
SENATE BILL 5659

State of Washington

61st Legislature

2009 Regular Session

By Senators Berkey, Benton, and Marr

Read first time 01/28/09. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to the consideration of mitigating factors for
2 enforcement actions under the mortgage broker practices act; amending
3 RCW 19.146.220; and adding a new section to chapter 19.146 RCW.

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

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

7 (1) The director shall consider circumstances that may mitigate the
8 seriousness of a violation in any investigation or any enforcement
9 action. Mitigating factors include:

10 (a) Whether the licensee voluntarily disclosed of the violation or
11 activity;

12 (b) The timeliness of the disclosure;

13 (c) When there is a voluntary disclosure by a licensee, the
14 likelihood that the director would have discovered the violation in a
15 timely fashion without that voluntary disclosure;

16 (d) The cooperation of the licensee during any investigation of the
17 violation;

18 (e) Any remedial measures taken to correct any flaws in internal

1 procedures to protect against any future violations when the disclosure
2 is by a designated broker, principal, or owner;

3 (f) The length of time the licensee has engaged in business without
4 any prior administrative actions;

5 (g) Whether the licensee has business practices that include:

6 (i) Supervision and training of personnel;

7 (ii) Regular review work performed;

8 (iii) Training in the requirements of this chapter and rules;

9 (iv) Monitoring for compliance under this chapter; and

10 (v) Acting on reports of alleged misconduct;

11 (h) Whether the violation should have been reasonably anticipated;

12 (i) Whether the violation was a matter of inadvertence, simple
13 negligence, or gross negligence;

14 (j) Whether there were prior audits of the company that failed to
15 reveal the violation;

16 (k) A positive score or report obtained in prior audits, if the
17 licensee has been previously audited; and

18 (l) Any other mitigating factors adopted by the director by rule.

19 (2) When a violation voluntarily disclosed by a licensee is the
20 result of a deliberate and knowing violation by an employee or
21 independent contract loan officer and was intended to be concealed from
22 the licensee, the director shall:

23 (a) Pursue the employee or independent contract loan officer who
24 committed the violation and exhaust all legal remedies in an effort to
25 make all consumers harmed by the violation whole;

26 (b) Not charge the licensee punitive fees, penalties, investigation
27 fees, or fees of any other kind; and

28 (c) Not audit, examine, or investigate the licensee.

29 (3) The director must adopt a policy to encourage licensees to
30 report violations by minimizing remedial actions imposed upon the
31 reporting individual. When the reporting person is a licensee or
32 acting on behalf of a licensee, the director may only suspend or revoke
33 a license or require restitution to a consumer from a licensee in
34 severe cases of high culpability. Examples of high culpability
35 include:

36 (a) When the licensee has actual knowledge of the act when the act
37 is committed; and

38 (b) Gross and reckless negligence in supervision by a licensee.

1 **Sec. 2.** RCW 19.146.220 and 2006 c 19 s 13 are each amended to read
2 as follows:

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

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

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

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

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

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

17 (e) Any violation of this chapter.

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

21 (a) Any violations of RCW 19.146.0201 (1) through (9) or (13),
22 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or
23 19.146.265; or

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

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

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

34 (a) Any violation of 19.146.0201 (1) through (9) or (13),
35 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or
36 19.146.265;

37 (b) False statements or omission of material information on the

1 application that, if known, would have allowed the director to deny the
2 application for the original license;

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

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

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

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

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

20 (9) The remedies in this section are subject to section 1 of this
21 act.

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