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HOUSE BILL 2340

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State of Washington                      59th Legislature                      2006 Regular Session

By Representatives Kirby, Roach, Chase, Kenney and Simpson; by request of Department of Financial Institutions

Prefiled 12/20/2005.      Read first time 01/09/2006.      Referred to Committee on Financial Institutions & Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (10) "Loan originator" means a natural person ~~((employed, either  
9 directly or indirectly, or retained as an independent contractor by a  
10 person required to be licensed as a mortgage broker, or a natural  
11 person who represents a person required to be licensed as a mortgage  
12 broker, in the performance of any act specified in subsection (12) of  
13 this section))~~ who (a) takes a residential mortgage loan application  
14 for a mortgage broker, or (b) offers or negotiates terms of a mortgage  
15 loan, for direct or indirect compensation or gain, or in the  
16 expectation of direct or indirect compensation or gain. "Loan  
17 originator" also includes a person who holds themselves out to the  
18 public as able to perform any of these activities. "Loan originator"  
19 does not mean persons performing purely administrative or clerical  
20 tasks for a mortgage broker as defined by rule by the director.

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

26 (12) "Mortgage broker" means any person who for compensation or  
27 gain, or in the expectation of compensation or gain (a) makes a  
28 residential mortgage loan or assists a person in obtaining or applying  
29 to obtain a residential mortgage loan or (b) holds himself or herself  
30 out as being able to make a residential mortgage loan or assist a  
31 person in obtaining or applying to obtain a residential mortgage loan.

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

34 (14) "Principal" means any person who controls, directly or  
35 indirectly through one or more intermediaries, or alone or in concert  
36 with others, a ten percent or greater interest in a partnership,  
37 company, association, or corporation, and the owner of a sole  
38 proprietorship.

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

6        ~~((+15+))~~ (16) "Third-party provider" means any person other than a  
7 mortgage broker or lender who provides goods or services to the  
8 mortgage broker in connection with the preparation of the borrower's  
9 loan and includes, but is not limited to, credit reporting agencies,  
10 title companies, appraisers, structural and pest inspectors, or escrow  
11 companies.

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

14        (1) Except as provided under subsections (2) ~~((and-(3+)))~~ through  
15 (4) of this section, the following are exempt from all provisions of  
16 this chapter:

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

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

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

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

35        ~~((+e+))~~ (d) Any person doing any act under order of any court,  
36 except for a person subject to an injunction to comply with any

1 provision of this chapter or any order of the director issued under  
2 this chapter;

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

6 ~~((e))~~ (f) A real estate broker or salesperson licensed by the  
7 state who obtains financing for a real estate transaction involving a  
8 bona fide sale of real estate in the performance of his or her duties  
9 as a real estate broker and who receives only the customary real estate  
10 broker's or salesperson's commission in connection with the  
11 transaction;

12 ~~((f))~~ (g) Any mortgage broker approved and subject to auditing by  
13 the federal national mortgage association or the federal home loan  
14 mortgage corporation;

15 ~~((g))~~ (h) The United States of America, the state of Washington,  
16 any other state, and any Washington city, county, or other political  
17 subdivision, and any agency, division, or corporate instrumentality of  
18 any of the entities in this subsection (1)~~((g))~~ (h); and

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

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

29 (ii) Accepts a loan application, or submits a loan application to  
30 a lender;

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

34 (iv) Negotiates rates or terms with a lender on behalf of a  
35 borrower; or

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

37 (2) Those persons and their loan originators otherwise exempt under  
38 subsection (1)~~((d) or (f))~~ (e), (g), or (4) of this section must

1 comply with RCW 19.146.0201 (~~and shall be subject to the director's~~  
2 ~~authority to issue a cease and desist order for any violation of RCW~~  
3 ~~19.146.0201 and shall be subject to the director's authority~~) through  
4 19.146.080. For violations of RCW 19.146.0201 through 19.146.080, the  
5 director has authority to issue a cease and desist order as provided in  
6 RCW 19.146.220 and 19.146.227, to impose penalties as provided in RCW  
7 19.146.220, and to obtain and review books and records that are  
8 relevant to any allegation of such a violation as provided in RCW  
9 19.146.235.

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

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

21 (b) Any licensee under this subsection who would otherwise be  
22 exempted from the requirements of licensing by (~~RCW 19.146.020~~) this  
23 section may apply to the director for exemption from licensing. The  
24 director shall adopt rules for reviewing such applications and shall  
25 grant exemptions from licensing to applications which are consistent  
26 with those rules and consistent with the other provisions of this  
27 chapter.

28 (4) The director may exempt an exclusive agent under subsection  
29 (1)(a) of this section provided that the affiliate in subsection (1)(a)  
30 of this section:

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

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

36 (c) Maintains a bond or other security in an amount required by the  
37 director that runs to the benefit of the state and any person who

1 suffers loss by reason of the exclusive agent's violation of this  
2 chapter or rules adopted under this chapter.

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

5 It is a violation of this chapter for a loan originator, mortgage  
6 broker required to be licensed under this chapter, or mortgage broker  
7 otherwise exempted from this chapter under RCW 19.146.020(1) (~~((d) or~~  
8 ~~(f) in connection with a residential mortgage loan)) (e), (g), or (4)  
9 to:~~

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

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

13 (3) Obtain property by fraud or misrepresentation;

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

18 (5) Solicit, advertise, or enter into a contract for specific  
19 interest rates, points, or other financing terms unless the terms are  
20 actually available at the time of soliciting, advertising, or  
21 contracting from a person exempt from licensing under RCW 19.146.020(1)  
22 (~~((f) or~~) (g) or (h) or a lender with whom the mortgage broker  
23 maintains a written correspondent or loan ~~((brokerage))~~ broker  
24 agreement under RCW 19.146.040;

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

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

32 (8) Negligently make any false statement or knowingly and willfully  
33 make any omission of material fact in connection with any reports filed  
34 by a mortgage broker or in connection with any investigation conducted  
35 by the department;

36 (9) Make any payment, directly or indirectly, to any appraiser of

1 a property, for the purposes of influencing the independent judgment of  
2 the appraiser with respect to the value of the property;

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

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

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

36 ~~((12))~~ (13) Collect, charge, attempt to collect or charge or use  
37 or propose any agreement purporting to collect or charge any fee  
38 prohibited by RCW 19.146.030 or 19.146.070;

1       (~~(13)~~) (14)(a) Except when complying with (b) and (c) of this  
2 subsection, (~~(to)~~) act as a (~~(mortgage broker)~~) loan originator in any  
3 transaction (i) in which the (~~(mortgage broker)~~) loan originator acts  
4 or has acted as a real estate broker or salesperson or (ii) in which  
5 another person doing business under the same licensed real estate  
6 broker acts or has acted as a real estate broker or salesperson;

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

11       THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES  
12 HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON  
13 REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO  
14 YOU. I AM ALSO A (~~(LICENSED MORTGAGE BROKER)~~) LOAN ORIGINATOR,  
15 AND WOULD LIKE TO PROVIDE MORTGAGE (~~(BROKERAGE)~~) SERVICES TO  
16 YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

17       YOU ARE NOT REQUIRED TO USE ME AS A (~~(MORTGAGE BROKER)~~) LOAN  
18 ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE  
19 TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND  
20 TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

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

1 director determines that maintaining such physical separation would  
2 constitute an undue financial hardship upon the mortgage broker and is  
3 unnecessary for the protection of the public; or

4 ~~((14))~~ (15) Fail to comply with any provision of RCW 19.146.030  
5 through 19.146.080 or any rule adopted under those sections.

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

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

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

22 (a) The annual percentage rate, finance charge, amount financed,  
23 total amount of all payments, number of payments, amount of each  
24 payment, amount of points or prepaid interest and the conditions and  
25 terms under which any loan terms may change between the time of  
26 disclosure and closing of the loan; and if a variable rate, the  
27 circumstances under which the rate may increase, any limitation on the  
28 increase, the effect of an increase, and an example of the payment  
29 terms resulting from an increase. Disclosure in compliance with the  
30 requirements of the truth-in-lending act, 15 U.S.C. Sec. 1601 and  
31 Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be  
32 deemed to comply with the disclosure requirements of this subsection;

33 (b) The itemized costs of any credit report, appraisal, title  
34 report, title insurance policy, mortgage insurance, escrow fee,  
35 property tax, insurance, structural or pest inspection, and any other  
36 third-party provider's costs associated with the residential mortgage  
37 loan. Disclosure through good faith estimates of settlement services

1 and special information booklets in compliance with the requirements of  
2 the real estate settlement procedures act, 12 U.S.C. Sec. 2601, and  
3 Regulation X, 24 C.F.R. Sec. 3500, as now or hereafter amended, shall  
4 be deemed to comply with the disclosure requirements of this  
5 subsection;

6 (c) If applicable, the cost, terms, duration, and conditions of a  
7 lock-in agreement and whether a lock-in agreement has been entered, and  
8 whether the lock-in agreement is guaranteed by the mortgage broker or  
9 lender, and if a lock-in agreement has not been entered, disclosure in  
10 a form acceptable to the director that the disclosed interest rate and  
11 terms are subject to change;

12 (d) A statement that if the borrower is unable to obtain a loan for  
13 any reason, the mortgage broker must, within five days of a written  
14 request by the borrower, give copies of any appraisal, title report, or  
15 credit report paid for by the borrower to the borrower, and transmit  
16 the appraisal, title report, or credit report to any other mortgage  
17 broker or lender to whom the borrower directs the documents to be sent;

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

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

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

33 (4) A mortgage broker or loan originator on behalf of a mortgage  
34 broker shall not charge any fee that inures to the benefit of the  
35 mortgage broker if it exceeds the fee disclosed on the written  
36 disclosure pursuant to this section, unless (a) the need to charge the  
37 fee was not reasonably foreseeable at the time the written disclosure  
38 was provided and (b) the mortgage broker or loan originator on behalf

1 of a mortgage broker has provided to the borrower, no less than three  
2 business days prior to the signing of the loan closing documents, a  
3 clear written explanation of the fee and the reason for charging a fee  
4 exceeding that which was previously disclosed. However, if the  
5 borrower's closing costs on the final settlement statement, excluding  
6 prepaid escrowed costs of ownership as defined by rule, does not exceed  
7 the total closing costs in the most recent good faith estimate,  
8 excluding prepaid escrowed costs of ownership as defined by rule, no  
9 other disclosures shall be required by this subsection.

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

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

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

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

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

22 (1) A mortgage broker shall use generally accepted accounting  
23 principles.

24 (2) Except as otherwise provided in subsection (3) of this section,  
25 a mortgage broker shall maintain accurate and current books and records  
26 which shall be readily available at (~~the mortgage broker's usual~~  
27 ~~business~~) a location available to the director until at least twenty-  
28 five months have elapsed following the effective period to which the  
29 books and records relate.

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

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

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

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

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

22 (1) Except as otherwise permitted by this section, a mortgage  
23 broker shall not receive a fee, commission, or compensation of any kind  
24 in connection with the preparation, negotiation, and brokering of a  
25 residential mortgage loan unless a borrower actually obtains a loan  
26 from a lender on the terms and conditions agreed upon by the borrower  
27 and mortgage broker. A loan originator may not accept a fee,  
28 commission, or compensation of any kind from borrowers in connection  
29 with the preparation, negotiation, and brokering of a residential  
30 mortgage loan.

31 (2) A mortgage broker may:

32 (a) If the mortgage broker has obtained for the borrower a written  
33 commitment from a lender for a loan on the terms and conditions agreed  
34 upon by the borrower and the mortgage broker, and the borrower fails to  
35 close on the loan through no fault of the mortgage broker, charge a fee  
36 not to exceed three hundred dollars for services rendered, preparation  
37 of documents, or transfer of documents in the borrower's file which

1 were prepared or paid for by the borrower if the fee is not otherwise  
2 prohibited by 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; or

4 (b) Solicit or receive fees for third party provider goods or  
5 services in advance. Fees for any goods or services not provided must  
6 be refunded to the borrower and the mortgage broker may not charge more  
7 for the goods and services than the actual costs of the goods or  
8 services charged by the third party provider.

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

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

17 (1) A person, unless specifically exempted from this chapter under  
18 RCW 19.146.020, may not engage in the business of a mortgage broker(~~(~~  
19 ~~except as an employee of a person licensed or exempt from licensing,~~)  
20 or loan originator without first obtaining and maintaining a license  
21 under this chapter. (~~However, a person who independently contracts~~  
22 ~~with a licensed mortgage broker need not be licensed if the licensed~~  
23 ~~mortgage broker and the independent contractor have on file with the~~  
24 ~~director a binding written agreement under which the licensed mortgage~~  
25 ~~broker assumes responsibility for the independent contractor's~~  
26 ~~violations of any provision of this chapter or rules adopted under this~~  
27 ~~chapter; and if the licensed mortgage broker's bond or other security~~  
28 ~~required under this chapter runs to the benefit of the state and any~~  
29 ~~person who suffers loss by reason of the independent contractor's~~  
30 ~~violation of any provision of this chapter or rules adopted under this~~  
31 ~~chapter.))~~)

32 (2) A person may not bring a suit or action for the collection of  
33 compensation (~~(as a mortgage broker)~~) in connection with a residential  
34 mortgage loan unless the plaintiff alleges and proves that he or she  
35 was a duly licensed mortgage broker, or exempt from the license  
36 requirement of this chapter, at the time of offering to perform or

1 performing any such an act or service regulated by this chapter.  
2 (~~This subsection does not apply to suits or actions for the collection~~  
3 ~~or compensation for services performed prior to October 31, 1993.~~)

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

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

12 (a) The designated broker, principal, or owner directs or instructs  
13 the conduct or, with knowledge of the specific conduct, approves or  
14 allows the conduct; or

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

20 **Sec. 10.** RCW 19.146.205 and 2001 c 177 s 4 are each amended to  
21 read as follows:

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

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

29 (b) If the applicant is a partnership or association, the name,  
30 address, date of birth, and social security number of each general  
31 partner or principal of the association, and any other names, dates of  
32 birth, or social security numbers previously used by the members,  
33 unless waived by the director;

34 (c) If the applicant is a corporation, the name, address, date of  
35 birth, and social security number of each officer, director, registered  
36 agent, and each principal stockholder, and any other names, dates of

1 birth, or social security numbers previously used by the officers,  
2 directors, registered agents, and principal stockholders unless waived  
3 by the director;

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

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

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

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

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

1 account, in which case the director shall deposit the moneys in the  
2 consumer services account.

3 (4)(a) Each applicant for a mortgage broker's license shall file  
4 and maintain a surety bond, in an amount of not greater than sixty  
5 thousand dollars nor less than twenty thousand dollars which the  
6 director deems adequate to protect the public interest, executed by the  
7 applicant as obligor and by a surety company authorized to do a surety  
8 business in this state as surety. The bonding requirement as  
9 established by the director may take the form of a uniform bond amount  
10 for all licensees or the director may establish by rule a schedule  
11 establishing a range of bond amounts which shall vary according to the  
12 annual average number of loan originators (~~(or independent~~  
13 ~~contractors))~~) of a licensee. The bond shall run to the state of  
14 Washington as obligee, and shall run first to the benefit of the  
15 borrower and then to the benefit of the state and any person or persons  
16 who suffer loss by reason of the applicant's or its loan originator's  
17 violation of any provision of this chapter or rules adopted under this  
18 chapter. The bond shall be conditioned that the obligor as licensee  
19 will faithfully conform to and abide by this chapter and all rules  
20 adopted under this chapter, and shall reimburse all persons who suffer  
21 loss by reason of a violation of this chapter or rules adopted under  
22 this chapter. Borrowers shall be given priority over the state and  
23 other persons. The state and other third parties shall be allowed to  
24 receive distribution pursuant to a valid claim 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. The bond shall be  
28 continuous and may be canceled by the surety upon the surety giving  
29 written notice to the director of its intent to cancel the bond. The  
30 cancellation shall be effective thirty days after the notice is  
31 received by the director. Whether or not the bond is renewed,  
32 continued, reinstated, reissued, or otherwise extended, replaced, or  
33 modified, including increases or decreases in the penal sum, it shall  
34 be considered one continuous obligation, and the surety upon the bond  
35 shall not be liable in an aggregate or cumulative amount exceeding the  
36 penal sum set forth on the face of the bond. In no event shall the  
37 penal sum, or any portion thereof, at two or more points in time be  
38 added together in determining the surety's liability. The bond shall

1 not be liable for any penalties imposed on the licensee, including, but  
2 not limited to, any increased damages or attorneys' fees, or both,  
3 awarded under RCW 19.86.090. The applicant may obtain the bond  
4 directly from the surety or through a group bonding arrangement  
5 involving a professional organization comprised of mortgage brokers if  
6 the arrangement provides at least as much coverage as is required under  
7 this subsection.

8 (b) Subsection (4)(b) and (c) of this section applies only to  
9 applications received on or before January 1, 2007. Before January 1,  
10 2007, in lieu of a surety bond, the applicant may, upon approval by the  
11 director, file with the director a certificate of deposit, an  
12 irrevocable letter of credit, or such other instrument as approved by  
13 the director by rule, drawn in favor of the director for an amount  
14 equal to the required bond.

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

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

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

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

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

35 (c) Neither the applicant, any of its principals, or the designated  
36 broker have had a license issued under this chapter or any similar

1 state statute suspended or revoked within five years of the filing of  
2 the present application;

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

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

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

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

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

25 (3) The director shall issue a mortgage broker license under this  
26 chapter to any licensee issued a license under chapter 468, Laws of  
27 1993, that has a valid license and is otherwise in compliance with the  
28 provisions of this chapter.

29 (4) A license issued pursuant to this (~~chapter is valid~~) section  
30 expires on the date one year from the date of issuance (~~with no fixed~~  
31 ~~date of expiration~~) which, for license renewal purposes, is also the  
32 renewal date. The director shall adopt rules establishing the process  
33 for renewal of licenses.

34 (5) A licensee may surrender a license by delivering to the  
35 director written notice of surrender, but the surrender does not affect  
36 the licensee's civil or criminal liability or any administrative  
37 actions arising from acts or 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. 12.** RCW 19.146.215 and 1997 c 106 s 11 are each amended to  
7 read as follows:

8 The designated broker of every licensee shall complete an annual  
9 continuing education requirement(~~(, which the director shall define by~~  
10 rule)). The director shall establish standards in rule for approval of  
11 professional organizations offering continuing education to designated  
12 brokers. The director may approve continuing education taken by  
13 designated brokers in other states if the director is satisfied that  
14 such continuing education meets the requirements of the continuing  
15 education required by this chapter.

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

18 (1) The director (~~(shall)~~) may enforce all laws and rules relating  
19 to the licensing of mortgage brokers and loan originators, grant or  
20 deny licenses to mortgage brokers and loan originators, and hold  
21 hearings.

22 (2) The director may impose (~~(the following sanctions:~~  
23 ~~(a) Deny applications for licenses for: (i))~~) fin  
24 es or order  
25 restitution against licensees or other persons subject to this chapter,  
26 or deny, suspend, decline to renew, or revoke licenses for:

27 (a) Violations of orders, including cease and desist orders  
28 (~~issued under this chapter; or (ii) any violation of RCW 19.146.050 or~~  
29 19.146.0201 (1) through (9)));

30 (b) (~~Suspend or revoke licenses for:~~  
31 (i)) False statements or omission of material information on the  
32 application that, if known, would have allowed the director to deny the  
33 application for the original license;

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

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

1        ~~((iv))~~ (e) Any violation of ~~((RCW 19.146.050, 19.146.060(3),~~  
2 ~~19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265;~~  
3 ~~(e))~~ this chapter.

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

7        ~~((i))~~ (a) Any violations of RCW 19.146.0201 (1) through (9) or  
8 ~~((12))~~ (13), 19.146.030 through 19.146.080, 19.146.200,  
9 19.146.205(4), or 19.146.265; or

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

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

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

18 ~~(ii) Pay restitution to an injured borrower; or~~  
19 ~~(e))~~.

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

25        ~~((i))~~ (a) Any violation of 19.146.0201 (1) through (9) or  
26 ~~((12))~~ (13), 19.146.030 through 19.146.080, 19.146.200,  
27 19.146.205(4), or 19.146.265; ~~((or~~

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

31        ~~((iii))~~ (c) Conviction of a gross misdemeanor involving  
32 dishonesty or financial misconduct or a felony after obtaining a  
33 license; or

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

36        ~~((3))~~ (6) Each day's continuance of a violation or failure to  
37 comply with any directive or order of the director is a separate and  
38 distinct violation or failure.

1        ~~((4))~~ (7) The director shall establish by rule standards for  
2 licensure of applicants licensed in other jurisdictions.

3        ~~((5))~~ (8) The director shall immediately suspend the license or  
4 certificate of a person who has been certified pursuant to RCW  
5 74.20A.320 by the department of social and health services as a person  
6 who is not in compliance with a support order (~~or a residential or~~  
7 ~~visitation order~~). If the person has continued to meet all other  
8 requirements for reinstatement during the suspension, reissuance of the  
9 license or certificate shall be automatic upon the director's receipt  
10 of a release issued by the department of social and health services  
11 stating that the licensee is in compliance with the order.

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

14        In accordance with the administrative procedure act, chapter 34.05  
15 RCW, the director may issue rules under this chapter only after seeking  
16 the advice of the mortgage (~~brokerage~~) broker commission and (~~to~~  
17 ~~govern~~) only for the purpose of governing the activities of licensed  
18 mortgage brokers, loan originators, and other persons subject to this  
19 chapter.

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

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

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

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

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

33        Mortgage brokers and loan originators shall not be charged  
34 investigation fees for the processing of complaints when the  
35 investigation determines that no violation of this chapter occurred or  
36 when the mortgage broker or loan originator provides a remedy

1 satisfactory to the complainant and the director and no order of the  
2 director is issued. All moneys, fees, and penalties collected under  
3 the authority of this chapter shall be deposited into the financial  
4 services regulation fund, unless the consumer services account is  
5 created as a dedicated, nonappropriated account, in which case all  
6 moneys, fees, and penalties collected under this chapter shall be  
7 deposited in the consumer services account.

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

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

34 ~~Once during the first two years of licensing, the director may  
35 visit, either personally or by designee, the licensee's place or places  
36 of business to conduct a compliance examination. The director may  
37 examine, either personally or by designee, a sample of the licensee's~~

1 ~~loan files, interview the licensee or other designated employee or~~  
2 ~~independent contractor, and undertake such other activities as~~  
3 ~~necessary to ensure that the licensee is in compliance with the~~  
4 ~~provisions of this chapter. For those licensees issued licenses prior~~  
5 ~~to March 21, 1994, the cost of such an examination shall be considered~~  
6 ~~to have been prepaid in their license fee. After this one visit within~~  
7 ~~the two year period subsequent to issuance of a license, the director~~  
8 ~~or a designee may visit the licensee's place or places of business only~~  
9 ~~to ensure that corrective action has been taken or to investigate a~~  
10 ~~complaint.))~~

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

13 (1) For the purposes of investigating violations or complaints  
14 arising under this chapter, the director or his or her designee may  
15 make an investigation of the operations of any mortgage broker or loan  
16 originator as often as necessary in order to carry out the purposes of  
17 this chapter.

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

20 (a) For the purpose of examinations, the director or his or her  
21 designee may have access to such books and records during normal  
22 business hours and interview the officers, principals, loan  
23 originators, employees, independent contractors, and agents of the  
24 licensee concerning their business.

25 (b) For the purposes of investigating violations or complaints  
26 arising under this chapter, the director may at any time, either  
27 personally or by a designee, investigate the business, including but  
28 not limited to the books, accounts, records, and files used therein, of  
29 every licensee and of every person engaged in the business of mortgage  
30 brokering, whether such a person acts or claims to act under, or  
31 without the authority of, this chapter.

32 (c) The director or designated person may direct, subpoena, or  
33 order the attendance of and examine under oath all persons whose  
34 testimony may be required about the loans or the business or subject  
35 matter of any such examination or investigation, and may direct,  
36 subpoena, or order such person to produce books, accounts, records,  
37 files, and any other documents the director or designated person deems  
38 relevant to the inquiry.

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

7       (a) A review for trust accounting compliance;

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

11       (c) Interviews for the purpose of understanding business and  
12 solicitation practices, transactional events, disclosure compliance,  
13 complaint resolution, or determining specific compliance with this  
14 chapter and the attendant rules; and

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

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

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

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

26       (c) The criteria by which the frequency of examinations will be  
27 determined.

28       (5) If the examination findings clearly identify the need to expand  
29 the scope of the examination, the director or a designee, upon five  
30 days' written notification to the licensee with an explanation of the  
31 need, may:

32       (a) Expand the examination review to locations other than the  
33 examined location regardless of the number of years a location has held  
34 a license; or

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

1       (6) The director or a designee may consider reports made by  
2 independent certified professionals for the mortgage broker covering  
3 the same general subject matter as the examination. The director or a  
4 designee may incorporate all or part of the report in the report of the  
5 examination.

6       (7) The director may retain attorneys, accountants, or other  
7 professionals and specialists as examiners, auditors, or investigators  
8 to conduct or assist in the conduct of examinations or investigations.  
9 The cost of these services shall be billed in accordance with RCW  
10 19.146.228.

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

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

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

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

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

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

1 ~~one-year terms~~). The department shall provide staff support to the  
2 commission.

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

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

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

22 (6) The department, in consultation with other applicable agencies  
23 of state government, shall conduct a continuing review of the number  
24 and type of consumer complaints arising from residential mortgage  
25 lending in the state. The department shall report its findings to the  
26 senate committee on financial institutions and house of representatives  
27 committee on financial institutions and insurance along with  
28 recommendations for any changes in the licensing requirements of this  
29 chapter, biennially by December 1st of each even-numbered year.

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

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

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

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

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

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

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

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

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

24 (2) As part of or in connection with an application for any license  
25 under this section, the loan originator applicant shall furnish  
26 information concerning his or her identity, including fingerprints for  
27 submission to the Washington state patrol, the federal bureau of  
28 investigation, and any governmental agency or entity authorized to  
29 receive this information for a state and national criminal history  
30 background check; personal history; experience; business record;  
31 purposes; and other pertinent facts, as the director may reasonably  
32 require. As part of or in connection with an application for a license  
33 under this chapter, the director is authorized to receive criminal  
34 history record information that includes nonconviction data as defined  
35 in RCW 10.97.030. The department may only disseminate nonconviction  
36 data obtained under this section to criminal justice agencies. This

1 section does not apply to financial institutions regulated under  
2 chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

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

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

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

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

15 (a) The loan originator applicant has paid the required license  
16 fees;

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

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

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

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

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

29 (g) The loan originator applicant has demonstrated character and  
30 general fitness such as to command the confidence of the community and  
31 to warrant a belief that the business will be operated honestly and  
32 fairly within the purposes of this chapter; and

33 (h) The loan originator licensee has completed, during the calendar  
34 year preceding a licensee's annual license renewal date, continuing  
35 education as established by rule of the director. The director shall  
36 establish standards in rule for approval of professional organizations  
37 offering continuing education to loan originators. The director may

1 approve continuing education taken by loan originators in other states  
2 if the director is satisfied that such continuing education meets the  
3 requirements of the continuing education required by this chapter.

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

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

13 (4) A loan originator license issued under this section expires on  
14 the date one year from the date of issuance which, for license renewal  
15 purposes, is also the renewal date. The director shall establish rules  
16 regarding the loan originator license renewal process created under  
17 this chapter.

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

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

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

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

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

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

4           NEW SECTION.   **Sec. 23.** This act takes effect January 1, 2007.

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