

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1678

55th Legislature
1997 Regular Session

Passed by the House March 12, 1997
Yeas 97 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate April 11, 1997
Yeas 45 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1678** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1678

Passed Legislature - 1997 Regular Session

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives L. Thomas, Smith, Wolfe, Sullivan and Zellinsky)

Read first time 02/19/97.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (3) Obtain property by fraud or misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (c) In lieu of the surety bond or compliance with (b) of this
7 subsection, an applicant may obtain insurance or coverage from an
8 association comprised of mortgage brokers that is organized as a mutual
9 corporation for the sole purpose of insuring or self-insuring claims
10 that may arise from a violation of this chapter. An applicant may only
11 substitute coverage under this subsection for the requirements of (a)
12 or (b) of this subsection if the director, with the consent of the
13 insurance commissioner, has authorized such association to organize a
14 mutual corporation under such terms and conditions as may be imposed by
15 the director to ensure that the corporation is operated in a
16 financially responsible manner to pay any claims within the financial
17 responsibility limits specified in (a) of this subsection.

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

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

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

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

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

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

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

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

5 (2) If the director does not find the conditions of subsection (1)
6 of this section have been met, the director shall not issue the
7 license. The director shall notify the applicant of the denial and
8 return to the applicant the bond or approved alternative and any
9 remaining portion of the license fee that exceeds the department's
10 actual cost to investigate the license.

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

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

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

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

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

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

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

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

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

1 (a) Deny applications for licenses for: (i) Violations of orders,
2 including cease and desist orders issued under this chapter; or (ii)
3 any violation of RCW 19.146.050 or 19.146.0201 (1) through (9);
4 (b) Suspend or revoke licenses for:
5 (i) False statements or omission of material information on the
6 application that, if known, would have allowed the director to deny the
7 application for the original license;
8 (ii) Failure to pay a fee required by the director or maintain the
9 required bond;
10 (iii) Failure to comply with any directive or order of the
11 director; or
12 (iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201
13 (1) through (9) or (~~(13)~~) (12), 19.146.205(~~(3)~~) (4), or 19.146.265;
14 (c) Impose fines on the licensee, employee or loan originator of
15 the licensee, or other person subject to this chapter for:
16 (i) Any violations of RCW 19.146.0201 (1) through (9) or (~~(13)~~)
17 (12), 19.146.030 through (~~19.146.090~~) 19.146.080, 19.146.200,
18 19.146.205(~~(3)~~) (4), or 19.146.265; or
19 (ii) Failure to comply with any directive or order of the director;
20 (d) Issue orders directing a licensee, its employee or loan
21 originator, or other person subject to this chapter to:
22 (i) Cease and desist from conducting business in a manner that is
23 injurious to the public or violates any provision of this chapter; or
24 (ii) Pay restitution to an injured borrower; or
25 (e) Issue orders removing from office or prohibiting from
26 participation in the conduct of the affairs of a licensed mortgage
27 broker, or both, any officer, principal, employee, or loan originator
28 of any licensed mortgage broker or any person subject to licensing
29 under this chapter for:
30 (i) Any violation of 19.146.0201 (1) through (9) or (~~(13)~~) (12),
31 19.146.030 through (~~19.146.090~~) 19.146.080, 19.146.200,
32 19.146.205(~~(3)~~) (4), or 19.146.265; or
33 (ii) False statements or omission of material information on the
34 application that, if known, would have allowed the director to deny the
35 application for the original license;
36 (iii) Conviction of a gross misdemeanor involving dishonesty or
37 financial misconduct or a felony after obtaining a license; or
38 (iv) Failure to comply with any directive or order of the director.

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

4 (4) The director shall establish by rule standards for licensure of
5 applicants licensed in other jurisdictions. ~~((Every licensed mortgage
6 broker that does not maintain a physical office within the state must
7 maintain a registered agent within the state to receive service of any
8 lawful process in any judicial or administrative noncriminal suit,
9 action, or proceeding, against the licensed mortgage broker which
10 arises under this chapter or any rule or order under this chapter, with
11 the same force and validity as if served personally on the licensed
12 mortgage broker. Service upon the registered agent shall be effective
13 if the plaintiff, who may be the director in a suit, action, or
14 proceeding instituted by him or her, sends notice of the service and a
15 copy of the process by registered mail to the defendant or respondent
16 at the last address of the respondent or defendant on file with the
17 director. In any judicial action, suit, or proceeding arising under
18 this chapter or any rule or order adopted under this chapter between
19 the department or director and a licensed mortgage broker who does not
20 maintain a physical office in this state, venue shall be exclusively in
21 the superior court of Thurston county.))~~

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

24 The director shall establish fees by rule in accordance with RCW
25 43.24.086 sufficient to cover, but not exceed, the costs of
26 administering this chapter. These fees may include:

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

29 (2) An ~~((examination))~~ investigation fee to cover the costs of any
30 ~~((examination))~~ investigation of the books and records of a licensee or
31 other person subject to this chapter; and

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

34 Mortgage brokers shall not be charged investigation fees for the
35 processing of complaints when the investigation determines that no
36 violation of this chapter occurred or when the mortgage broker provides
37 a remedy satisfactory to the complainant and the director and no order
38 of the director is issued. All moneys, fees, and penalties collected

1 under the authority of this chapter shall be deposited into the banking
2 examination fund, unless the consumer services account is created as a
3 dedicated, nonappropriated account, in which case all moneys, fees, and
4 penalties collected under this chapter shall be deposited in the
5 consumer services account.

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

8 For the purposes of investigating complaints arising under this
9 chapter, the director may at any time, either personally or by a
10 designee, examine the business, including but not limited to the books,
11 accounts, records, and files used therein, of every licensee and of
12 every person engaged in the business of mortgage brokering, whether
13 such a person shall act or claim to act under or without the authority
14 of this chapter. For that purpose the director and designated
15 representatives shall have access during regular business hours to the
16 offices and places of business, books, accounts, papers, records,
17 files, safes, and vaults of all such persons. The director or
18 designated person may (~~require~~) direct or order the attendance of and
19 examine under oath all persons whose testimony may be required about
20 the loans or the business or subject matter of any such examination or
21 investigation, and may direct or order such person to produce books,
22 accounts, records, files, and any other documents the director or
23 designated person deems relevant to the inquiry. If a person who
24 receives such a directive or order does not attend and testify, or does
25 not produce the requested books, records, files, or other documents
26 within the time period established in the directive or order, then the
27 director or designated person may issue a subpoena requiring attendance
28 or compelling production of books, records, files, or other documents.
29 No person subject to examination or investigation under this chapter
30 shall withhold, abstract, remove, mutilate, destroy, or secrete any
31 books, records, computer records, or other information.

32 Once during the first two years of licensing, the director may
33 visit, either personally or by designee, the licensee's place or places
34 of business to conduct a compliance examination. The director may
35 examine, either personally or by designee, a sample of the licensee's
36 loan files, interview the licensee or other designated employee or
37 independent contractor, and undertake such other activities as
38 necessary to ensure that the licensee is in compliance with the

1 provisions of this chapter. For those licensees issued licenses prior
2 to March 21, 1994, the cost of such an examination shall be considered
3 to have been prepaid in their license fee. After this one visit within
4 the two-year period subsequent to issuance of a license, the director
5 or a designee may visit the licensee's place or places of business only
6 to ensure that corrective action has been taken or to investigate a
7 complaint.

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

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

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

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

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

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

14 A licensed mortgage broker is liable for any conduct violating this
15 chapter by the designated broker, a loan originator, or other licensed
16 mortgage broker while employed or engaged by the licensed mortgage
17 broker. ~~((In addition, a branch office manager is liable for any~~
18 ~~conduct violating this chapter by a loan originator or other licensed~~
19 ~~mortgage broker employed or engaged at the branch office.))~~

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

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

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

29 (2) A broker may establish one or more branch offices under a name
30 or names different from that of the main office if the name or names
31 are approved by the director, so long as each branch office is clearly
32 identified as a branch or division of the main office. ~~((No broker may~~
33 ~~establish branch offices under more than three names.))~~ Both the name
34 of the branch office and of the main office must clearly appear on the
35 sign identifying the office, if any, and in any advertisement or on any
36 letterhead of any stationery or any forms, or signs used by the

1 mortgage firm on which either the name of the main or branch offices
2 appears.

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

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

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

28 A licensed mortgage broker may apply to the director for authority
29 to establish one or more branch offices under the same or different
30 name as the main office upon the payment of a fee as prescribed by the
31 director by rule. Provided that the applicant is in good standing with
32 the department, as defined in rule by the director, the director shall
33 promptly issue a duplicate license for each of the branch offices
34 showing the location of the main office and the particular branch.
35 Each duplicate license shall be prominently displayed in the office for
36 which it is issued. ((Each branch office shall be required to have a

1 ~~branch manager who meets the experience and educational requirements~~
2 ~~for branch managers as established by rule of the director.))~~

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

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

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

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

30 (4) Members of the commission shall be reimbursed for their travel
31 expenses incurred in carrying out the provisions of this chapter in
32 accordance with RCW 43.03.050 and 43.03.060. All costs and expenses
33 associated with the commission shall be paid from the banking
34 examination fund, unless the consumer services account is created as a
35 dedicated, nonappropriated account, in which case all costs and
36 expenses shall be paid from the consumer services account.

37 ~~((+4))~~ (5) The commission shall advise the director on the
38 characteristics and needs of the mortgage brokerage profession.

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

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

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

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

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

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