;

8 ~~((+13))~~ (14)(a) Except when complying with (b) and (c) of this  
9 subsection, ~~((to))~~ act as a ~~((mortgage broker))~~ loan originator in any  
10 transaction (i) in which the ~~((mortgage broker))~~ loan originator acts  
11 or has acted as a real estate broker or salesperson or (ii) in which  
12 another person doing business under the same licensed real estate  
13 broker acts or has acted as a real estate broker or salesperson;

14 (b) Prior to providing mortgage ~~((broker))~~ services to the  
15 borrower, ~~((the mortgage broker))~~ a loan originator, in addition to  
16 other disclosures required by this chapter and other laws, shall  
17 provide to the borrower the following written disclosure:

18 THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES  
19 HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON  
20 REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO  
21 YOU. I AM ALSO A ~~((LICENSED MORTGAGE BROKER))~~ LOAN ORIGINATOR,  
22 AND WOULD LIKE TO PROVIDE MORTGAGE ~~((BROKERAGE))~~ SERVICES TO  
23 YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.  
24 YOU ARE NOT REQUIRED TO USE ME AS A ~~((MORTGAGE BROKER))~~ LOAN  
25 ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE  
26 TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND  
27 TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

28 (c) A real estate broker or salesperson licensed under chapter  
29 18.85 RCW who also acts as a mortgage broker shall carry on such  
30 mortgage ~~((brokerage))~~ broker business activities and shall maintain  
31 such person's mortgage ~~((brokerage))~~ broker business records separate  
32 and apart from the real estate ~~((brokerage))~~ broker activities  
33 conducted pursuant to chapter 18.85 RCW. Such activities shall be  
34 deemed separate and apart even if they are conducted at an office  
35 location with a common entrance and mailing address, so long as each  
36 business is clearly identified by a sign visible to the public, each  
37 business is physically separated within the office facility, and no

1 deception of the public as to the separate identities of the  
2 (~~brokerage~~) broker business firms results. This subsection (~~(13)~~)  
3 (14)(c) shall not require a real estate broker or salesperson licensed  
4 under chapter 18.85 RCW who also acts as a mortgage broker to maintain  
5 a physical separation within the office facility for the conduct of its  
6 real estate and mortgage (~~brokerage~~) broker activities where the  
7 director determines that maintaining such physical separation would  
8 constitute an undue financial hardship upon the mortgage broker and is  
9 unnecessary for the protection of the public; or  
10 (~~(14)~~) (15) Fail to comply with any provision of RCW 19.146.030  
11 through 19.146.080 or any rule adopted under those sections.

12 **Sec. 5.** RCW 19.146.030 and 1997 c 106 s 4 are each amended to read  
13 as follows:

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

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

28 (a) The annual percentage rate, finance charge, amount financed,  
29 total amount of all payments, number of payments, amount of each  
30 payment, amount of points or prepaid interest and the conditions and  
31 terms under which any loan terms may change between the time of  
32 disclosure and closing of the loan; and if a variable rate, the  
33 circumstances under which the rate may increase, any limitation on the  
34 increase, the effect of an increase, and an example of the payment  
35 terms resulting from an increase. Disclosure in compliance with the  
36 requirements of the truth-in-lending act, 15 U.S.C. Sec. 1601 and

1 Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be  
2 deemed to comply with the disclosure requirements of this subsection;

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

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

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

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

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

31 (3) If subsequent to the written disclosure being provided under  
32 this section, a mortgage broker or loan originator enters into a lock-  
33 in agreement with a borrower or represents to the borrower that the  
34 borrower has entered into a lock-in agreement, then no less than three  
35 business days thereafter including Saturdays, the mortgage broker or  
36 loan originator shall deliver or send by first-class mail to the  
37 borrower a written confirmation of the terms of the lock-in agreement,

1 which shall include a copy of the disclosure made under subsection  
2 (2)(c) of this section.

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

18 **Sec. 6.** RCW 19.146.040 and 1994 c 33 s 19 are each amended to read  
19 as follows:

20 (1) Every contract between a mortgage broker, or a loan originator,  
21 and a borrower shall be in writing and shall contain the entire  
22 agreement of the parties.

23 (2) Any contract under this section entered by a loan originator  
24 shall be binding on the mortgage broker.

25 (3) A mortgage broker shall have a written correspondent or loan  
26 (~~brokerage~~) broker agreement with a lender before any solicitation  
27 of, or contracting with, the public.

28 **Sec. 7.** RCW 19.146.060 and 1997 c 106 s 6 are each amended to read  
29 as follows:

30 (1) A mortgage broker shall use generally accepted accounting  
31 principles.

32 (2) Except as otherwise provided in subsection (3) of this section,  
33 a mortgage broker shall maintain accurate and current books and records  
34 which shall be readily available at (~~the mortgage broker's usual~~  
35 ~~business~~) a location available to the director until at least twenty-

1 five months have elapsed following the effective period to which the  
2 books and records relate.

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

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

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

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

29 **Sec. 8.** RCW 19.146.070 and 1993 c 468 s 13 are each amended to  
30 read as follows:

31 (1) Except as otherwise permitted by this section, a mortgage  
32 broker shall not receive a fee, commission, or compensation of any kind  
33 in connection with the preparation, negotiation, and brokering of a  
34 residential mortgage loan unless a borrower actually obtains a loan  
35 from a lender on the terms and conditions agreed upon by the borrower  
36 and mortgage broker. A loan originator may not accept a fee,

1 commission, or compensation of any kind from borrowers in connection  
2 with the preparation, negotiation, and brokering of a residential  
3 mortgage loan.

4 (2) A mortgage broker may:

5 (a) If the mortgage broker has obtained for the borrower a written  
6 commitment from a lender for a loan on the terms and conditions agreed  
7 upon by the borrower and the mortgage broker, and the borrower fails to  
8 close on the loan through no fault of the mortgage broker, charge a fee  
9 not to exceed three hundred dollars for services rendered, preparation  
10 of documents, or transfer of documents in the borrower's file which  
11 were prepared or paid for by the borrower if the fee is not otherwise  
12 prohibited by the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, and  
13 Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended; or

14 (b) Solicit or receive fees for third party provider goods or  
15 services in advance. Fees for any goods or services not provided must  
16 be refunded to the borrower and the mortgage broker may not charge more  
17 for the goods and services than the actual costs of the goods or  
18 services charged by the third party provider.

19 (3) A loan originator may not solicit or receive fees for a third-  
20 party provider of goods or services except that a loan originator may  
21 transfer funds from a borrower to a licensed mortgage broker, exempt  
22 mortgage broker, or third-party provider, if the loan originator does  
23 not deposit, hold, retain, or use the funds for any purpose other than  
24 the payment of bona fide fees to third-party providers.

25 **Sec. 9.** RCW 19.146.200 and 1997 c 106 s 8 are each amended to read  
26 as follows:

27 (1) A person, unless specifically exempted from this chapter under  
28 RCW 19.146.020, may not engage in the business of a mortgage broker(~~(~~  
29 ~~except as an employee of a person licensed or exempt from licensing,~~)  
30 or loan originator without first obtaining and maintaining a license  
31 under this chapter. (~~However, a person who independently contracts~~  
32 ~~with a licensed mortgage broker need not be licensed if the licensed~~  
33 ~~mortgage broker and the independent contractor have on file with the~~  
34 ~~director a binding written agreement under which the licensed mortgage~~  
35 ~~broker assumes responsibility for the independent contractor's~~  
36 ~~violations of any provision of this chapter or rules adopted under this~~  
37 ~~chapter; and if the licensed mortgage broker's bond or other security~~

1 ~~required under this chapter runs to the benefit of the state and any~~  
2 ~~person who suffers loss by reason of the independent contractor's~~  
3 ~~violation of any provision of this chapter or rules adopted under this~~  
4 ~~chapter.)~~)

5 (2) A person may not bring a suit or action for the collection of  
6 compensation (~~as a mortgage broker~~) in connection with a residential  
7 mortgage loan unless the plaintiff alleges and proves that he or she  
8 was a duly licensed mortgage broker, or exempt from the license  
9 requirement of this chapter, at the time of offering to perform or  
10 performing any such an act or service regulated by this chapter.  
11 (~~This subsection does not apply to suits or actions for the collection~~  
12 ~~or compensation for services performed prior to October 31, 1993.~~)

13 (3) ((The)) A mortgage broker license must be prominently displayed  
14 in the mortgage broker's place of business.

15 (4) Every licensed mortgage broker must at all times have a  
16 designated broker responsible for all activities of the mortgage broker  
17 in conducting the business of a mortgage broker. A designated broker,  
18 principal, or owner who has supervisory authority over a mortgage  
19 broker is responsible for a licensee's, employee's, or independent  
20 contractor's violations of this chapter and its rules if:

21 (a) The designated broker, principal, or owner directs or instructs  
22 the conduct or, with knowledge of the specific conduct, approves or  
23 allows the conduct; or

24 (b) The designated broker, principal, or owner who has supervisory  
25 authority over the licensed mortgage broker knows or by the exercise of  
26 reasonable care and inquiry should have known of the conduct, at a time  
27 when its consequences can be avoided or mitigated and fails to take  
28 reasonable remedial action.

29 **Sec. 10.** RCW 19.146.205 and 2001 c 177 s 4 are each amended to  
30 read 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. The  
33 application shall contain at least the following information:

34 (a) The name, address, date of birth, and social security number of  
35 the applicant, and any other names, dates of birth, or social security  
36 numbers previously used by the applicant, unless waived by the  
37 director;

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

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

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

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

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

22 (2) (~~The director may exchange fingerprint data with the federal~~  
23 ~~bureau of investigation.)) As a part of or in connection with an  
24 application for any license under this section, the applicant shall  
25 furnish information concerning his or her identity, including  
26 fingerprints for submission to the Washington state patrol, the federal  
27 bureau of investigation, and any governmental agency or entity  
28 authorized to receive this information for a state and national  
29 criminal history background check; personal history; experience;  
30 business record; purposes; and other pertinent facts, as the director  
31 may reasonably require. As part of or in connection with an  
32 application for a license under this chapter, the director is  
33 authorized to receive criminal history record information that includes  
34 nonconviction data as defined in RCW 10.97.030. The department may  
35 only disseminate nonconviction data obtained under this section to  
36 criminal justice agencies. This section does not apply to financial  
37 institutions regulated under chapters 31.12 and 31.13 RCW and Titles  
38 30, 32, and 33 RCW.~~



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

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

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

15 (b) Subsection (4)(b) and (c) of this section applies only to  
16 applications received on or before January 1, 2007. Before January 1,  
17 2007, in lieu of a surety bond, the applicant may, upon approval by the  
18 director, file with the director a certificate of deposit, an  
19 irrevocable letter of credit, or such other instrument as approved by  
20 the director by rule, drawn in favor of the director for an amount  
21 equal to the required bond.

22 (c) Before January 1, 2007, in lieu of the surety bond or  
23 compliance with (b) of this subsection, an applicant may obtain  
24 insurance or coverage from an association comprised of mortgage brokers  
25 that is organized as a mutual corporation for the sole purpose of  
26 insuring or self-insuring claims that may arise from a violation of  
27 this chapter. An applicant may only substitute coverage under this  
28 subsection for the requirements of (a) or (b) of this subsection if the  
29 director, with the consent of the insurance commissioner, has  
30 authorized such association to organize a mutual corporation under such  
31 terms and conditions as may be imposed by the director to ensure that  
32 the corporation is operated in a financially responsible manner to pay  
33 any claims within the financial responsibility limits specified in (a)  
34 of this subsection.

35 **Sec. 11.** RCW 19.146.210 and 1997 c 106 s 10 are each amended to  
36 read as follows:

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

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

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

6 (c) Neither the applicant, any of its principals, or the designated  
7 broker have had a license issued under this chapter or any similar  
8 state statute suspended or revoked within five years of the filing of  
9 the present application;

10 (d) Neither the applicant, any of its principals, or the designated  
11 broker have been convicted of a gross misdemeanor involving dishonesty  
12 or financial misconduct or a felony within seven years of the filing of  
13 the present application;

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

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

24 (g) Neither the applicant, any of its principals, or the designated  
25 broker have been found to be in violation of this chapter or rules.

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

32 (3) The director shall issue a mortgage broker license under this  
33 chapter to any licensee issued a license under chapter 468, Laws of  
34 1993, that has a valid license and is otherwise in compliance with the  
35 provisions of this chapter.

36 (4) A license issued pursuant to this (~~chapter is valid~~) section  
37 expires on the date one year from the date of issuance (~~with no fixed~~

1 ~~date of expiration))~~ which, for license renewal purposes, is also the  
2 renewal date. The director shall adopt rules establishing the process  
3 for renewal of licenses.

4 (5) A licensee may surrender a license by delivering to the  
5 director written notice of surrender, but the surrender does not affect  
6 the licensee's civil or criminal liability or any administrative  
7 actions arising from acts or omissions occurring before such surrender.

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

13 **Sec. 12.** RCW 19.146.215 and 1997 c 106 s 11 are each amended to  
14 read as follows:

15 The designated broker of every licensee shall complete an annual  
16 continuing education requirement(~~(, which the director shall define by~~  
17 ~~rule)).~~ The director shall establish standards in rule for approval of  
18 professional organizations offering continuing education to designated  
19 brokers. The director may approve continuing education taken by  
20 designated brokers in other states if the director is satisfied that  
21 such continuing education meets the requirements of the continuing  
22 education required by this chapter.

23 **Sec. 13.** RCW 19.146.220 and 1997 c 106 s 12 and 1997 c 58 s 879  
24 are each reenacted and amended to read as follows:

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

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

30 ~~(a) Deny applications for licenses for: (i))~~ fines or order  
31 restitution against licensees or other persons subject to this chapter,  
32 or deny, suspend, decline to renew, or revoke licenses for:

33 (a) Violations of orders, including cease and desist orders  
34 (issued under this chapter; or (ii) any violation of RCW 19.146.050 or  
35 19.146.0201 (1) through (9));

36 ~~(b) ((Suspend or revoke licenses for:~~

1        ~~(i)~~) False statements or omission of material information on the  
2 application that, if known, would have allowed the director to deny the  
3 application for the original license;

4        ~~((i))~~) (c) Failure to pay a fee required by the director or  
5 maintain the required bond;

6        ~~((iii))~~) (d) Failure to comply with any directive ~~((or))~~, order,  
7 or subpoena of the director; or

8        ~~((iv))~~) (e) Any violation of ~~((RCW 19.146.050, 19.146.060(3),~~  
9 ~~19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265;~~

10 ~~(e))~~) this chapter.

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

14        ~~((i))~~) (a) Any violations of RCW 19.146.0201 (1) through (9) or  
15 ~~((12))~~) (13), 19.146.030 through 19.146.080, 19.146.200,  
16 19.146.205(4), or 19.146.265; or

17        ~~((ii))~~) (b) Failure to comply with any directive or order of the  
18 director~~((r))~~.

19        ~~((d))~~) (4) The director may issue orders directing a licensee, its  
20 employee ~~((or))~~, loan originator, independent contractor, agent, or  
21 other person subject to this chapter to~~((r~~

22 ~~(i))~~) cease and desist from conducting business ~~((in a manner that~~  
23 ~~is injurious to the public or violates any provision of this chapter;~~  
24 ~~or~~

25 ~~(ii) Pay restitution to an injured borrower; or~~  
26 ~~(e))~~.

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

32        ~~((i))~~) (a) Any violation of 19.146.0201 (1) through (9) or  
33 ~~((12))~~) (13), 19.146.030 through 19.146.080, 19.146.200,  
34 19.146.205(4), or 19.146.265; ~~((or~~

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

1       (~~(iii)~~) (c) Conviction of a gross misdemeanor involving  
2 dishonesty or financial misconduct or a felony after obtaining a  
3 license; or

4       (~~(iv)~~) (d) Failure to comply with any directive or order of the  
5 director.

6       (~~(3)~~) (6) Each day's continuance of a violation or failure to  
7 comply with any directive or order of the director is a separate and  
8 distinct violation or failure.

9       (~~(4)~~) (7) The director shall establish by rule standards for  
10 licensure of applicants licensed in other jurisdictions.

11       (~~(5)~~) (8) The director shall immediately suspend the license or  
12 certificate of a person who has been certified pursuant to RCW  
13 74.20A.320 by the department of social and health services as a person  
14 who is not in compliance with a support order (~~(or a residential or~~  
15 ~~visitation order)~~). If the person has continued to meet all other  
16 requirements for reinstatement during the suspension, reissuance of the  
17 license or certificate shall be automatic upon the director's receipt  
18 of a release issued by the department of social and health services  
19 stating that the licensee is in compliance with the order.

20       **Sec. 14.** RCW 19.146.225 and 1994 c 33 s 15 are each amended to  
21 read as follows:

22       In accordance with the administrative procedure act, chapter 34.05  
23 RCW, the director may issue rules under this chapter only after seeking  
24 the advice of the mortgage (~~(brokerage)~~) broker commission and (~~(to~~  
25 ~~govern)~~) only for the purpose of governing the activities of licensed  
26 mortgage brokers, loan originators, and other persons subject to this  
27 chapter.

28       **Sec. 15.** RCW 19.146.228 and 2001 c 177 s 5 are each amended to  
29 read as follows:

30       The director shall establish fees by rule in accordance with the  
31 policy established in RCW 43.24.086 and fees shall be sufficient to  
32 cover, but not exceed, the costs of administering this chapter. These  
33 fees may include:

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

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

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

6 Mortgage brokers and loan originators shall not be charged  
7 investigation fees for the processing of complaints when the  
8 investigation determines that no violation of this chapter occurred or  
9 when the mortgage broker or loan originator provides a remedy  
10 satisfactory to the complainant and the director and no order of the  
11 director is issued. All moneys, fees, and penalties collected under  
12 the authority of this chapter shall be deposited into the financial  
13 services regulation fund, unless the consumer services account is  
14 created as a dedicated, nonappropriated account, in which case all  
15 moneys, fees, and penalties collected under this chapter shall be  
16 deposited in the consumer services account.

17 **Sec. 16.** RCW 19.146.235 and 1997 c 106 s 14 are each amended to  
18 read as follows:

19 ~~((For the purposes of investigating complaints arising under this  
20 chapter, the director may at any time, either personally or by a  
21 designee, examine the business, including but not limited to the books,  
22 accounts, records, and files used therein, of every licensee and of  
23 every person engaged in the business of mortgage brokering, whether  
24 such a person shall act or claim to act under or without the authority  
25 of this chapter. For that purpose the director and designated  
26 representatives shall have access during regular business hours to the  
27 offices and places of business, books, accounts, papers, records,  
28 files, safes, and vaults of all such persons. The director or  
29 designated person may direct or order the attendance of and examine  
30 under oath all persons whose testimony may be required about the loans  
31 or the business or subject matter of any such examination or  
32 investigation, and may direct or order such person to produce books,  
33 accounts, records, files, and any other documents the director or  
34 designated person deems relevant to the inquiry. If a person who  
35 receives such a directive or order does not attend and testify, or does  
36 not produce the requested books, records, files, or other documents  
37 within the time period established in the directive or order, then the~~

1 ~~director or designated person may issue a subpoena requiring attendance~~  
2 ~~or compelling production of books, records, files, or other documents.~~  
3 ~~No person subject to examination or investigation under this chapter~~  
4 ~~shall withhold, abstract, remove, mutilate, destroy, or secrete any~~  
5 ~~books, records, computer records, or other information.~~

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

20 The director or a designee has authority to conduct investigations  
21 and examinations as provided in this section.

22 (1) For the purposes of investigating violations or complaints  
23 arising under this chapter, the director or his or her designee may  
24 make an investigation of the operations of any mortgage broker or loan  
25 originator as often as necessary in order to carry out the purposes of  
26 this chapter.

27 (2) Every mortgage broker shall make available to the director or  
28 a designee its books and records relating to its operations.

29 (a) For the purpose of examinations, the director or his or her  
30 designee may have access to such books and records during normal  
31 business hours and interview the officers, principals, loan  
32 originators, employees, independent contractors, and agents of the  
33 licensee concerning their business.

34 (b) For the purposes of investigating violations or complaints  
35 arising under this chapter, the director may at any time, either  
36 personally or by a designee, investigate the business, including but  
37 not limited to the books, accounts, records, and files used therein, of



1 every licensee and of every person engaged in the business of mortgage  
2 brokering, whether such a person acts or claims to act under, or  
3 without the authority of, this chapter.

4 (c) The director or designated person may direct, subpoena, or  
5 order the attendance of and examine under oath all persons whose  
6 testimony may be required about the loans or the business or subject  
7 matter of any such examination or investigation, and may direct,  
8 subpoena, or order such person to produce books, accounts, records,  
9 files, and any other documents the director or designated person deems  
10 relevant to the inquiry.

11 (3) Once during the first five years of licensing, including branch  
12 licensing, the director may visit, either personally or by designee,  
13 the licensee's place or places of business to conduct an examination.  
14 The scope of the examination is limited to documents and information  
15 necessary to determine compliance with this chapter and attendant  
16 rules. In general, the examination scope may include:

17 (a) A review for trust accounting compliance;

18 (b) Loan file review to determine the mortgage broker's compliance  
19 with this chapter and applicable federal regulations covering the  
20 business of mortgage brokering and lending;

21 (c) Interviews for the purpose of understanding business and  
22 solicitation practices, transactional events, disclosure compliance,  
23 complaint resolution, or determining specific compliance with this  
24 chapter and the attendant rules; and

25 (d) A review of general business books and records, including  
26 employee records, for the purpose of determining specific compliance  
27 with this chapter and the attendant rules.

28 (4) The purpose of an examination is to make certain that licensees  
29 are conducting business in compliance with the law. Therefore,  
30 protocols for examination findings and corrective action directed from  
31 an examination must be established by rule of the director. To  
32 accomplish this purpose, these protocols must include the following:

33 (a) A reporting mechanism from the director to the licensee;

34 (b) A process for clear notification of violations and an  
35 opportunity for response by the licensee; and

36 (c) The criteria by which the frequency of examinations will be  
37 determined.

1 (5) If the examination findings clearly identify the need to expand  
2 the scope of the examination, the director or a designee, upon five  
3 days' written notification to the licensee with an explanation of the  
4 need, may:

5 (a) Expand the examination review to locations other than the  
6 examined location regardless of the number of years a location has held  
7 a license; or

8 (b) Expand the time period of the examination beyond the five-year  
9 period of licensing, provided the expansion of time does not exceed a  
10 date certain identified in the written notification in this subsection.

11 (6) The director or a designee may consider reports made by  
12 independent certified professionals for the mortgage broker covering  
13 the same general subject matter as the examination. The director or a  
14 designee may incorporate all or part of the report in the report of the  
15 examination.

16 (7) The director may retain attorneys, accountants, or other  
17 professionals and specialists as examiners, auditors, or investigators  
18 to conduct or assist in the conduct of examinations or investigations.  
19 The cost of these services for investigations only must be billed in  
20 accordance with RCW 19.146.228.

21 (8) The director may establish by rule travel costs for examination  
22 of out-of-state entities.

23 (9)(a) No person subject to examination or investigation under this  
24 chapter may knowingly withhold, abstract, remove, mutilate, destroy, or  
25 secrete any books, records, computer records, or other information.

26 (b) A person who commits an act under (a) of this subsection is  
27 guilty of a class B felony punishable under RCW 9A.20.021(1)(b) or  
28 punishable by a fine of not more than twenty thousand dollars, or both.

29 **Sec. 17.** RCW 19.146.280 and 2001 c 177 s 6 are each amended to  
30 read as follows:

31 (1) There is established the mortgage (~~brokerage~~) broker  
32 commission consisting of (~~five~~) seven commission members who shall  
33 act in an advisory capacity to the director on mortgage (~~brokerage~~)  
34 broker issues.

35 (2) The director shall appoint the members of the commission,  
36 weighing the recommendations from professional organizations  
37 representing mortgage brokers and loan originators. At least three of

1 the commission members shall be mortgage brokers licensed under this  
2 chapter (~~and~~), at least one shall be exempt from licensure under RCW  
3 19.146.020(1)(~~f~~) (g), and at least two of the commission members  
4 shall be licensed loan originators under this chapter. No commission  
5 member shall be appointed who has had less than five years' experience  
6 in the business of residential mortgage lending. In addition, the  
7 director or a designee shall serve as an ex officio, nonvoting member  
8 of the commission. Voting members of the commission shall serve for  
9 two-year terms (~~with three of the initial commission members serving~~  
10 ~~one-year terms~~). The department shall provide staff support to the  
11 commission.

12 (3) The commission may establish a code of conduct for its members.  
13 Any commissioner may bring a motion before the commission to remove a  
14 commissioner for failing to conduct themselves in a manner consistent  
15 with the code of conduct. The motion shall be in the form of a  
16 recommendation to the director to dismiss a specific commissioner and  
17 shall enumerate causes for doing so. The commissioner in question  
18 shall recuse himself or herself from voting on any such motion. Any  
19 such motion must be approved unanimously by the remaining (~~four~~) six  
20 commissioners. Approved motions shall be immediately transmitted to  
21 the director for review and action.

22 (4) Members of the commission shall be reimbursed for their travel  
23 expenses incurred in carrying out the provisions of this chapter in  
24 accordance with RCW 43.03.050 and 43.03.060. All costs and expenses  
25 associated with the commission shall be paid from the financial  
26 services regulation fund, unless the consumer services account is  
27 created as a dedicated, nonappropriated account, in which case all  
28 costs and expenses shall be paid from the consumer services account.

29 (5) The commission shall advise the director on the characteristics  
30 and needs of the mortgage (~~brokerage~~) broker profession.

31 (6) The department, in consultation with other applicable agencies  
32 of state government, shall conduct a continuing review of the number  
33 and type of consumer complaints arising from residential mortgage  
34 lending in the state. The department shall report its findings to the  
35 senate committee on financial institutions and house of representatives  
36 committee on financial institutions and insurance along with  
37 recommendations for any changes in the licensing requirements of this  
38 chapter, biennially by December 1st of each even-numbered year.

1        NEW SECTION.    **Sec. 18.**    A new section is added to chapter 19.146  
2    RCW to read as follows:

3        (1) A licensee shall provide the director with an annual report of  
4    mortgage broker activity.    The director may by rule create a schedule  
5    and format for the annual report.    The annual report may only include  
6    the following for mortgage broker activities in Washington state:

7        (a) The total number of closed loans originated by the mortgage  
8    broker; and

9        (b) The total dollar volume of closed loans originated by the  
10   mortgage broker.

11       (2) Any information provided by a mortgage broker in an annual  
12   report that constitutes a trade secret as defined in RCW 19.108.010 is  
13   exempt from the disclosure requirements in chapters 42.17 and 42.56  
14   RCW, unless aggregated with information supplied by other mortgage  
15   brokers in such a manner that the mortgage broker's individual  
16   information is not identifiable.    Any information provided by the  
17   mortgage broker that allows identification of the mortgage broker may  
18   only be used for purposes reasonably related to the regulation of  
19   mortgage brokers to ensure compliance with this chapter.

20       NEW SECTION.    **Sec. 19.**    A new section is added to chapter 19.146  
21   RCW to read as follows:

22       (1) Application for a loan originator license under this chapter  
23   shall be in writing and in the form prescribed by the director.    The  
24   application shall contain at least the following information:

25       (a) The name, address, date of birth, and social security number of  
26   the loan originator applicant, and any other names, dates of birth, or  
27   social security numbers previously used by the loan originator  
28   applicant, unless waived by the director; and

29       (b) Such other information regarding the loan originator  
30   applicant's background, experience, character, and general fitness as  
31   the director may require by rule.

32       (2) As part of or in connection with an application for any license  
33   under this section, the loan originator applicant shall furnish  
34   information concerning his or her identity, including fingerprints for  
35   submission to the Washington state patrol, the federal bureau of  
36   investigation, and any governmental agency or entity authorized to  
37   receive this information for a state and national criminal history

1 background check; personal history; experience; business record;  
2 purposes; and other pertinent facts, as the director may reasonably  
3 require. As part of or in connection with an application for a license  
4 under this chapter, the director is authorized to receive criminal  
5 history record information that includes nonconviction data as defined  
6 in RCW 10.97.030. The department may only disseminate nonconviction  
7 data obtained under this section to criminal justice agencies. This  
8 section does not apply to financial institutions regulated under  
9 chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

10 (3) At the time of filing an application for a license under this  
11 chapter, each loan originator applicant shall pay to the director the  
12 appropriate application fee in an amount determined by rule of the  
13 director in accordance with RCW 19.146.228 to cover the cost of  
14 processing and reviewing the application. The director shall deposit  
15 the moneys in the financial services regulation fund.

16 (4) The director must establish by rule procedures for accepting  
17 and processing incomplete applications.

18 NEW SECTION. **Sec. 20.** A new section is added to chapter 19.146  
19 RCW to read as follows:

20 (1) The director shall issue and deliver a loan originator license  
21 if, after investigation, the director makes the following findings:

22 (a) The loan originator applicant has paid the required license  
23 fees;

24 (b) The loan originator applicant has met the requirements of  
25 section 19 of this act;

26 (c) The loan originator applicant has not had a license issued  
27 under this chapter or any similar state statute suspended or revoked  
28 within five years of the filing of the present application;

29 (d) The loan originator applicant has not been convicted of a gross  
30 misdemeanor involving dishonesty or financial misconduct or a felony  
31 within seven years of the filing of the present application;

32 (e) The loan originator applicant has passed a written examination  
33 whose content shall be established by rule of the director;

34 (f) The loan originator applicant has not been found to be in  
35 violation of this chapter or rules;

36 (g) The loan originator applicant has demonstrated character and

1 general fitness such as to command the confidence of the community and  
2 to warrant a belief that the business will be operated honestly and  
3 fairly within the purposes of this chapter; and

4 (h) The loan originator licensee has completed, during the calendar  
5 year preceding a licensee's annual license renewal date, continuing  
6 education as established by rule of the director. The director shall  
7 establish standards in rule for approval of professional organizations  
8 offering continuing education to loan originators. The director may  
9 approve continuing education taken by loan originators in other states  
10 if the director is satisfied that such continuing education meets the  
11 requirements of the continuing education required by this chapter.

12 (2) If the director does not find the conditions of subsection (1)  
13 of this section have been met, the director shall not issue the loan  
14 originator license. The director shall notify the loan originator  
15 applicant of the denial and return to the loan originator applicant any  
16 remaining portion of the license fee that exceeds the department's  
17 actual cost to investigate the license.

18 (3) The director shall issue a new loan originator license under  
19 this chapter to any licensee that has a valid license and is otherwise  
20 in compliance with this chapter.

21 (4) A loan originator license issued under this section expires on  
22 the date one year from the date of issuance which, for license renewal  
23 purposes, is also the renewal date. The director shall establish rules  
24 regarding the loan originator license renewal process created under  
25 this chapter.

26 (5) A loan originator licensee may surrender a license by  
27 delivering to the director written notice of surrender, but the  
28 surrender does not affect the loan originator licensee's civil or  
29 criminal liability or any administrative actions arising from acts or  
30 omissions occurring before such surrender.

31 (6) To prevent undue delay in the issuance of a loan originator  
32 license and to facilitate the business of a loan originator, an interim  
33 loan originator license with a fixed date of expiration may be issued  
34 when the director determines that the loan originator has substantially  
35 fulfilled the requirements for loan originator licensing as defined by  
36 rule.

1        NEW SECTION.    **Sec. 21.**    A new section is added to chapter 19.146  
2    RCW to read as follows:

3        A loan originator license, or the authority granted under such a  
4    license, is not assignable and cannot be transferred, sold, or  
5    franchised by contract or any other means.

6        NEW SECTION.    **Sec. 22.**    A new section is added to chapter 19.146  
7    RCW to read as follows:

8        A loan originator may only take an application on behalf of one  
9    mortgage broker at a time, and that mortgage broker must be clearly  
10   identified on the application.

11       NEW SECTION.    **Sec. 23.**    The director of the department of financial  
12   institutions or the director's designee may take such steps as are  
13   necessary to ensure that this act is implemented on the effective date  
14   of this section.

15       NEW SECTION.    **Sec. 24.**    This act takes effect January 1, 2007.

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