

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

3 By Representative L. Thomas

4

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (3) Obtain property by fraud or misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21       (b) Suspend or revoke licenses for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

--- END ---