Chapter 208-660 WAC

MORTGAGE BROKERS AND LOAN ORIGINATORS—LICENSING

(Formerly chapter 50-60 WAC)

WAC

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208-660-010 Definitions. [Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.-200. 01-12-029, § 208-660-010, filed 5/29/01, effective 7/1/01. Statutory Authority: RCW 43.320.-010, 19.146.223. 01-01-044, § 208-660-010, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-010, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-010, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-010, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-020 Statutory exemptions. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-020, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-020, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-020, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-020, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-025 Computer loan information services and systems. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-025, filed 12/8/00, effective 1/8/01. Statutory Authority: RCW 42.320.040 [43.320.040], 19.146.020 (1)(h) and 19.146.225. 97-01-003, § 208-660-025, filed 12/5/96 effective 1/5/97.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-030 Application procedure for mortgage broker license. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-030, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-030, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-030, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-030, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-035 Interim licenses. [96-04-028, recodified as § 208-660-035, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-035, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-040 Experience requirements. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-040, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-040, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-040, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-040, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-040, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-042 Continuing education requirement. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-042, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-042, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-042, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-045 Approval of courses and examinations. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-045, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-045, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-045, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-045, filed 11/8/94, effective 12/9/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-050 Demand for criminal history information. [96-04-028, recodified as § 208-660-050, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-050, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-050, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-060 Department's fees and assessments. [Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-060, filed 5/29/01, effective 7/1/01; 96-04-028, recodified as § 208-660-060, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-060, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-060, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-060, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-061 Fee increase. [Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-061, filed 5/29/01, effective 7/1/01.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-062 Waiver of fees. [Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-062, filed 5/29/01, effective 7/1/01.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-070 Branch office application procedure. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-070, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-070, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-070, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-070, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-080 Surety bond and approved alternatives—General requirements. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-080, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-080, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-080, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-080, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-080, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-08005 Alternatives to the surety bond. [96-04-028, recodified as § 208-660-08005, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08005, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-08010 Establishment of trust account for borrower funds to pay third-party providers. [96-04-028, recodified as 208-660-08010, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08010, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-08015 Designation of trust account(s). [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-08015, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-08015, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08015, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-08020 Required trust account records and procedures. [96-04-028, recodified as § 208-660-08020, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08020, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-08025 Trust account deposit requirements. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-08025, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-08025, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08025, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-08030 Trust account disbursement requirements. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-08030, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-08030, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08030, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-08032 Approved methods of disbursement to and from trust accounts. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-08032, filed 12/8/00, effective 1/8/01.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-08035 Computerized accounting system requirements. [96-04-028,recodified as § 208-660-08035, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08035, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-08040 Automated check writing systems. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-08040, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-08040, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08040, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-085 Alternatives to the surety bond. [96-04-028, recodified as § 208-660-085, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 94-23-033, § 50-60-085, filed 11/8/94, effective 12/9/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-090 License standards for applicants licensed in other jurisdictions. [96-04-028, recodified as § 208-660-090, filed 2/1/96, effective 4/1/96. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-090, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-09005 Registered agent and agent's office. [96-04-028, recodified as § 208-660-09005, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-09005, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-09010 Change of registered agent or agent's office. [96-04-028, recodified as § 208-660-09010, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-09010, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-09015 Resignation of registered agent. [96-04-028, recodified as § 208-660-09015, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-09015, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-09020 Service on licensee. [96-04-028, recodified as § 208-660-09020, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-09020, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-100 License standards for associations. [96-04-028, recodified as § 208-660-100, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-100, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-100,

filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-110 Transfers by, or changes in principal or designated broker of, a licensee. [96-04-028, recodified as § 208-660-110, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-110, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-110, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-120 Employees and independent contractors of licensees. [96-04-028, recodified as § 208-660-120, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-120, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-120, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-125 Recordkeeping and other requirements for advertising materials. [Statutory Authority: RCW 19.146.223 and 19.146.225. 02-21-100, § 208-660-125, filed 10/22/02, effective 11/22/02; 96-04-028, recodified as § 208-660-125, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-125, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-130 Disclosure required to borrower. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-130, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-130, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-130, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-130, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-140 General recordkeeping requirements. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-140, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-140, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-140, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-140, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-145 Forwarding appraisal, title report and credit report. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-145, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-145, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-145, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-150 Disclosure of significant developments. [96-04-028, recodified as § 208-660-150, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-150, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-150, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-160 License application denial or condition; license suspension or revocation. [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-160, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-160, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-160, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-160, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-165 Fines and penalties for violation of the Mortgage Broker Practices Act. [96-04-028, recodified as § 208-660-165, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-165, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-165, filed 11/8/94, effective 12/9/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-170 Transitional rule. [96-04-028, recodified as § 208-660-170, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 94-23-033, § 50-60-170, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-170, filed 1/7/94, effective 2/7/94.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-190 Prohibited practices—Improperly influencing appraisals. [96-04-028, recodified as § 208-660-190, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-190, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-200 Mortgage broker fees allowed. [96-04-028, recodified as § 208-660-200, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-200, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

208-660-210 Mortgage brokerage commission. [96-04-028, recodified as § 208-660-210, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-210, filed 6/21/95, effective 7/22/95.] Repealed by 06-23-137, filed 11/21/06, effective 1/1/07. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19.

WAC 208-660-005 Purpose, scope and coverage. (1) **What is the purpose of the Mortgage Broker Practices Act?** The purpose of the Mortgage Broker Practices Act is to establish a state system of licensure and rules of practice and conduct for mortgage brokers and loan originators, to promote honesty and fair dealing with citizens, and to preserve public confidence in the lending and real estate community.

(2) **What is the purpose of the Mortgage Broker Practices Act rules?** The purpose of these rules is to administer and interpret the Mortgage Broker Practices Act in order to govern the activities of licensed mortgage brokers, loan originators, and other persons subject to the act.

(3) **What is the scope and coverage of the Mortgage Broker Practices Act and these rules?** There are four criteria to determine the scope and coverage of the Mortgage Broker Practices Act and these rules. All of the criteria must be met in order for a person or entity to fall under the scope and coverage of the act and these rules. The criteria are:

(a) The persons or entities conducting business;

(b) The type of transactions performed when conducting the business;

(c) The identification of residential real estate; and

(d) The location of the mortgage broker, loan originator, potential borrower, and residential real estate.

(4) **What persons or entities are covered?** The Mortgage Broker Practices Act and these rules apply to all persons or entities defined as mortgage brokers or loan originators under RCW 19.146.010. However, certain mortgage brokers and loan originators may be exempt from all or part of the act under RCW 19.146.020 as discussed in WAC 208-660-008.

(5) **What types of transactions are covered?** The Mortgage Broker Practices Act and these rules cover the assisting to obtain any "residential mortgage loan" defined in RCW 19.146.010 and WAC 208-660-006. Violations of RCW 19.146.0201, however, are not limited to residential mortgage loan transactions.

(6) **What is residential real estate?** Residential real estate is real property upon which is constructed or intended to be constructed, a single family dwelling, or multiple fam-

ily dwelling of four or less units. See examples in WAC 208-660-006, "residential real estate."

(7) **Does the location of the mortgage broker, loan originator, potential borrower, and residential real estate affect whether the transaction is covered under the Mortgage Broker Practices Act?** If the mortgage broker, loan originator, potential borrower, or residential real estate is located in Washington, the transaction is covered by the Mortgage Broker Practices Act and these rules. However, the director may choose to defer to other jurisdictions where doing so would, in the director's sole discretion, achieve the purposes of the Mortgage Broker Practices Act.

(8) **What are some examples of transactions falling under the scope and coverage of the Mortgage Broker Practices Act and these rules?**

(a) A loan originator employed with Mortgage Broker, Inc. with a physical office in Redmond, Washington takes a loan application from a Kirkland, Washington resident for the purchase of a home located in Bellevue, Washington. Mortgage Broker, Inc. is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020. The home located in Bellevue meets the definition of residential real estate and the purchaser intends to reside in the home.

(b) A loan originator with a physical office in Spokane, Washington takes a loan application from a Yakima, Washington resident for the purchase of a home located in Oregon. The mortgage broker is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020. The home located in Oregon meets the definition of residential real estate and the purchaser intends to reside in the home.

(c) A loan originator with a physical office in Reno, Nevada working for a Nevada mortgage broker takes a loan application from a Nevada resident for the purchase of a home located in Olympia, Washington. The mortgage broker is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020. The home located in Washington meets the definition of residential real estate and the purchaser intends to reside in the home.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-005, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-005, filed 11/21/06, effective 1/1/07.]

WAC 208-660-006 Definitions. What definitions are applicable to these rules? Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

"Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

"Advertising material" means any form of sales or promotional materials used in connection with the mortgage broker business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; or internet pages.

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

"Annual loan origination volume" means the aggregate of the principal loan amounts brokered by the licensee.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be in writing or electronically submitted, including a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

"Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value range, exclusion of a value, or a minimum value.

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

"Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker.

"Branch office license" means a branch office license issued by the director allowing the licensee to conduct a mortgage broker business at the location indicated on the license.

"Business day" means Monday through Friday excluding federally recognized bank holidays.

"Certificate of passing an approved examination" means a certificate signed by the testing administrator verifying that the individual performed with a satisfactory score or higher.

"Certificate of satisfactory completion of an approved continuing education course" means a certificate signed by the course provider verifying that the individual has attended an approved continuing education course.

"Compensation or gain" means remuneration, benefits, or an increase in something having monetary value, including, but not limited to, moneys, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing moneys that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special or unusual bank or financing terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation. "Compensation or gain" is not evaluated solely on a loan by loan basis.

For example, a realtor advertising that buyers using their services will receive free loan origination assistance is doing so in the anticipation of "compensation or gain" through increased real estate business.

"Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

For purposes of this definition, the CLI system includes computer hardware or software, an internet-based system, or any combination of these, which provides information to consumers about residential mortgage interest rates and other loan terms which are available from another person.

"Computer loan information system provider" or "CLI provider" is any person who provides a computer loan information service, either directly, or as an owner-operator of a CLI system, or both.

"Consumer Protection Act" means chapter 19.86 RCW.

"Control" including the terms "controls," "is controlled by," or "is under common control" means the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person is presumed to control another person if such person is:

• A general partner, officer, director, or employer of another person;

• Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of another person; or

• Has similar status or function in the business as a person in this definition.

"Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:

• Has been convicted of the crime in any jurisdiction;

• Has been convicted of a crime which, if committed within this state would constitute a crime under the laws of this state;

• Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or

• Has been found guilty of a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

"Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210 (1)(e).

"Director" means the director of financial institutions.

"Discount points" or "points" mean a fee paid by a borrower to a lender to reduce the interest rate of a residential mortgage loan. Pursuant to Regulation X, discount points are to be reflected on the good faith estimate and settlement statement as a dollar amount.

"Division of consumer services" means the division of consumer services within the department of financial institutions, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

"Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

"Examination" or "compliance examination" means the examination performed by the division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules to determine whether the licensee is in compliance with applicable laws and regulations.

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, Director of the Office of Thrift Supervision, National Credit Union Administration, and Federal Deposit Insurance Corporation.

Federal statutes and regulations used in these rules are:

• "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

• "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 CFR Part 202.

• "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

• "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 41-58.

• "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 CFR Parts 313-314.

• "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

• "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 CFR Part 203.

• "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

• "Homeowners Protection Act" means the Homeowners Protection Act of 1998 (HPA), 12 U.S.C. Sec. 4901 et seq.

• "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 24 CFR Part 3500 et seq.

"S.A.F.E." means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289, effective July 30, 2008.

• "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telephone Sales Rule, 16 CFR Part 310.

• "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 CFR Part 226 et seq.

"Federally insured financial institution" means a savings bank, savings and loan association, or credit union, whether state or federally chartered, or a federally insured bank, authorized to conduct business in this state.

"Financial misconduct," for the purposes of the act, means a criminal conviction for any of the following:

• Any conduct prohibited by the act;

• Any conduct prohibited by statutes governing mortgage brokers in other states, or the United States, if such conduct would constitute a violation of the act;

• Any conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers; or

• Any conduct commonly known as white collar crime, including, but not limited to, embezzlement, identity theft, mail or wire fraud, insider trading, money laundering, check fraud, or similar crimes.

"Independent contractor" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

The following factors may be considered to determine if a person is an independent contractor:

Is the person instructed about when, where and how to work?

Is the person guaranteed a regular wage?

Is the person reimbursed for business expenses?

Does the person maintain a separate business?

Is the person exposed to potential profits and losses?

Is the person provided employee benefits such as insurance, a pension plan, or vacation or sick pay?

"License number" means the NMLSR unique identifier displayed as prescribed by the director.

"Licensee" means:

• A mortgage broker licensed by the director; or

• The principal(s) or designated broker of a mortgage broker; or

• A loan originator licensed by the director; or

• Any person subject to licensing under RCW 19.146.-200; or

• Any person acting as a mortgage broker or loan originator subject to any provisions of the act.

"Loan modification" means a change in one or more residential mortgage loan terms or conditions and includes forbearances, repayment plans, a change in interest rates, loan term (length), loan type (fixed or adjustable), the capitalization of arrearages, and principal reductions. "Loan modification" does not include services that result in refinancing a residential mortgage loan.

"Loan originator or mortgage loan originator" means a natural person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain:

• Takes a residential mortgage loan application for a mortgage broker; or

• Offers or negotiates terms of a mortgage loan, including short sale transactions.

"Loan originator" also includes a person who holds themselves out to the public as able to perform any of the activities described in this definition. For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists, or other promotional items.

For purposes of further defining "loan originator," "taking a residential mortgage loan application" includes soliciting, accepting, or offering to accept an application for a residential mortgage loan or assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application.

"Loan originator" also includes a natural person who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain performs residential mortgage loan modification services.

"Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. An individual who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

"Loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction;

(d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(e) Offering to engage in any activity, or act in any capacity, described in (a) through (d) of this subsection.

"Loan originator" does not include a person or entity solely involved in extensions of credit relating to timeshare

plans, as that term is defined in section 101(53D) of Title 11, United States Code.

The definition of loan originator does not apply to employees of a housing counseling agency approved by the United States department of Housing and Urban Development unless the employees of a housing counseling agency are required under federal law to be licensed individually as loan originators.

"Loan originator licensee" means a natural person who is licensed as a loan originator or is subject to licensing under RCW 19.146.200 or who is acting as a loan originator subject to any provisions of the act.

"Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 19.146 RCW. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms.

"Material litigation" means any litigation that would be relevant to the director's ruling on an application for a license including, but not limited to, criminal or civil action involving dishonesty or financial misconduct.

"Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan. A mortgage broker either prepares a residential mortgage loan for funding by another entity or table-funds the residential mortgage loan. See the definition of "table funding." (These are the two activities allowed under the MBPA.)

For purposes of this definition, a person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms (rates, fees, other costs), preparing loan packages, or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X, 24 CFR Part 3500, Section 3500 (2)(b).

For purposes of this definition, a person "holds himself or herself out" by advertising or otherwise informing the public that they engage in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate sheets, or other promotional items.

"Mortgage broker licensee" means a person that is licensed as a mortgage broker or is subject to licensing under RCW 19.146.200 or is acting as a mortgage broker subject to any provisions of the act.

"Mortgage Broker Practices Act" means chapter 19.146 RCW.

"Mortgage loan originator" means the same as "loan originator."

"Nationwide Mortgage Licensing System and Registry (NMLSR)" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

"Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage. This definition is limited to implementation of the S.A.F.E. Act.

"Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

"Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

"Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan.

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

"Rate lock agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

"Registered agent" means a person located in Washington appointed to accept service of process for a licensee.

"Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of:

(a) A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and

(b) Is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

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

For purposes of this definition, a loan "primarily for personal, family, or household use" includes loan applications for a finance or refinance of a primary residence for any purpose, loan applications on second homes, and loan applications on nonowner occupied residential real estate provided the licensee has knowledge that proceeds of the loan are intended to be used primarily for personal, family or household use.

"Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include, but are not limited to, forbearances; repayment plans; changes in interest rates, loan terms, or loan types; capitalizations of arrearages; or principal reductions. Loan modification does not include services that result in refinancing a residential mortgage loan.

"Residential mortgage loan modification services" includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a res-

idential mortgage loan modification. "Residential mortgage loan modification services" also includes the collection of data for submission to any entity performing mortgage loan modification services.

"Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

• Residential real estate includes, but is not limited to:

– A single family home;

– A duplex;

– A triplex;

– A fourplex;

– A single condominium in a condominium complex;

– A single unit within a cooperative;

– A manufactured home; or

– A fractile, fee simple interest in any of the above.

• Residential real estate does not include:

– An apartment building or dwelling of five or more units; or

– A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings.

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, or Title V of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289, effective July 30, 2008.

"Table-funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned.

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

A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

"Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

"Underwriting" means a lender's detailed credit analysis preceding the offering or making of a loan. The analysis may be based on information furnished by the borrower (employment history, salary, financial statements), the borrower's credit history from a credit report, the lender's evaluation of the borrower's credit needs and ability to pay, and an assessment of the collateral for the loan. While mortgage brokers may have access to various automated underwriting systems to facilitate an evaluation of the borrower's qualifications, the mortgage broker who qualifies or approves a borrower in this manner is not the underwriter of the loan and cannot charge a fee for underwriting the loan. Third-party charges the mortgage broker incurs in using or accessing an automated system to qualify or approve a borrower may, like other third-party expenses, be passed on to the borrower.

"Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-006, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-006, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-006, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-11-103, § 208-660-006, filed 5/20/08, effective 6/20/08; 08-05-126, § 208-660-006, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-006, filed 11/21/06, effective 1/1/07.]

WAC 208-660-007 Good standing. (1) **What does good standing mean?** For the purposes of the act and these rules, good standing means that the applicant, licensee, or other person subject to the act demonstrates financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of the act and these rules. In determining good standing the director will consider the following factors, and any other evidence relevant to good standing as defined in this rule:

(a) Whether the applicant or licensee has paid all fees due to the director or the NMLSR.

(b) Whether the mortgage broker licensee has filed their mortgage broker annual report.

(c) Whether the mortgage broker licensee has filed and maintained the required surety bond or had its surety bond canceled or revoked for cause.

(d) Whether the mortgage broker licensee has maintained a designated broker in compliance with the act and these rules.

(e) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization or ability to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years.

(f) Whether the applicant, licensee, or other person subject to the act has been convicted of, or pled guilty or nolo contendere to, in a domestic, foreign, or military court to:

(i) A gross misdemeanor involving dishonesty or financial misconduct within the prior seven years;

(ii) A felony within the prior seven years; or

(iii) A felony that involved an act of fraud, dishonesty, breach of trust, or money laundering at any time preceding the date of application.

(g) Whether the licensee or other person subject to the act, is, or has been subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(h) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

(i) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject

to the act has been notified of the complaints and been given the opportunity to respond.

(j) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

(k) Whether the licensee, or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

(l) Whether the licensee or other person subject to the act has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

(2) **Under what circumstances may the department conduct a good standing review of an applicant, mortgage broker licensee, designated broker, or exempt mortgage broker?** The department may conduct a good standing review when:

(a) Processing an application for a new mortgage broker branch office license.

(b) Processing an application for appointment of a different designated broker (both the licensed mortgage broker, including those individuals to whom the license was granted, and the proposed designated broker must meet good standing).

(c) Processing a request for recognition as an exempt mortgage broker under RCW 19.146.020.

(3) **When will an applicant, licensee, or other person subject to the act receive notice from the department of their failure to meet a determination of good standing?** If the department conducts a good standing review, the department will notify the applicant, licensee, or other person subject to the act that they have failed to meet the department's good standing requirement within ten business days of the department's receipt of any application or request that requires a determination of good standing. See subsection (2) of this section. For purposes of the notice required by this section, a statement of charges filed and served on the licensee is sufficient notice of a lack of good standing.

(4) **What recourse does an applicant, licensee, or other person subject to the act have when the department has determined that they are not in good standing?** The applicant, licensee, or other person subject to the act may request a brief adjudicative proceeding under the Administrative Procedure Act, chapter 34.05 RCW, to challenge the department's determination. See WAC 208-660-009.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-007, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-007, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-007, filed 11/21/06, effective 1/1/07.]

WAC 208-660-008 Exemptions. (1) **Who is exempt from all provisions of the act?** Any person doing business under the laws of the state of Washington or the United States and any federally insured depository institution doing business under the laws of any other state relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof.

(2) **Who is exempt from licensing as a mortgage loan originator?**

(a) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual; or

(b) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(3) **If I am licensed as an insurance agent under RCW 48.17.060, must I have a separate license to act as a loan originator or mortgage broker?** Yes. You will need a separate license as a loan originator or mortgage broker if you are a licensed insurance agent and you do any of the following:

(a) Take a residential mortgage loan application for a mortgage broker;

(b) Offer or negotiate terms of a mortgage loan for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;

(c) Assist a person in obtaining or applying to obtain a residential mortgage loan, for compensation or gain; or

(d) Hold yourself out as being able to perform any of the above services.

(4) **Are insurance companies exempt from the Mortgage Broker Practices Act?** Yes. Insurance companies authorized to transact the business of insurance in this state by the Washington state office of the insurance commissioner are exempt from the Mortgage Broker Practices Act.

(5) **As an attorney, must I have a mortgage broker or loan originator license to assist a person in obtaining or applying to obtain a residential mortgage loan in the course of my practice?**

(a) If you are an attorney licensed in Washington and if the mortgage broker activities are incidental to your professional duties as an attorney, you are exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (1)(c).

(b) Whether an exemption is available to you depends on the facts and circumstances of your particular situation. For example, if you hold yourself out publicly as being able to perform the services of a mortgage broker or loan originator, or if your fee structure for those services is different from the customary fee structure for your professional legal services, the department will consider you to be principally engaged in the mortgage broker business and you will need a mortgage broker or loan originator license before performing those services. A "customary" fee structure for the professional legal service does not include the receipt of compensation or gain associated with assisting a borrower in obtaining a residential mortgage loan on the property.

(6) **As a licensed real estate broker or salesperson, must I have a mortgage broker or loan originator license when I assist the purchaser in obtaining financing for a residential mortgage loan involving a bona fide sale of real estate?** You are exempt from the act under RCW 19.146.020 (1)(e) if you only receive the customary real

estate commission in connection with the transaction. A "customary" real estate commission does not include receipt of compensation or gain associated with the financing of the property. A "customary" real estate commission only includes the agreed upon commission designated in the listing or purchase and sale agreement for the bona fide sale of the subject property.

(7) **Are independent contractor loan originators exempt from licensing?** No. An independent contractor working as a loan originator must hold a loan originator license.

(8) **What other persons or entities are exempt from the Mortgage Broker Practices Act?**

(a) Any person doing any act under order of any court except for a person subject to an injunction to comply with any provision of the act or any order of the director issued under the act.

(b) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of these entities in this subsection (b).

(c) Registered mortgage loan originators, or any individual required to be registered, employed by entities exempt from the act.

(d) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the transaction.

(9) **When is a CLI provider exempt from the licensing requirements of the act?** A CLI provider is exempt from the licensing requirements of the act:

(a) When the CLI provider meets the general statutory requirements under RCW 19.146.020 (1)(a), (c), (d), or (f); or

(b) When a real estate broker or salesperson licensed in Washington, acting as a CLI provider and a real estate agent, obtains financing for a real estate transaction involving a bona fide sale of real estate and does not receive either:

(i) A separate fee for the CLI service; or

(ii) A sales commission greater than that which would be otherwise customary in connection with the sales transaction; or

(c) When a person, acting as a CLI provider:

(i) Provides only information regarding rates, terms, and lenders;

(ii) Complies with all requirements of subsection (12) of this section;

(iii) Does not represent or imply to a borrower that they are able to obtain a residential mortgage loan from a mortgage broker or lender;

(iv) Does not accept a loan application, assist in the completion of a loan application, or submit a loan application to a mortgage broker or lender on behalf of a borrower;

(v) Does not accept any deposit for third-party provider services or any loan fees from a borrower in connection with a loan, regardless of when the fees are paid;

(vi) Does not negotiate interest rates or terms of a loan with a mortgage broker or lender on behalf of a borrower; and

(vii) Does not provide to the borrower a good faith estimate or other disclosure(s) required of mortgage brokers or lender(s) by state or federal law.

(d) If the CLI provider is not exempt under (a), (b), or (c) of this subsection, the CLI provider is not required to have a mortgage broker license if the CLI provider does not receive any fee or other compensation or gain, directly or indirectly, for performing or facilitating the CLI service.

(10) **When is a CLI provider required to have a mortgage broker license?**

(a) If a CLI provider, who is not otherwise exempt from the licensing requirements of the act, performs any act that would otherwise require that they be licensed, including accepting a loan application, or submitting a loan application to a mortgage broker or lender, the CLI provider must obtain a mortgage broker or a loan originator license.

(b) Example - License required: A CLI provider uses an internet-based CLI system in which an abbreviated application is available for online completion by borrower. Once the borrower presses "submit," the information collected in the abbreviated application is forwarded to lender. The information contains the borrower's name, Social Security number, contact information, purpose of the loan sought (e.g., purchase, refinance, home equity, second mortgage), size of loan requested, annual salary, and a self-declaration of total unsecured debt. The electronic entries made by the borrower are then used by lender to electronically populate "form fields" and to initiate lender's loan application. A loan originator for the lender then follows up with borrower to complete the loan application. On or after closing, CLI provider receives a CLI service fee.

(c) Example - License not required: A CLI provider uses an internet-based CLI system in which various interactive informational tools are present, including an online "prequalification" tool. Based upon borrower's self-declared data input, borrower receives an indication of borrower's "maximum affordable loan amount," based upon standard norms of debt-to-income ratio and loan-to-value ratio, and also subject to verification of information, availability and suitability of loan products, and independent underwriting by any lender. The borrower indicates a desire for follow-up from one or more lenders by inputting personal contact information and pressing "submit." A number of lenders receive only the personal identity information of borrower and not any financial information. However, the CLI system has been programmed (and may be continuously reprogrammed) to route personal contact information to certain lenders based upon borrower's "prequalification" data input and the lending criteria of each of the lenders for whom CLI provider has a relationship. None of borrower's self-declared financial information is actually submitted to any of the lenders whose criteria match borrower's profile. Loan originators from lender A and lender B initiate contact with borrower based solely on borrower's contact information. Lender A and lender B, through their assigned loan originators, contact borrower with the object of beginning and hopefully completing a loan application. In this example, CLI provider has not taken a loan application.

(11) **Must the CLI provider provide any disclosures?**

(a) Yes. If a borrower using or accessing the CLI services pays for the CLI service, either directly or indirectly, the CLI provider must give the following disclosure:

(i) The amount of the fee the CLI provider charges the borrower for the service;

(ii) That the use of the CLI system is not required to obtain a residential mortgage loan; and

(iii) That the full range of loans available may not be listed on the CLI system, and different terms and conditions, including lower rates, may be available from others not listed on the system.

(b) Each CLI provider must give the borrower a copy of the disclosure form when the first CLI service is provided to the borrower. The form must be signed and dated by the borrower and a copy maintained as part of the CLI provider's books and records for at least two years.

(12) **Are CLI system providers subject to enforcement under the act?** Yes. CLI system providers are responsible for any violations of the act and will be subject to any applicable fines or penalties.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-008, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-008, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-11-103, § 208-660-008, filed 5/20/08, effective 6/20/08; 08-05-126, § 208-660-008, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-008, filed 11/21/06, effective 1/1/07.]

WAC 208-660-009 Application of Administrative Procedure Act. (1) What are my rights when the department begins an administrative enforcement action against me? Under the Administrative Procedure Act (APA), chapter 34.05 RCW, you have the right to request a hearing on the agency's action. Hearings are conducted as either formal adjudicative proceedings or may, under certain circumstances, be handled as a brief adjudicative proceeding (BAP).

(2) What must I do when I want to request a hearing? When you are notified of administrative charges filed against you, you are also notified of your right to request a hearing. At that time, the department will also notify you as to whether the hearing will be conducted as a brief adjudicative proceeding. You are required to notify the department, in writing, within twenty days from the date of the director's notice to you notifying you of the enforcement action against you. This notice must be received by the department by the 20th day following service of the charges on you.

(3) What is a brief adjudicative proceeding? Under the APA, a brief adjudicative proceeding is a hearing that is less formal in nature and typically resolves the charges quickly. The department provides a BAP for violations of the act in which the facts are undisputed and under circumstances where the parties may present their case without the need for witnesses. Typical matters to be heard in a BAP include, but are not limited to, license denials or revocations based on certain undisputed facts, including criminal convictions or misrepresentations on an application.

(4) May I request a brief adjudicative proceeding in response to an administrative enforcement action? Yes, but only if the matter has been designated by the department as one for which a BAP is available. The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings. Brief adjudicative proceedings shall be limited to a determination of one or more of the following issues:

(a) Whether an applicant for a loan originator license meets the requirements of RCW 19.146.310 (1)(a), (b), (c), (d), (e), or (h);

(b) Whether an applicant for a mortgage broker license meets the requirements of RCW 19.146.210 (1)(a), (b), (c), (d), or (e); and

(c) Whether a mortgage broker has failed to maintain the bond required by RCW 19.146.205.

(5) In a matter not listed in subsection (4) of this section, a brief adjudicative proceeding may be conducted at the discretion of the presiding officer when it appears that protection of the public interest does not require that the department provide notice and an opportunity to participate to persons other than the parties, and:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief proceeding. As used in this section, "persons other than the parties" does not include an attorney or representative for a party, or a witness for a party.

(6) How does the BAP work? Brief adjudicative proceedings are controlled by the provisions of RCW 34.05.482 through 34.05.494. The department will use the following procedure:

(a) Presiding officer. The director shall designate a presiding officer to conduct the brief adjudicative proceedings. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's licensing application denial, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

(b) Preliminary records. The preliminary record for the brief adjudicative proceeding consists of the application and all associated documents including all documents relied upon by the department to deny the application and all correspondence between the applicant and the department regarding the application.

(c) Notice of hearing. The presiding officer will set the date, time, and place of the hearing, giving at least seven business days notice to the applicant.

(d) Written documents. The department's staff or representative and the applicant or their representative may present written documentation for consideration by the presiding officer. The presiding officer will designate the date and number of pages allowed for submission of written documents, including supporting exhibits.

(e) Oral argument. The presiding officer may exercise discretion on whether to allow oral argument.

(f) Witnesses. Live witness testimony will not be allowed. Witnesses providing testimony by sworn declaration or affidavit will be allowed at the discretion of the presiding officer.

(g) If, at the time of the hearing, the presiding officer determines that the alleged violations or evidence concerning the violations is such that a formal adjudicative proceeding is necessary, the presiding officer may immediately adjourn the hearing and direct that the matter be scheduled as a formal adjudicative proceeding.

(h) Initial order. The presiding officer must make a written initial order within ten business days of the final date for submission of materials, or oral argument, if any, to include a

written statement describing the decision, the reasons for the decision, and describing the right to request review of the decision by the director. The initial order will become final twenty-one days after service on the applicant unless the applicant requests an administrative review or the department decides to review the matter.

[Statutory Authority: RCW 43.320.040. 09-12-111, § 208-660-009, filed 6/2/09, effective 7/3/09.]

MORTGAGE BROKERS

WAC 208-660-155 Mortgage brokers—General. (1) **May I originate residential mortgage loans in Washington without a license?** No. Mortgage brokers and loan originators must have a valid Washington license, or be exempt from licensing pursuant to RCW 19.146.020, in order to originate residential mortgage loans. There is no "one-time, one loan" exception.

(2) **May I originate a Washington residential mortgage loan using the license of an already licensed or exempt Washington mortgage broker and then split the proceeds with that mortgage broker?** No. Mortgage broker licenses may only be used by the person named on the license. Mortgage broker licenses may not be transferred, sold, traded, assigned, loaned, shared, or given to any other person. Two individually licensed mortgage brokers may originate a loan. Each licensee is itemized in the disclosures and is paid their proportionate share of fees in relation to the work provided at the loan closing. Federal laws may prohibit this cobrokering.

(3) **Do I need a license to assist a borrower with a residential mortgage loan modification?** Yes. Persons providing loan modification services for compensation or gain must be licensed under this chapter, or under chapter 31.04 RCW. See also WAC 208-660-430(23), 208-660-500(4), 208-660-550 (3)(c) and (4).

(4) **As a licensed mortgage broker, am I responsible for the actions of my employees and independent contractors?** Yes. You are responsible for any conduct violating the act or these rules by any person you employ, or engage as an independent contractor, to work in the business covered by your license.

(5) **Who at the licensed mortgage broker company is responsible for the licensee's compliance with the act and these rules?** The designated broker, principals, and owners with supervisory authority are responsible for the licensee's compliance with the act and these rules.

(6) **What is the nature of my relationship with the borrower?** You have a fiduciary relationship with the borrower. See RCW 19.146.095.

(7) **May I charge upfront broker fees when assisting the borrower in applying for a loan?** No. You may only charge the borrower a fee, commission, or other compensation for the preparation, negotiation, and brokering of a residential mortgage loan when the loan is closed on the terms and conditions agreed upon by you and the borrower.

(8) **May I charge fees when the loan does not close, or does not close on the terms and conditions agreed upon by me and the borrower?** You may charge a fee, and may bring a suit for collection of the fee, not to exceed three hundred dollars, for services rendered, for the preparation of documents, or for the transfer of documents in the borrower's file which were prepared for, or paid for by, the borrower if:

(a) You have obtained a written commitment from a lender on the same terms and conditions agreed upon by you and the borrower; and

(b) The borrower fails to close on a loan through no fault of yours; and

(c) The fee is not otherwise prohibited by the Truth in Lending Act.

(9) **As a mortgage broker, may I solicit or accept fees from a borrower in advance to pay third-party providers?** Yes. However, prior to accepting the funds, you must provide the borrower in writing a notice identifying the specific third-party provider goods and services the funds are to be used for. Additionally, you must not charge the borrower more for the third-party provider goods and services than the actual costs of the goods and services charged by the provider. Once you have the funds you must then:

(a) Deposit the funds in a trust account pursuant to the act and these rules (see WAC 208-660-410 on Trust accounting);

(b) Refund any fees collected for goods or services not provided.

(10) **What is a "written commitment from a lender on the same terms and conditions agreed upon by the borrower and mortgage broker"?** The written commitment is a written agreement or contract between the mortgage broker and lender containing mutually acceptable loan provisions and terms. The lender must be one with whom the mortgage broker maintains a written correspondent or loan brokerage agreement as required by RCW 19.146.040(3). The mutually acceptable loan provisions and terms must be the same terms and conditions set forth in the most recent good faith estimate signed by both the borrower and the mortgage broker.

(11) **How do I sponsor a loan originator?** You must file a sponsorship request through the NMLSR.

(12) **What action must a mortgage broker take to terminate a working relationship with a loan originator?** The licensed mortgage broker must process the termination through the NMLSR.

(13) **When must I update my record in the NMLSR after I terminate employment with a loan originator?** You must process the termination through the NMLSR within five business days of the termination.

(14) **Are there any loan originator compensation models I am prohibited from using?** Yes. You are prohibited from using a compensation model for loan originators based on a loan's interest rate or other terms. You are not prohibited from basing compensation on the principal balance of a loan.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-155, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-155, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-155, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-155, filed 11/21/06, effective 1/1/07.]

WAC 208-660-163 Mortgage brokers—Licensing. (1) **How do I apply for a mortgage broker license?** Your application consists of an on-line filing through the NMLSR

and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR.

(a) **Appoint a designated broker.** You must appoint a designated broker who meets the requirements of WAC 208-660-250.

(b) **Submit an application.** You must complete an online application through the NMLSR.

(c) **Pay the application and license fees.** You will have to pay application fees to cover the costs of processing the application. You must also pay a separate annual license fee. See WAC 208-660-550, Department fees and costs.

(d) **Prove your identity.** You must provide information about the identity of owners, principals, officers, and the designated broker, including fingerprints.

(e) **Provide a surety bond.** Mortgage brokers must have a surety bond based upon the annual loan origination volume of the mortgage broker. See WAC 208-660-175 (1)(e).

(2) **What information will the department consider when deciding whether to approve a mortgage broker license application?** The department considers the financial responsibility, character, and general fitness of the applicant, principals, and the designated broker.

(3) **Why does the department consider financial responsibility, character, and general fitness before issuing a mortgage broker license?** One of the purposes of the act is to ensure that mortgage brokers and loan originators deal honestly and fairly with the public. Applicants, principals, and designated brokers who have demonstrated their financial responsibility, character, and general fitness to operate their businesses honestly, fairly, and efficiently are more likely to deal honestly and fairly with the public.

(4) **What specific information will the department consider to determine if the mortgage broker business will be operated honestly, fairly, and in compliance with applicable law?**

(a) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, or restricted within the prior five years.

(b) Whether the applicant has ever had a license revoked under this chapter or any similar state statute, including a license for insurance, securities, consumer lending, or escrow.

(c) Whether the applicant, licensee, or other person subject to the act has been convicted of, or pled guilty or nolo contendere to, in a domestic, foreign, or military court to:

(i) A gross misdemeanor involving dishonesty or financial misconduct within the prior seven years;

(ii) A felony within the prior seven years; or

(iii) A felony that involved an act of fraud, dishonesty, breach of trust, or money laundering at any time preceding the date of application.

(d) Whether the licensee or other person subject to the act is, or has been, subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(e) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

(f) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

(g) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

(h) Whether the licensee or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

(i) Whether the licensee or other person subject to the act has interfered with an investigation, or disciplinary proceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

(5) **What will happen if my mortgage broker license application is incomplete?** If your application is incomplete your file will be marked "pending-deficient" in the NMLSR. The department will either identify each deficiency or respond that there are multiple deficiencies and ask you to contact the department. You are responsible for reviewing your record and responding to each issue.

(6) **How do I withdraw my application for a mortgage broker license?** You may request to withdraw the application through the NMLSR.

(7) **When will the department consider my mortgage broker license application abandoned?** If you do not respond as directed by the department's request for information and within fifteen business days, your license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

(8) **What are my rights if the director denies my application for a mortgage broker license?** You have the right to request an administrative hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW. To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied, that you wish to have a hearing. See also WAC 208-660-009.

Upon denial of your mortgage broker license application, and provided the department finds no unlicensed activity, the department will return your surety bond, and refund any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

(9) **What Washington law protects my rights when my application for a mortgage broker license is denied, or my mortgage broker license is suspended or revoked?** The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for license application denials, cease

and desist orders, license suspension or revocation, the imposition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions. See also WAC 208-660-009.

(10) **May I advertise my business while I am waiting for my mortgage broker license application to be processed?** No. It is a violation of the act for nonlicensed, nonexempt mortgage brokers or loan originators to hold themselves out as mortgage brokers or loan originators in Washington.

(11) **May I originate Washington residential mortgage loans while waiting for my mortgage broker license application to be processed?** No. You may not originate loans prior to receiving your mortgage broker license.

(12) **How do I change information on my mortgage broker license?** You must file a license amendment application through the NMLSR. See also WAC 208-660-400.

(13) **When does a mortgage broker license expire?** The mortgage broker license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(14) **When may the department issue interim mortgage broker licenses?** To prevent an undue delay, the director may issue interim mortgage broker licenses, including branch office licenses, with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the result of the applicant's background check.

(15) **How do I renew my mortgage broker license?**

(a) Before the license expiration date you must:

(i) File the mortgage broker annual report and any other required notices, with the director. See WAC 208-660-400.

(ii) Complete a renewal request through the NMLSR.

(iii) Show evidence that your designated broker completed the required annual continuing education.

(iv) Pay the annual license assessment fee.

(b) The renewed license is valid for the term listed on the license or until surrendered, suspended, or revoked.

(16) **If I let my mortgage broker license expire must I apply to get a new license?** If you complete all the requirements for renewal on or before February 28th each year, you may renew an expired license. However, if you renew your license after the expiration, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (15) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

If you fail to comply with the renewal request requirements by March 1st of each year, you must apply for a new license.

(17) **May I still conduct my mortgage broker business if my mortgage broker license has expired?** No. If your mortgage broker license expires, you must not conduct any business under the act that requires a license until you renew your license.

(18) **What should I do if I wish to close my mortgage broker business?** You may surrender the mortgage broker license by submitting a surrender request through the NMLSR and submitting a completed departmental closure form. Surrendering your license does not change your civil or criminal liability, or your liability for any administrative actions arising from any acts or omissions occurring before you surrender your license. Contact the Washington department of revenue to find out how to handle any unclaimed funds in your trust account.

(19) **May I transfer, sell, trade, assign, loan, share, or give my mortgage broker license to another person or company?** No. A mortgage broker license authorizes only the person named on the license to conduct the business at the location listed on the license. See also WAC 208-660-155(2).

(20) **Must I display my mortgage broker license?** Yes. Your mortgage broker license must be prominently displayed at the licensed location.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-163, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-163, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-163, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-163, filed 11/21/06, effective 1/1/07.]

WAC 208-660-175 Mortgage brokers—Surety bond. (1) **What are the surety bond requirements for licensed mortgage brokers?**

(a) Mortgage brokers must at all times have a valid surety bond on file with the director. The surety bond must be provided on a form prescribed by the department.

(b) The surety bond amount must be based upon the annual loan origination volume of the licensee in the state of Washington.

(c) When the mortgage broker initially applies for a license, the dollar amount of the surety bond must be a minimum of twenty thousand dollars. Thereafter, by March 31st of each year, you must determine your required bond amount based on loan origination volume and provide DFI with proof of having an adequate bond.

(d) The surety bond must list the mortgage broker's full name, unified business identifier (UBI), and NMLSR unique identifier.

(e) The surety bond must be signed by a principal of the mortgage broker as well as an authorized representative of the insurance company listed as surety. The power-of-attorney must identify the signing representative as authorized by the insurance company. The insurance company must include their surety bond number and seal on the surety bond form.

The following chart shows the surety bond amount required for the annual loan origination volume of the licensee in the state of Washington:

Loan Volume in Millions	Bond Amount
$40+	$60,000
$20 to $40	$40,000
$0 to $20	$20,000

(f) If you only offer residential mortgage loan modification services, your bond amount is twenty thousand dollars, initially and thereafter.

(2) **Who provides mortgage broker surety bonds?** To purchase a surety bond, contact your insurance broker. A list of insurance companies that underwrite Washington surety bonds in Washington is available from the Washington state office of the insurance commissioner's web site.

(3) **What do I do with the surety bond once I receive it from my insurance company?** You must sign the original surety bond and include the surety bond and the attached power-of-attorney with your license application package.

(4) **What happens to my mortgage broker license if my surety bond is canceled?** Failure to maintain a surety bond is a violation of the act and may result in an enforcement action against you.

(5) **May I change surety bond companies?** Yes. You may change your insurance provider at any time. Your current insurance company will issue a cancellation notice for your existing surety bond. The cancellation notice may be effective no less than thirty days following the director's receipt of the cancellation notice.

Prior to the cancellation date of the existing surety bond, you must have on file with the department a replacement surety bond. The replacement surety bond must be in effect on or before the cancellation date of the prior surety bond.

(6) **Why must I carry a surety bond to have a mortgage broker license?** The surety bond protects the state and any persons who suffer loss by reason of violations of any provision of the act or these rules by you or your employees or independent contractors.

(7) **Who may make a claim against a licensed mortgage broker's surety bond?** The director, or any person, including a third-party provider, who has been injured by a violation of the act, may make a claim against a bond.

(8) **How may I make a claim against a licensed mortgage broker's surety bond?** The department can provide you with the name of a licensed mortgage broker's surety bond provider. Contact the surety bond company and follow its required procedures to make your claim.

(9) **How long does the bond claim procedure take?** The time to complete a bond claim may vary among bonding companies. If the claimant is not a borrower, final judgment will not be entered prior to one hundred eighty days after the claim is filed.

(10) **When must I file a bond claim?** A bond claim must be filed within one year of the date of the act that causes the claim.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-175, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-175, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-175, filed 11/21/06, effective 1/1/07.]

WAC 208-660-176 Mortgage brokers—Recovery fund in lieu of surety bond. (1) **What if the surety bond required in WAC 208-660-175 is not reasonably available in the insurance market?** If the director determines that the bond required is not reasonably available due to the insurance market or other product availability issue, the director must waive the requirements for the bond.

(2) **If a recovery fund is created, how will it be funded?** All licensees will pay a fee at application and renewal, in addition to all license application fees, through the NMLSR, to fund the recovery fund.

(3) **How much will the recovery fund fees be?**

(a) Two hundred fifty dollars for the main office location;

(b) One hundred fifty dollars for each branch office; and

(c) One hundred dollars for each mortgage loan originator.

(4) **Will the fund have a cap or maximum?** After the fund has been in existence for three years, and periodically thereafter, the director may determine the maximum fund amount needed based upon claims made.

(5) **What happens to any interest that accrues on the mortgage recovery fund balance?** All interest that accrues in the fund will be added to the balance of the fund.

(6) **Can the department use any of the recovery fund money?** Yes. On an annual basis the department may apply up to fifty thousand dollars to fund the department's expenses in administering the mortgage recovery fund.

(7) **What is the procedure for recovery from the fund?**

(a) A claimant must obtain a money judgment from a superior court that includes findings of violations of this act against a mortgage broker or mortgage loan originator.

(b) The final money judgment must be obtained after January 1, 2010, after execution has been returned unsatisfied and the judgment has been recorded.

(c) The person in (a) of this subsection must file a verified claim with the court in which the judgment was entered, and on twenty days' written notice to the director and to the judgment debtor, may apply to the court for an order directing payment from the mortgage recovery fund of any unpaid amount on such judgment.

(d) After giving notice and the opportunity for a hearing to the person seeking recovery, to the judgment debtor and to the department, the court may enter an order requiring the director to pay from the mortgage recovery fund the amount the court finds payable on the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied as to the proof of all matters required to be shown under subsection (a) of this section, and that the person seeking recovery from the mortgage recovery fund has satisfied all requirements of this section.

(e) If the court finds that the aggregate amount of claims against a mortgage broker or mortgage loan originator exceeds the limits set forth in WAC 208-660-175, the court must reduce proportionately the amount the court finds payable on the claim.

(f) When the director receives notice that a hearing is scheduled under this section, the director may enter an appearance, file a response, appear at the hearing or take any other appropriate action as he or she deems necessary to protect the mortgage recovery fund from spurious or unjust claims and to ensure compliance with the requirements for recovery under this section.

(g) The department must provide the court with information concerning the mortgage recovery fund necessary to enable the court to carry out its duties under this section.

(8) **What must a person show at the hearing on the recovery fund claim?** The person seeking recovery from the mortgage recovery fund must show:

(a) That the judgment has not been discharged in bankruptcy and is based on facts allowing recovery under the act;

(b) That the person is not a spouse of the judgment debtor, or the personal representative of the spouse;

(c) That the person is not a mortgage broker or mortgage loan originator as defined by this chapter who is seeking to recover any compensation regarding the mortgage loan transaction which is the subject of the money judgment upon which a claim against the mortgage recovery fund is based; and

(d) That, based on the best available information, the judgment debtor lacks sufficient nonexempt assets in this or any state to satisfy the judgment.

(9) **What may recovery funds obtained be used for?**

(a) Any recovery on the money judgment received by the judgment creditor before payment from the mortgage recovery fund must be applied by the judgment creditor to reduce the judgment creditor's actual damages which were awarded in the judgment.

(b) A recovery from the fund will not include punitive damages awarded by a court.

(10) **What is the statute of limitations for a claim from the recovery fund?** A verified claim against the recovery fund must be filed within one year of the date of termination of all court proceedings concerning the judgment, including appeals.

(11) **What types of claims will the fund award money on?**

(a) The fund will be used to reimburse persons awarded actual damages resulting from acts constituting violations of the act by a mortgage broker or mortgage loan originator who was licensed, or required to be licensed, under this chapter at the time that the act was committed.

(b) Payments from the mortgage recovery fund may not be made to:

(i) Any licensee whose acts were found by a court to be violations of this chapter and a basis of the court's award of a money judgment to a person injured by such violations;

(ii) Any person who acquires a mortgage loan where acts associated with the origination of such loan are found by a court to be violations of this chapter and a basis for a judgment obtained by a person injured by such violations; or

(iii) The spouse, the personal representative of the spouse of the judgment debtor or the personal representative of the judgment debtor.

(12) **Will the department revoke my license if a claim is made against the recovery fund based on my actions?**

(a) The director may revoke a license issued under this chapter if the director is required by court order under this section to make a payment from the mortgage recovery fund based on a money judgment that includes findings of violations of this chapter by such licensee.

(b) A person whose license has been revoked under this subsection is not eligible to be considered for the issuance of a new license under this chapter until the person has repaid in full, plus interest at the current legal rate, the amount paid from the mortgage recovery fund resulting from that person's violation of this chapter.

(c) This section does not limit the authority of the director to take disciplinary action against a licensee under this chapter for a violation of this chapter or of rules promulgated or orders issued pursuant to this chapter. The repayment in full to the mortgage recovery fund of all obligations of a licensee under this chapter does not nullify or modify the effect of any other disciplinary proceeding brought under this chapter.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-176, filed 12/1/09, effective 1/1/10.]

WAC 208-660-180 Mortgage brokers—Main office. (1) **Must a licensed mortgage broker have a designated broker?** Yes. Licensed mortgage broker companies must have an approved designated broker at all times.

(2) **How many designated brokers may a mortgage broker have?** The mortgage broker may appoint only one individual to be the designated broker at any given time. The designated broker need not be a principal of the licensee.

It is a prudent business practice to have more than one qualified individual working for the licensee who could be appointed as the designated broker.

(3) **If my designated broker leaves, may I continue to operate my mortgage broker business?** Yes. You may continue to operate your mortgage broker business. However, you must notify the department within five business days of the loss of or change of your designated broker. You must then replace the designated broker within thirty days of the loss or change of the designated broker. If you need more than thirty days to replace the designated broker, you must seek approval from the department. Failure to replace your designated broker, or receive approval from the director for an extension, may result in an enforcement action against you.

(4) **What must I do to replace my designated broker?** You must apply through the NMLSR for approval of the new designated broker. The new designated broker must meet the requirements of WAC 208-660-250(1). You and the new designated broker must meet the good standing requirements of WAC 208-660-007.

(5) **What must I do if I sell all or part of my mortgage broker company?** See WAC 208-660-400(13).

(6) **After my mortgage broker license is approved, may I change my business structure?** Yes. See WAC 208-660-400 (7)(a)(iv).

(7) **May a licensed mortgage broker share an office with a licensed real estate broker?** Yes. A licensed mortgage broker may share an office with a licensed real estate broker. The mortgage broker location must be licensed as a main or branch mortgage broker office.

(8) **If a licensed mortgage broker shares an office with a licensed real estate broker, what must the mortgage broker do to notify the public that the office is shared?** The licensed mortgage broker must clearly identify the mortgage broker business as separate from the real estate business to the public on any signage, advertising, or other material identifying the businesses.

(9) **May I add a trade name (or "DBA") to my mortgage broker license?** Yes. You may add a trade or "DBA" name to the mortgage broker license if you first apply to the department, in a form prescribed by the department, and receive department approval. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the trade name; or

(b) Use your mortgage broker license number together with the trade name.

(10) **May the department deny an application for a proposed DBA name because it is similar to an existing licensee name?** Yes. The director may deny an application for a proposed DBA name if the proposed DBA name is similar to a currently existing licensee name.

(11) **May I conduct my mortgage broker business from more than one location?** Yes. You may establish one or more branch offices under your license. See WAC 208-660-195 for information on licensing branch offices.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-180, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-180, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-180, filed 11/21/06, effective 1/1/07.]

WAC 208-660-195 Mortgage brokers—Branch offices. (1) **May I open branch offices under my mortgage broker license?** Yes. A licensed mortgage broker may submit license application(s) to the department through the NMLSR to establish branch office(s) under the existing mortgage broker license. Each branch office must be licensed and must pay an annual license fee. See WAC 208-660-550, Department fees and costs.

(2) **If my branch offices are under separate ownership, does that limit my liability for their activities?** No. Licensed mortgage brokers are responsible for the activity and violations at their branch offices regardless of the structure or label given the branch offices. Licensure of a branch office creates a direct line of responsibility from the main office to the branch.

(3) **If my branch offices are under separate ownership, what level of supervision must I maintain?** Because branch offices, regardless of their business structure, are not independent from your license and surety bond, you are responsible for the conduct of anyone conducting business under your license. You must have a written supervisory plan. The details of the plan, and how you implement the plan for your branch offices, must take into account the number of branch offices, their location, and the number of individuals working at the branch offices. You must maintain your written supervisory plan as part of your business books and records.

(4) **How do I apply for a mortgage broker branch office license?** As the licensed mortgage broker, you must apply for a branch office license through the NMLSR and receive approval from the department before operating from any location other than your licensed location. You must be in good standing. You will have to pay application and annual assessment fees for the branch office(s). See WAC 208-660-550, Department fees and costs.

(5) **What does the department consider when reviewing an application for a branch office license?** The department considers:

(a) Whether the mortgage broker is in good standing. See WAC 208-660-007.

(b) Whether the physical address listed in the application can be verified as a branch office location.

(6) **Must I display my branch office license?** Yes. Your mortgage broker branch office license must be prominently displayed in the branch office.

(7) **If I am an internet company, how do I display my license?** You must display your license information, as it appears on your license, including any or all business names, and the license number, on your web site. The information must also include a list of the states in which you are licensed.

(8) **How do I change information on my mortgage broker branch office license?** You must file a license amendment through the NMLSR at least ten days prior to the change occurring.

(9) **Does my branch office license expire?** The license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(10) **How do I renew my mortgage broker branch office license?**

(a) Before the expiration date, the licensed mortgage broker must submit an on-line renewal and pay the branch office annual assessment fee through the NMLSR.

(b) The renewed mortgage broker branch office license is valid for the term listed on the license or until surrendered, suspended, or revoked.

(11) **If my mortgage broker branch office license expires, must I apply for a new license?** If you complete all the requirements for renewal by February 28th, each year, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your branch office license, you must pay an additional fifty percent of your annual assessment for that branch. See subsection (10) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

If you fail to comply with the renewal request requirements by February 28th, each year, you must apply for a new license.

(12) **If my mortgage broker branch office license has expired, may I still conduct my mortgage broker business from that location?** No. Once the mortgage broker branch office license has expired, you must not conduct any business under the act that requires a license until you renew your license.

(13) **If my mortgage broker main office license expires, may I still conduct my mortgage broker business from a branch office?** No. Once the mortgage broker main office license expires, you must not conduct any business under the act that requires a license from any location until you renew the main office license.

(14) **May I add a trade name (or "DBA") to my mortgage broker branch office license?** Yes. You may add a trade name, or "DBA" name, to the mortgage broker branch

office license if you first apply to the department, in a form prescribed by the director, and receive department approval. The branch office trade name must at all times be identified as connected with the mortgage broker's license name as it appears on the mortgage broker license. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the branch office trade name; or

(b) Use the branch office trade name and mortgage broker branch office license number together.

(c) See WAC 208-660-180(10).

(15) **How must I identify my mortgage broker branch office(s)?** The branch office must be prominently identified as a branch or division of the licensed mortgage broker so as not to appear to be an independent enterprise.

(16) **Does my branch office have to be a physical location?** Yes. The physical location may be at a commercial or residential address but does not have to be in Washington. See WAC 208-660-420, Out-of-state mortgage brokers and loan originators.

(17) **Must I have a branch manager?** No. Although you may appoint one, the act does not require a branch manager. You and the designated broker are responsible for the business conducted at all locations.

(18) **If I appoint a branch manager, must he or she be licensed?** If the branch manager performs any of the functions of a mortgage broker or loan originator, he or she must be licensed. If they do not perform those functions, they must not be paid a commission or salary based upon the number of transactions closed.

(19) **Must I have a designated broker at each branch?** No. You may have only one designated broker who is responsible for the mortgage broker business at all locations.

(20) **If I want to move my licensed company under the sponsorship of another mortgage broker, what must be completed before the licensed loan originators can start transacting business under the sponsorship of the other mortgage broker?** The loan originators may begin doing business when the other mortgage broker has filed for approval of a new branch office with the NMLSR, has sponsored each of the licensed loan originators through the NMLSR and you have filed the trust account paperwork with the department, you may transact business under the new mortgage broker for up to thirty days without a new license.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-195, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-195, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-195, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-195, filed 11/21/06, effective 1/1/07.]

DESIGNATED BROKERS

WAC 208-660-250 Designated brokers—General. (1) **How do I become a designated broker?**

(a) Be eighteen years or older.

(b) Have a high school diploma, an equivalent to a high school diploma, or two years experience in the industry in addition to the experience required in (e) of this subsection. The experience must meet the criteria in (e) of this subsection.

(c) You must pass the Washington designated broker test. See WAC 208-660-260, Designated brokers—Testing. If you will originate loans, you must also take and pass the loan originator national and Washington specific tests and apply for and receive a loan originator license.

(d) You must be appointed to the designated broker position by the licensed mortgage broker through an application and approval process with the department and the NMLSR.

(e) You must have a minimum of two years experience lending or originating residential mortgage loans.

(i) The work experience must be in one or more of the following, within the last five years:

(A) As a mortgage broker or designated broker of a mortgage broker for a minimum of two years; or

(B) As a mortgage banker, responsible individual, or manager of a mortgage banking business; or

(C) As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or

(D) As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or

(E) As a manager or supervisor of mortgage loan originators; or

(F) As a mortgage processor, underwriter, or quality control professional; or

(G) As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and the department determines your background is sufficient.

(ii) The work experience must be evidenced by a detailed work history and:

(A) W-2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(B) 1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(C) Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company; or

(f) In addition to supplying the application information, both you and the licensed mortgage broker must be in good standing with the department; or

(g) Demonstrate financial responsibility, character and general fitness.

(2) **How do I demonstrate financial responsibility?** The department will review your credit history to determine if you have outstanding judgments (except judgments involving medical expenses); current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years.

Specifically, you are not eligible to become a designated broker if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(3) **May I work as the designated broker for more than one company?** Yes. You may be the designated broker for more than one licensee.

(4) **As the designated broker, must I hold a loan originator's license?** Yes. If you perform any of the functions of a loan originator, you must apply for and receive a loan originator license.

(5) **May I work as the designated broker for one licensee and a licensed loan originator for another licensee?** Yes. If you want to originate loans for a mortgage broker different from the mortgage broker for whom you are the designated broker, you must amend your license information through the NMLSR to reflect the new relationship and the second company must sponsor you. Federal law may prohibit a mortgagee from hiring employees who work for more than one mortgage broker or who have multiple employers.

(6) **May a designated broker hire employees or independent contractors apart from the employees or independent contractors working for the mortgage broker licensee?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against a designated broker having employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

(7) **As a designated broker, what reporting requirements must I comply with?** See WAC 208-660-400, Reporting requirements.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-250, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-250, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-250, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-250, filed 11/21/06, effective 1/1/07.]

WAC 208-660-260 Designated brokers—Testing. (1) **Must I pass a test prior to becoming a designated broker?** Yes. You must take and pass the Washington designated broker test. See subsection (3) of this section if you are going to originate loans. See WAC 208-660-250(1) if you have never been a designated broker.

(2) **If I am currently a designated broker, will I have to take the test again?** You will only have to retake tests if you stop working in the industry for five years or longer.

(3) **If I am currently a designated broker that originates loans, will I have to take the loan originator test and obtain a loan originator license?** Yes. You must take and pass the national and state NMLSR tests and obtain the necessary prelicensing education prior to acting as a loan originator.

(4) **Where can I get information about the designated broker test?** Go to the department's web site for information about the designated broker test: http://www.dfi.wa.gov/cs/mb_testing.htm.

(5) **What topics may be covered in the designated broker test?** See WAC 208-660-600(3).

(6) **How soon after failing the designated broker test may I take it again?** After failing the test three consecutive times you must wait at least fourteen days before taking the test again.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-260, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-260, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-260, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-260, filed 11/21/06, effective 1/1/07.]

WAC 208-660-270 Designated brokers—Continuing education. (1) **Where can I get information about continuing education?** The NMLSR will publish a list of approved courses and providers. The providers will have detailed information about the continuing education courses they offer. The department will accept the continuing education courses approved by the NMLSR for designated broker continuing education.

(2) **As a designated broker, how many hours of continuing education must I have?**

(a) The continuing education requirement for designated brokers is nine hours.

(b) You will receive one credit hour by attending one or more mortgage broker commission meeting(s).

(3) **As a designated broker, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) **If I teach a continuing education course approved by the NMLSR, may I use my course as credit toward my annual continuing education requirement?** Yes. As an instructor of a NMLSR approved continuing education course, you may receive credit for your annually required designated broker continuing education courses from the course(s) you teach. You will receive credit at the rate of one course taught equaling two continuing education course credits.

(5) **Is ethics a required continuing education topic for designated brokers?** Yes. You must take two hours of ethics each year you act as a designated broker. The ethics course must include the topics of fraud, consumer protection, and fair lending. You must not take the same course in the same or successive years.

(6) **If I accumulate more than the required designated broker continuing education course credits during a year, may I carry-over the excess credit to the next year?** No. Continuing education credits only apply to the year in which they are taken.

(7) **How do I provide the department with proof of the continuing education courses I have completed?**

(a) For S.A.F.E. required courses, the course provider will report your continuing education to the NMLSR and DFI will have access to that information.

(b) For Washington specific courses, you must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

(8) **If I fail to complete the required continuing education, what happens to my license?** When your license expires, the department will not renew it and you cannot continue conducting any business under the act. See WAC 208-660-350(20) to renew your license within two months after expiration.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-270, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-270, filed 11/21/06, effective 1/1/07.]

LOAN ORIGINATORS

WAC 208-660-300 Loan originators—General. (1) **May I work as a loan originator for more than one mortgage broker?** Yes.

(2) **How do I obtain approval to work for more than one mortgage broker?** Using the NMLSR, the company will submit a sponsorship request. The department will notify you and others associated with your license upon approval of your request. The NMLSR will charge a fee for the additional relationship. See also WAC 208-660-550.

(3) **If I work as a loan originator for more than one mortgage broker, may I take an application from a borrower without identifying one specific mortgage broker?** No. You may take an application for only one mortgage broker at a time in any one transaction. Prior to presenting yourself to a specific borrower as licensed to originate mortgage loans, you must state who you represent. You must clearly identify the mortgage broker by name and address on the application, on all disclosures, authorization forms, and other material provided to the borrower. There must be no confusion by the borrower as to which mortgage broker you are representing at any given time.

(4) **May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location. The licensed location can be the main company office, or any licensed branch.

(5) **May a loan originator transfer loan files to a mortgage broker other than the mortgage broker the loan originator is associated with?** No. Only the borrower may submit a written request to the licensed mortgage broker to transmit the borrower's selected information to another mortgage broker or lender. The licensed mortgage broker must transmit the information within five business days after receiving the borrower's written request.

(6) **Who owns loan files?** Loan files are the property of the mortgage broker named on the loan application and the mortgage broker must keep the original files and documents.

(7) **May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:

> "THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.
> YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS, AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER, OR LENDER OF YOUR CHOOSING."

(8) **As a loan originator, may I be paid directly by the borrower for my services?** No. As a loan originator, you may not be paid any compensation or fees directly by the borrower.

(9) **May a loan originator charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. A loan originator may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

(10) **As a loan originator, may I be paid my portion of the mortgage broker fee directly from the loan closing?**

(a) Yes. If authorized in the mortgage broker's demand, the settlement service provider may pay your portion of the mortgage broker fee directly to you; provided however, that the HUD-1 or equivalent settlement statement has the following information:

(i) Your name as it appears on your loan originator license;

(ii) Your loan originator license unique identifier; and

(iii) The amount to be paid to you by the settlement service provider.

(b) You must provide a copy of the HUD-1 or equivalent settlement statement to the licensed mortgage broker within twenty-four hours of your receipt of funds from closing.

(11) **May a loan originator bring a lawsuit against a borrower for the collection of compensation?** No. Only licensed mortgage brokers, or exempt mortgage brokers, may bring collection actions against borrowers to collect compensation.

(12) **May I work as a licensed loan originator for a mortgage broker located out of the state?** Yes. You may originate loans for any mortgage broker who sponsors you and who is licensed under Washington law.

(13) **May a licensed loan originator hire employees or independent contractors to assist in the mortgage broker licensee's activities?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

(14) **Do loan processors have to be licensed as loan originators?** W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed or exempt mortgage broker and do not hold themselves out as able to conduct the activities of a mortgage broker or loan originator. Independent contractor loan processors must be licensed as a mortgage broker, mortgage broker branch office, or loan originator.

(15) **May loan processors work on files from an unlicensed location?** A loan processor may work on loan files from an unlicensed location under the following circumstances:

(a) The loan files are in electronic format and the loan processor accesses the files directly from the licensed mortgage broker's main computer system. The loan processor may not maintain any electronic files on any computer system other than the system belonging to the licensed mortgage broker.

(b) The loan processor does not conduct any of the activities of a licensed loan originator.

(c) The licensed mortgage broker must have safeguards in place for the computer system that safeguards borrower information.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-300, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-300, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-300, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-300, filed 11/21/06, effective 1/1/07.]

WAC 208-660-350 Loan originators—Licensing. (1) **How do I apply for a loan originator license? Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR system. You also must:**

(a) **Be eighteen years or older.**

(b) **Have a high school diploma, an equivalent to a high school diploma, or three years experience in the industry. The experience must meet the criteria in WAC 208-660-250 (1)(e)(i) and (ii).**

(c) **Pass a licensing test.** You must take and pass the national and state components of the NMLSR tests. See WAC 208-660-360, Loan originators—Testing.

(d) **Submit an application.** You must submit an on-line application through the NMLSR.

(e) **Prove your identity.** You must provide information to prove your identity.

(f) **Pay the application fee.** You must pay an application fee for your application, as well as an administrative fee to the NMLSR. See WAC 208-660-550, Department fees and costs.

(g) **Complete prelicensing education.** You must complete prelicensing education. See WAC 208-660-355.

(2) **In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?**

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction. This investigation may also include a review of whether you have had a license issued under the act or any similar state statute suspended.

(b) **License suspensions or revocations.**

(i) You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules.

(ii) You are not eligible for a loan originator license if you have ever had a license issued under the Mortgage Broker Practices Act or the Consumer Loan Act or any similar state statute revoked.

(iii) For purposes of (b) and (c) of this subsection, a "similar statute" may include statutes involving other financial services, such as insurance, securities, escrow or banking.

(c) **Criminal history.**

(i) You are not eligible for a loan originator license if you have ever been convicted of a felony involving an act of fraud, dishonesty, breach of trust, or money laundering.

(ii) You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony not involving fraud, dishonesty, breach of trust, or money laundering, within seven years of the filing of the present application.

(d) **Financial background.**

(i) The department will investigate your financial background including a review of your credit report to determine if you have demonstrated financial responsibility including, but not limited to, an assessment of your current outstanding judgments (except judgments solely as a result of medical expenses); current outstanding tax liens or judgments or other government liens or filings; foreclosure within the last three years; or a pattern of seriously delinquent accounts within the past three years.

(ii) Specifically, you are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(3) **What will happen if my loan originator license application is incomplete?** After submitting your on-line application through the NMLSR, the department will notify you of any application deficiencies.

(4) **How do I withdraw my application for a loan originator license?** Once you have submitted the on-line application through NMLSR you may withdraw the application through NMLSR. You will not receive a refund of the NMLSR application fee but you may receive a partial refund of your licensing fee if the fee exceeds the department's actual cost to investigate the license application.

(5) **When will the department consider my loan originator license application to be abandoned?** If you do not respond as directed by the department's request for information and within fifteen business days, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

(6) **What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?** Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request a hearing. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied. **See also WAC 208-660-009.**

(7) **How will the department provide me with my loan originator license?** The department may use any of the following methods to provide you with your loan originator license:

(a) A license sent to you electronically that you may print.

(b) A license verification available on the department's web site and accessible for viewing by the public.

(8) **May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A

loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

(9) **How do I change information on my loan originator license?** You must submit an amendment to your license through the NMLSR. You may be charged a fee.

(10) **What is an inactive loan originator license?** When a licensed loan originator is not sponsored by a licensed or exempt company, the license is inactive. If a licensed loan originator works for a consumer loan company (chapter 31.04 RCW) as a W-2 employee, they may continue to do business under their inactive license until June 30, 2010, or until the company goes onto the NMLSR and sponsors their license.

(11) **When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

(12) **How do I activate my loan originator license?** The sponsoring company must submit a sponsorship request for your license through the NMLSR. The department will notify you and all the companies you are working with of the new working relationship if approved.

(13) **When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license. In no case shall these requirements be less than the minimum requirements to obtain a license under the S.A.F.E. Act.

(14) **When does my loan originator license expire?** The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.

(15) **How do I renew my loan originator license?**

(a) You must continue to meet the minimum standards for license issuance. See RCW 19.146.310.

(b) Before the license expiration date you must renew your license through the NMLSR. Renewal consists of:

(i) Pay the annual assessment fee; and

(ii) Meet the continuing education requirement. You will not have a continuing education requirement in the year in which you complete prelicensing education. See WAC 208-660-370.

(c) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

(16) **If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal on or before February 28th each year, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (15) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp prior to March 1st each year. If you fail to comply with the renewal request requirements prior to March 1st, you must apply for a new license.

(17) **If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

(18) **May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

(19) **What happens to the loan applications I originated before my loan originator license expired?** Existing loan applications must be processed by the licensed mortgage broker or another licensed loan originator working for the mortgage broker.

(20) **May I surrender my loan originator's license?** Yes. Only you may surrender your license before the license expires through the NMLSR.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omission occurring before the license surrender.

(21) **Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the mortgage broker company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

(22) **If I operate as a loan originator on the internet, must I display my license number on my web site?** Yes. You must display your license number, and the license number and name as it appears on the license of the licensed mortgage broker you represent, on the web site.

(23) **Must I include my license number on any documents?** You must include your license number immediately following your name on solicitations, including business cards, advertisements, and residential mortgage loan applications.

(24) **When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the mortgage broker you are associated with:

(a) When asked by any party to a loan transaction, including third party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

(25) **May I conduct business under a name other than the name on my loan originator license?** No. You must only use the name on your license when conducting business.

If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."

(26) **Will I have to obtain an individual bond if the company I work for is exempt from licensing?** Reserved.

(27) **Will I have to file quarterly call reports if I have an individual bond?** Reserved.

[Statutory Authority: RCW 43.320.040 and 19.146.223. 11-22-022, § 208-660-350, filed 10/25/11, effective 11/25/11. Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-350, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-350, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040. 09-12-111, § 208-660-350, filed 6/2/09, effective 7/3/09. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-350, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-350, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 07-13-079, § 208-660-350, filed 6/18/07, effective 7/19/07; 06-23-137, § 208-660-350, filed 11/21/06, effective 1/1/07.]

WAC 208-660-355 Loan originators—Prelicensing education. (1) **Must I obtain prelicensing education before I will be given a license?** Yes. You must take 20 hours of prelicensing education from an NMLSR approved provider. The prelicensing education must include at least three hours of federal law and regulations; three hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; two hours related to lending standards for the nontraditional mortgage product marketplace; and at least two hours of training specifically related to Washington law.

(2) **Who provides prelicensing education?** The NMLSR approves course providers and courses for prelicensing education. See the NMLSR Resource Center for a list of approved providers and courses.

(3) **Must I take continuing education in the year I complete the prelicensing education?** No. You will not have a continuing education requirement in the year in which you complete prelicensing education.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-355, filed 12/1/09, effective 1/1/10.]

WAC 208-660-360 Loan originators—Testing. (1) **Must I pass a test prior to becoming a loan originator?** Yes. You must take and pass the NMLSR national and state tests prior to becoming a loan originator. You must receive a score of seventy-five percent or higher to pass the test.

(2) **Where may I find information about the loan originator test?** The NMLSR contracts for its test provider. You will find information on the test provider on the NMLSR web site at www.stateregulatoryregistry.org.

(3) **How much does the loan originator test cost?** Testing costs are set by contract between the test provider and the NMLSR and may be modified from time to time. The department will publish the current testing fee on its web site or you may find it on the NMLSR web site at www.stateregulatoryregistry.org.

(4) **How do I register to take the loan originator test?** The department will provide a link to the NMLSR test provider on its web site.

(5) **What topics may be covered in the loan originator test?** At a minimum, the test topics will include ethics, federal and state law and regulation pertaining to mortgage origination, federal and state law and regulation on fraud, consumer protection, nontraditional mortgage products, and fair lending.

(6) **After passing the loan originator test, will I have to take it again?** You must retake the loan originator test if you have not been a loan originator within the past five years.

(7) **If I have taken and passed the state loan originator test, must I take the NMLSR state test?** If you are licensed on or before July 30, 2009, and you took your loan originator test after May 2007, you will not be required to take the NMLSR state test if you remain licensed.

(8) **How soon after failing the loan originator test may I take it again?** You may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test. After failing three consecutive tests, you must wait at least six months before taking the test again.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-360, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-360, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-360, filed 11/21/06, effective 1/1/07.]

WAC 208-660-370 Loan originators—Continuing education. (1) **How many hours of continuing education must I have each year to renew my license?**

(a) You must have at least eight hours to satisfy the federal requirement. The eight hours of education must include three hours of federal law and regulations; two hours of ethics on fraud, consumer protection, and fair lending issues; and two hours on lending standards for the nontraditional mortgage product marketplace.

(b) You must have at least one additional hour of continuing education to satisfy the Washington requirement.

(2) **Who approves the continuing education for loan originators?**

(a) The NMLSR approves all education that meets the federal requirement.

(b) Washington has approved providers and courses that can provide education to meet the Washington requirement until the end of 2010.

(3) **Where may I get information about continuing education for loan originators?**

(a) The NMLSR web site will have information about the approved NMLSR courses.

(b) Washington will have information about the Washington approved courses and providers meeting the Washington requirement on its web site through 2010.

(4) **As a loan originator, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(5) **If I teach an approved continuing education course may I use my course as credit toward my annual loan originator continuing education requirement?** Yes. Up until December 31, 2009, as an instructor of an approved continuing education course, you may receive two continuing education credits for each course hour you teach. If approved

as an NMLSR course provider you may receive two credit hours for each one hour taught.

(6) **How do I receive credit toward my continuing education requirement when I teach an approved continuing education course?** When you renew your license at the end of 2009 and seek to get credit for continuing education, submit to the department documentation evidencing approval of the continuing course you taught. The department will credit you with completing two continuing education courses for each one approved course you teach.

(7) **Is ethics a required continuing education course for loan originators?** Yes. You must take at least two ethics hours annually. The annual ethics credits must include the topics of fraud, consumer protection, and fair lending.

(8) **If I take a loan originator continuing education course approved by the NMLSR will the department accept it as part of my continuing education requirement?** Yes. The NMLSR approved continuing education courses will satisfy the federal requirement. Individual states will have individual state specific requirements.

(9) **Can I receive credit for continuing education by attending the Mortgage Broker Practices Act Commission meetings?** Yes. You will receive one credit hour by attending one or more mortgage broker commission meeting(s).

(10) **If I accumulate more than the required loan originator continuing education course credits during a year, may I carry-over the excess credit to the next year?** No. Continuing education credits only apply to the year in which they are taken.

(11) **If I fail to complete the required continuing education, what happens to my loan originator license?** When your license expires, the department will not renew it, and you cannot continue conducting any business under the act. See WAC 208-660-350(16) to renew your license within two months of it expiring. See also, WAC 208-660-350(15).

(12) **How do I provide the department with proof of the continuing education courses I have completed?** For the federal continuing education, the NMLSR will provide the process for receiving and calculating your continuing education. For Washington specific continuing education, you must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-370, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-370, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-370, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-370, filed 11/21/06, effective 1/1/07.]

WAC 208-660-400 Reporting requirements and notices to the department. (1) **As a licensed mortgage broker, what annual report must I provide to the department?** You must file a mortgage broker annual report, in a form prescribed by the director. The report must include:

(a) The total number of residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year; and

(b) The total dollar volume (principal loan amounts) of the residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year. In the case of an open or closed end home equity line of credit, the amount to be reported is the loan or line of credit limit.

(2) **When must I provide the mortgage broker annual report to the department?** You must provide the completed report to the department by March 31st of each year.

(3) **What period of time must the mortgage broker annual report cover?** The mortgage broker annual report must cover the prior calendar year from January 1st to December 31st.

(4) **What action will the department take if I fail to file my mortgage broker annual report?**

(a) The department may begin an enforcement action against you if you fail to file the report on time.

(b) When your license is due for renewal, the department will not renew it if you have not filed your annual report.

(5) **What are my quarterly filing requirements?** Reserved.

(6) **Will the filing of the fourth quarter call report satisfy the annual report requirement?** Reserved.

(7) **As a licensed mortgage broker what are my reporting responsibilities when something of significance happens to my business?**

(a) **Prior notification required.** You must notify the director through amendment to the NMLSR twenty days prior to a change of:

(i) Principal place of business or any of its branch offices;

(ii) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(iii) Legal or trade name; or

(iv) A change of ownership control of ten percent or more. The department will consider the qualifications of the new people and notify you whether or not the proposed change is acceptable. You may have to submit fingerprint cards for new controlling people directly to DFI.

(b) **Post notification within ten days.** You must notify the director through the NMLSR or in writing to the director within ten days after an occurrence of any of the following:

(i) Change in mailing address, telephone number, fax number, or e-mail address;

(ii) Cancellation or expiration of its Washington state master business license;

(iii) Change in standing with the Washington secretary of state;

(iv) Change in its standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(v) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340;

(vi) Receipt of notification of cancellation of your surety bond;

(vii) Receipt of notification of license revocation proceedings against you in any state;

(viii) If you, or any officer, director, or principal is convicted of a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(ix) Name and mailing address of your registered agent if you are out-of-state.

(c) **Post notification within twenty days.** You must notify the director in writing within twenty days after the occurrence of any of the following developments:

(i) The filing of a felony indictment or information related to lending or brokering activities against you, or any officer, board director, or principal, or an indictment or information involving dishonesty against you, or any officer, board director, or principal;

(ii) The receipt of service of notice of the filing of any material litigation against you; or

(iii) The change in your residential address or telephone number.

(8) **Must I notify the department of the physical address of my mortgage broker books and records?** Yes. You must provide the physical address of your mortgage broker books and records in your initial license application through NMLSR. If the location of your books and records changes, you must provide the department, through the NMLSR, with the new physical address within five business days of the change.

(9) **Must I notify the department if my designated broker leaves, or is no longer my designated broker?** Yes. You must notify the department, through NMLSR, within five business days of the loss of or change of status of your designated broker. See WAC 208-660-180(3).

(10) **If I am a registered agent under the act, must I notify the department if I resign?** Yes. You must provide the department with your statement of resignation letter at least thirty-one days prior to the intended effective date. You must also provide a copy of the resignation letter to the licensed mortgage broker. The department will terminate your appointment thirty-one days after receiving your resignation letter.

(11) **What are my responsibilities when I sell my business?**

(a) At least thirty days prior to the effective date of sale, you must notify the department of the pending sale by completing the following: Update and file all required information through the NMLSR for your main and any branch offices, including updating information about the location of your books and records.

(b) You must give written notice to borrowers whose applications or loans are in process, advising them of the change in ownership.

(c) You must give written notice to third party providers that have or will provide services on loans in process, and all third-party providers you owe money to, bringing accounts payable current.

(d) You must reconcile the trust account and return any funds to the borrowers or others to whom they belong, or transfer funds into a new trust account at the borrower's direction. If excess funds still remain and are unclaimed, follow the procedures provided by the department of revenue's unclaimed property division.

(12) **Must I notify the department if I cease doing business in this state?** Yes. You must notify the department within twenty days after you cease doing business in the state by updating your MU1 record through the NMLSR, and filing your Mortgage Broker annual report directly with DFI.

(13) **Must I notify the department of changes to my trust account?** Yes. You must notify the department within five business days of any change in the status, location, account number, or other particulars of your trust account, made by you or the federally insured financial institution where the trust account is maintained. A change in your trust account includes the addition of a trust account.

(14) **What must I do if my licensed mortgage broker company files for bankruptcy?**

(a) Notify the director within ten business days after filing the bankruptcy.

(b) Respond to the department's request for information about the bankruptcy.

(15) **If I am a designated broker and file for personal bankruptcy, what are my reporting responsibilities?** A designated broker must notify the department in writing within ten business days of filing for bankruptcy protection.

(16) **If I am a designated broker and file for personal bankruptcy, what action may the department take?** The director may require the licensed mortgage broker to replace you with another designated broker.

(17) **If I am a loan originator and file for personal bankruptcy, what are my reporting responsibilities?** A licensed loan originator must notify the director in writing within ten business days of filing for bankruptcy protection.

(18) **If I am a loan originator and file for personal bankruptcy, what action may the department take?** Depending on the circumstances, the director may revoke or condition your license.

(19) **When may I apply for a license after surrendering one due to my personal bankruptcy filing?** If you surrendered your license, you may apply for a license at any time. However, the department may deny your license application for three years after the bankruptcy has been discharged provided that no new bankruptcies have occurred or are in progress.

(20) **Who in the mortgage broker company must notify the department if they are charged with or convicted of a crime?** Licensees, whether on active or inactive license status, must notify the department in writing within ten business days of being:

(a) Charged by indictment or information with any felony, or a gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(b) Convicted of any felony, or any gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(c) Convicted of any felony involving fraud, dishonesty, breach of trust, or money laundering in any jurisdiction.

(d) Convicted outside of Washington for any crime that if charged in Washington would constitute a felony, or gross misdemeanor for dishonesty or financial misconduct.

(21) **Who in the mortgage broker company must notify the department if they are the subject of an administrative enforcement action?** Licensees, whether holding active or inactive licenses, must notify the department in writing within ten business days of the occurrence if:

(a) Charged with any violations by an administrative authority in any jurisdiction; or

(b) The subject of any administrative action, including a license revocation action, in any jurisdiction.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-400, filed 12/1/09, effective 1/1/10. Statutory Authority:

RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-400, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-400, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-400, filed 11/21/06, effective 1/1/07.]

WAC 208-660-410 Trust accounting. (1) **What are trust funds?** Trust funds are all funds received from borrowers, or on behalf of borrowers, for payments to third-party providers. The funds are considered to be held in trust immediately upon receipt. Trust funds include, but are not limited to, borrower deposits for appraisal fees, credit report fees, title report fees, and similar fees to be paid for services rendered by third-party providers in the borrower's loan transaction.

(2) **Are lock-in agreement fees paid by a borrower to the mortgage broker considered trust funds?** Yes, these fees are considered trust funds and must be deposited in the mortgage broker's trust account, unless the check is made payable to the lender. If the check is made payable to the lender, the mortgage broker has a duty to exercise ordinary care to see that the check is not used for any unauthorized purpose. The mortgage broker must deliver the check to the lender pursuant to any agreement with the lender, or within three business days of receiving the funds.

(3) **Must I have a trust account if I receive funds from borrowers for the payment of third-party providers?** Yes. All funds received from borrowers, or on behalf of borrowers, for payments to third-party providers are trust funds and are considered held in trust immediately upon receipt. You must deposit those funds in a trust account in your name as it appears on your license, or if exempt in the name of the exempt broker, in a federally insured financial institution's branch located in this state within three business days of receiving the funds. The funds must remain on deposit until disbursed to the third-party provider except as permitted by the act and these rules. The mortgage broker is responsible for depositing, holding, disbursing, accounting for and otherwise safeguarding the funds in accordance with the act and these rules.

(4) **Must I have a trust account if I do not receive any trust funds?** No. If you do not accept trust funds at any point before, during, or after a loan transaction, a trust account is not required.

(5) **Must I have a trust account if I am a mortgage broker exempt from licensing under the act?** Mortgage brokers exempt under RCW 19.146.020 (1)(a), (b), (c), (d), and (g) are not required to have a trust account even if they receive trust funds.

(6) **What does it mean to receive trust funds "on behalf of borrowers"?** Trust funds are identified by purpose rather than source. Funds received by the mortgage broker from the borrower for the payment of third-party provider services are trust funds. Funds received from relatives of borrowers, the seller in a real estate transaction, or an escrow company or lender reimbursing a mortgage broker for payments advanced are trust funds. Funds deposited to a borrower's subaccount by the mortgage broker as an advance are funds received on behalf of the borrower and are trust funds.

(7) **What forms of payment must trust funds take?** Trust funds may be in any form that allows deposit into the trust account, including, but not limited to, cash, check, or any electronic transmission of funds, including, but not limited to bank wires, ACH authorization, credit card or debit transactions, or on-line payments through a web site.

(8) **How do I receive trust funds through electronic transmission?**

(a) The trust funds must be transmitted directly from the borrower, or other person on behalf of the borrower, into your trust account, in a federally insured financial institution located in the state of Washington.

(b) Each electronic transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity. Electronic transmissions must be included in the monthly trust account reconciliation.

(9) **When must I deposit trust funds?** You must deposit all funds you receive, that are required to be held in trust, before the end of the third business day following your receipt of the funds.

(10) **How must I document deposits?**

(a) You must document all deposits to the trust account(s) by having a bank deposit slip which has been validated by bank imprint, or an attached deposit receipt which bears the signature of an authorized representative of the mortgage broker indicating that the funds were actually deposited into the proper account(s).

(b) You must post the deposit of funds by wire transfer or any means other than cash, check, or money order in the same manner as other receipts. Any such transfer of funds must include a traceable identifying name or number supplied by the federally insured financial institution or transferring entity. You must also retain a receipt for the deposit of the funds which must contain the traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

(11) **May I deposit funds other than trust funds into my trust account?** You may advance your own funds into the trust account(s) to prevent a disbursement in excess of an individual borrower's subaccount, provided that the exact sum of deficiency is deposited and detailed records of the deposit and its purpose are maintained in the trust ledger and the trust account(s) check register. Any deposits of your own funds into the trust account(s) must be held in trust in the same manner as funds paid by borrowers for the payment of third-party providers and treated accordingly in compliance with the act and these rules.

(12) **May a loan originator accept trust funds?** A loan originator may not solicit or receive fees for a third-party provider of goods or services except that a loan originator may transfer funds from a borrower to a licensed mortgage broker, exempt mortgage broker, or third-party provider, if the loan originator does not deposit, hold, retain, or use the funds for any purpose other than the payment of bona fide fees to third-party providers. The funds must be in the form of a check made payable to a licensed mortgage broker, exempt mortgage broker, or third-party provider. The loan originator must transfer the borrower's funds to the licensed mortgage broker, exempt mortgage broker, or third-party provider within one business day of receiving the check from the borrower.

(13) **May a mortgage broker accept and hold a check from a borrower that is made payable to a third-party provider and intended to be used to pay for third-party**

provider services without depositing the check into a trust account? Yes. The check must be payable to a specific third-party provider. The payee line may not be left blank. The mortgage broker has a duty to exercise ordinary care to see that the check is not used for any unauthorized purpose. The mortgage broker must deliver the check to the third-party provider within the time frames and requirements established in RCW 19.146.0201(12).

(14) **May a loan originator accept and hold a check from a borrower that is made payable to a third party and intended to be used to pay for third-party provider services?** A loan originator may only hold a borrower's check for the purpose of transferring the funds from the borrower to the licensed mortgage broker, exempt mortgage broker, or third-party provider. The loan originator must transfer the borrower's funds to the licensed mortgage broker, exempt mortgage broker, or third-party provider within one business day of receiving the check from the borrower.

(15) **Is a lender or mortgage broker, or agent or employee of a lender or mortgage broker, considered a third party?** A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

(16) **If a mortgage broker receives funds from a third party, such as a closer, or a lender, as reimbursement for advancements for the payment of third-party provider services, are these funds considered trust funds?** Yes, all funds received by the mortgage broker on behalf of the borrower for the payment of third-party providers are considered trust funds.

(17) **What books and records must I keep regarding my trust account?** You must maintain as part of your books and records:

(a) A trust account deposit register and copies of all validated deposit slips or signed deposit receipts for each deposit to the trust account;

(b) A record of all invoices for payments made on behalf of a borrower including but not limited to payments for appraisals, credit reports, title cancellations, and verification of deposit;

(c) A ledger for each trust account. Each ledger must contain a separate subaccount ledger sheet for each borrower from whom funds are received for payment of third-party providers. Each receipt and disbursement pertaining to such funds must be posted to the ledger sheet at the time the receipt or disbursement occurs. Entries to each ledger sheet must show the date of deposit, identifying check or instrument number, amount and name of remitter. Offsetting entries to each ledger sheet must show the date of check or electronic transmission, check number or identifying electronic transmission number, amount of check or electronic transmission, name of payee and invoice number if any. Canceled or closed ledger sheets must be identified by time period and borrower name or loan number;

(d) A trust account check register consisting of a record of all deposits to and disbursements from the trust account whether by check or electronic transmission;

(e) Reconciled trust account bank statements;

(f) A monthly trial balance of the ledger of trust accounts, and a reconciliation of the ledger of trust accounts with the related bank statement(s) and the related check register(s). The reconciled balance of the trust account(s) must at all times equal the sum of:

(i) The outstanding amount of funds received from or on behalf of borrowers for payment of third-party providers; and

(ii) The outstanding amount of any deposits into the trust fund of the mortgage broker's own funds in accordance with subsection (11) of this section; and

(g) A printed and dated source document file to support any changes to existing accounting records.

Any alternative records you propose for use must be approved in advance by the director.

(18) **What is a "subaccount"?** A "subaccount" is a recordkeeping segregation of each borrower's funds held in the mortgage broker's single deposit trust account that holds the aggregated funds for the mortgage broker's clients. Alternatively, the mortgage broker may establish a separate bank account for each borrower. When added together, individual subaccounts must exactly equal the total of funds held in trust.

(19) **May I transfer funds between a borrower's subaccounts?** If a borrower has more than one loan application pending with a mortgage broker, the mortgage broker must maintain a separate subaccount ledger for each loan application. The borrower must consent to any transfer of trust account funds between the individual subaccounts associated with these pending loan applications. The consent must be maintained in the borrower's loan file and referenced in the borrower's subaccount ledger sheets.

(20) **May I be reimbursed for funds that I have advanced into the trust account?**

(a) If you deposit your own funds into the trust account as provided in subsection (11) of this section, you may receive reimbursement for such deposit at closing into your general business bank account provided:

(i) All third-party provider's charges associated with your deposit have been paid;

(ii) The HUD-1 Settlement Statement provided to the borrower clearly reflects the line item, "deposit paid by broker," and the amount deposited;

(iii) The HUD-1 Settlement Statement provided to the borrower clearly reflects the line item, "reimbursement to broker for funds advances," and the amount reimbursed; and

(iv) Any funds disbursed by escrow at closing to you for payment of unpaid third-party providers' expenses charged or to be charged to you are deposited into the borrower's subaccount of the trust account.

(b) If you advance your own funds into the trust account as provided in subsection (11) of this section, and the loan does not close, the funds remain the property of the borrower.

(21) **May I disburse trust funds through electronic transmission?** Yes. You may disburse trust funds from the trust account by electronic transmission. Each electronic transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

Electronic transmission(s) must be included in the monthly trust account reconciliation.

(22) **How must I handle trust account disbursements?**

(a) Disbursements from trust accounts may be by electronic transmission or manual check. If a manual check is

used, the check must on its face identify the specific third-party provider transaction or borrower refund, except as specified in this section. If an electronic transmission is used, each transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

(b) Disbursements may be made from the trust account(s) for the payment of bona fide third-party providers' services rendered in the course of the borrower's loan origination, if the borrower has consented in writing to the payment. Such consent may be given at any time during the application process and in any written form, provided that it contains sufficient detail to verify the borrower's consent to the use of trust funds. No disbursement on behalf of the borrower may be made from the trust account until the borrower's or broker's deposit of sufficient funds into the trust account(s) is available for withdrawal.

(23) **What are the requirements concerning the checks I write from my trust account?** You must use checks that are prenumbered by the supplier (printer) unless you use an automated check writing system which numbers all checks in sequence. All trust account checks must have the words "trust account" on the front. If you use an automated program that writes checks, the check number must appear in the magnetic coding which also identifies the account number for readability by federally insured financial institution computers and the program may assign suffixes or subaccount codes before or after the check number for identification.

(24) **What disbursements are prohibited?** Among other prohibited disbursements, no disbursement may be made from a borrower's subaccount:

(a) In excess of the amount held in the borrower's subaccount (commonly referred to as a disbursement in excess);

(b) In payment of a fee owed to any employee of the mortgage broker or in payment of any business expense of the mortgage broker;

(c) For payment of any service charges related to the management or administration of the trust account(s);

(d) For payment of any fees owed to the mortgage broker by the borrower, or to transfer funds from the subaccount to any other account; and

(e) For the payment of fees owed to the broker under RCW 19.146.070 (2)(a).

(25) **When may a mortgage broker transfer excess funds from a borrower subaccount?**

(a) A mortgage broker may, in the case of a closed and funded transaction, transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account in full or partial payment of fees owed to the mortgage broker upon determination that all third-party providers' expenses have been accurately reported in the loan closing documents and have been paid in full, and that the borrower has received credit in the loan closing documents for all funds deposited in the trust account.

(b) Each mortgage broker must maintain a detailed audit trail for any disbursements from the borrower's subaccount(s) into the mortgage broker's general business bank account, including documentation in the form of a final HUD-1 Settlement Statement form showing that credit has been received by the borrower in the closing and funding of the transaction. The disbursements must be made by a check drawn or electronic transmission on the trust account and deposited directly into the mortgage broker's general business bank account.

(26) **What if there are funds remaining in a borrower's subaccount after all third-party providers have been satisfied?** Any remaining funds in a borrower's subaccount must be returned to the borrower within five business days of the determination that all payments to third-party providers owed by the borrower have been satisfied.

(27) **What if the mortgage broker cannot locate a borrower in order to remit excess funds in the borrower's subaccount?** The mortgage broker must follow the procedures provided by the department of revenue's unclaimed property division to handle any trust funds held for a borrower who cannot be located.

(28) **Is a mortgage broker responsible for all disbursements out of the trust account?** Yes. A mortgage broker is responsible for all disbursements from the trust account whether disbursed by personal signature, signature plate, signature of another person authorized to act on its behalf, or any authorized electronic transfer.

(29) **If a mortgage broker receives a check from closing that includes both the mortgage broker's fee and a payment or payments for third-party providers, how does the mortgage broker lawfully handle the funds?** The mortgage broker may either:

(a) Split the check at the teller window at the time of deposit and route any moneys due to third-party providers to an approved trust account, and moneys due it to its general account; or

(b) Deposit the entire check into the trust account. After paying any and all moneys due to third-party providers and insuring that the borrower has received credit for all funds deposited in the trust account, the mortgage broker may transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account. This amount must be equal to the fee disclosed on the final HUD-1 Settlement Statement, less any amounts already received by the mortgage broker, and must be duly recorded in the trust subaccount ledger. The mortgage broker may not transfer moneys from the trust account to its general business bank account before the loan is closed.

(30) **Is the mortgage broker allowed to transfer funds out of the trust account for any reason other than for payment to a third-party provider?** The mortgage broker may transfer the borrower's funds out of the trust account by check back to the borrower or to any party so instructed in writing by the borrower. A mortgage broker, when complying with these rules, may transfer excess trust funds to itself; however, failure to comply with these rules is a serious violation punishable by imprisonment, other penalties, or both as authorized by the act.

(31) **How do I pay a third-party provider's fees if escrow disburses the funds to me and I don't have a trust account?** You must return the funds to escrow for proper disbursement, or maintain a trust account for such incidental occurrences.

(32) **If I choose not to have a trust account, and a closing agent did not follow written instructions and issued a check to me after closing that has fees in it for third-party**

providers, may I deposit the check into my business account and pay those third-party providers immediately? No. You must not deposit those fees into your business account under any circumstances.

(33) **After closing, if an escrow agent, title company, or lender wires funds into my general account that are intended for third-party providers, will the department take action against me for a violation of the trust fund requirements?** Provided that the number of times funds are mistakenly wired to your general account is immaterial compared to the total number of loans you closed and you can provide proof that you took the following steps, the department will not take action against you for a violation of the trust account requirements under RCW 19.146.050:

(a) You gave the escrow agent, title company, or lender clear written instruction not to send funds intended for third-party providers to you; and you forwarded all funds mistakenly wired to your general account to the proper party on or before the end of the third business day after receipt; or

(b) You provided accurate wire instruction for the trust account and the funds transmitter caused the error by accidentally placing the funds into your general account, and within one day you transfer all trust funds to your trust account.

(34) **How does a mortgage broker disburse funds from a subaccount when there is more than one borrower due to receive those funds?** When disbursing funds back to the borrowers, a mortgage broker must make the trust account disbursement check payable to all borrowers with the term "and" written between each borrower's name. When disbursing funds to another party instructed by the borrowers, all borrowers must sign the written notice of instruction.

(35) **May mortgage brokers using an interest-bearing trust account keep the interest?** No. Mortgage brokers using an interest bearing account must refund or credit to the borrower the interest earned on the borrower's subaccount. The refund or credit to the borrower may be made either at closing or upon withdrawal or denial of the borrower's loan application.

(36) **Are there any separate requirements for a computerized accounting system?** Yes. The requirements are as follows:

(a) Your computer system must provide the capability to back up data files;

(b)(i) You must print the following documents at least once per month and retain them as part of your books and records:

(A) Trust account deposit register;

(B) Trust account check register;

(C) Trial balance ledger;

(ii) You must print each subaccount at closure and retain the closure document as part of your books and records;

(c) You must ensure that all written checks are included within your computer accounting system; and

(d) You must print your computer-generated reconciliations of the trust account at least once each month and retain the printouts as a part of your books and records.

(37) **Are there penalties for violating trust account requirements under RCW 19.146.050?** A violation of this section is a class C felony and may be punishable by imprisonment. In addition, a mortgage broker or other person violating this section may be subject to penalties as enumerated under RCW 19.146.220.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-410, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-410, filed 11/21/06, effective 1/1/07.]

WAC 208-660-420 Out-of-state mortgage brokers and loan originators. (1) **May I be a licensed mortgage broker in Washington without a physical office in Washington?** Yes. You are not required by the act to have a physical location in Washington.

(2) **May I be a licensed mortgage broker in Washington and have branch offices both in Washington and outside of Washington?** Yes. However, each of your branch offices that offer Washington residential mortgage loans must hold a Washington license, even if the location is outside Washington.

(3) **May my mortgage broker business be conducted entirely on the internet?** Yes. But you must have a license for all locations including those that offer loans by mail or internet.

(4) **May I work as a loan originator in Washington if I do not have a physical location in Washington?** Yes. You may originate Washington loans from any location licensed under the act, inside or outside of Washington.

(5) **May I work as a licensed loan originator for a licensed mortgage broker that is out of the state?** Yes, as long as the location from which you work is licensed under the act.

(6) **If my mortgage broker business is not located in Washington, where must I keep my records?** If your business is located outside of Washington, you may either maintain the books and records at a location in Washington, or pay the department's travel expenses to the out-of-state location to examine the books and records. Travel expenses may include, but are not limited to, transportation, meals, and lodging.

(7) **What additional requirements must I comply with if my business does not have a physical location in Washington?** You must continuously maintain a registered agent in Washington and provide the department, through the NMLSR, with the registered agent's name, physical and mailing address, and written consent to be the registered agent.

(8) **How do I change the information about my registered agent?** You must update the information in the NMLSR within ten business days from the change.

(9) **If I am a registered agent under the act, what must I do to resign as registered agent?**

(a) Provide the department with a statement of resignation at least thirty-one days prior to the intended effective date of your resignation.

(b) Provide a copy of the statement of resignation to the licensed mortgage broker.

(c) The department will terminate your appointment on the thirty-first day after the date on which the statement of resignation was delivered.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-420, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-420, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040,

19.146.223, 2006 c 19. 06-23-137, § 208-660-420, filed 11/21/06, effective 1/1/07.]

WAC 208-660-430 Disclosure requirements. (1) **What disclosures must I make to borrowers and when?** Within three business days of receiving a borrower's loan application, or receiving money from a borrower for third-party provider services, you, as a mortgage broker or loan originator on behalf of a mortgage broker, must make all disclosures required by RCW 19.146.030 (1), (2), (3), and 19.144.020. The one page disclosure summary required by RCW 19.144.020 must be dated when provided to the borrower. The disclosures must be in a form acceptable to the director.

(2) **What is the disclosure required under RCW 19.146.030(1)?** A full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker. A good faith estimate of a fee or cost must be provided if the exact amount of the fee or cost is not determinable. This subsection does not require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

The specific content of the disclosure required under RCW 19.146.030(1) is identified in RCW 19.146.030(2).

(3) **What is the disclosure required under RCW 19.146.030(2)?** Mortgage brokers must disclose the following content:

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

Disclosure in compliance with the requirements of the Truth-in-Lending Act and Regulation Z, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.-030(1) governs the delivery requirement of these disclosures;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of RESPA and Regulation X, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

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

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

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

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

(4) **What is the disclosure required under RCW 19.144.020?** See WAC 208-600-200.

(5) **How do I disclose the yield spread premium (YSP) from the lender?**

(a) You must disclose the YSP as a dollar amount credited to the borrower on the GFE.

(b) You must direct the settlement service provider to disclose the YSP on line 802 on the HUD-1 or equivalent settlement statement. The YSP must be expressed as a dollar amount.

(c) Failure to properly disclose the yield spread premium (YSP) is a violation of RCW 19.146.0201 (6) and (11), and RESPA.

(6) **Are there additional disclosure requirements related to interest rate locks?** Yes. Pursuant to RCW 19.146.030(3), if subsequent to the written disclosure being provided under this section, a mortgage broker or loan originator enters into a rate lock agreement with a borrower or represents to the borrower that the borrower has entered into a rate lock agreement, then within three business days the mortgage broker or loan originator must deliver or send by first-class mail to the borrower a written confirmation of the terms of the rate lock agreement, which must include a copy of the disclosure made under subsection (3)(c) of this section.

(7) **What must I disclose to the borrower if they do not choose to enter into a rate lock agreement?** If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change.

(8) **Will a rate lock agreement always guarantee the interest rate and terms?** No. A rate lock agreement may or may not be guaranteed by the mortgage broker or lender. The rate lock agreement must clearly state whether the rate lock agreement is guaranteed by the mortgage broker or lender.

(9) **How do I disclose the payment of a rate lock fee?** You must disclose payment of a rate lock fee as a cost in Block 2 of the GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209 with "P.O.C. (borrower)" recorded to the left of the borrower column.

(10) **Are there any model forms that suffice for the disclosure content under RCW 19.146.030(2)?** Yes. The following model forms are acceptable forms of disclosure:

(a) For RCW 19.146.030 (2)(a), mortgage brokers are encouraged to use the federal truth-in-lending disclosure form for mortgage loan transactions provided under the

Truth-in-Lending Act and Regulation Z, as now or hereafter amended. However, the federal truth-in-lending disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(a). The delivery of disclosures is governed by RCW 19.146.030(1).

(b) For RCW 19.146.030 (2)(b), mortgage brokers are encouraged to use the federal good faith estimate disclosure form provided under the Real Estate Settlement Procedures Act and Regulation X, as now or hereafter amended. However, the federal good faith estimate disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(b). The delivery of disclosures is governed by RCW 19.146.-030(1).

(c) For RCW 19.146.030 (2)(c), (d), (e), (f) and (3), the department encourages mortgage brokers to use the department published model disclosure forms that can be found on the department's web site.

(11) **May my mortgage broker fees increase following the disclosures required under RCW 19.146.030(1)?** Pursuant to RCW 19.146.030(4), a mortgage broker must not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the initial written good faith estimate disclosure required in RCW 19.146.030 (1) and (2)(b), unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(b) The mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

(12) **Are there any situations in which fees that benefit the mortgage broker can increase without additional disclosure?** Yes, there are two possible situations where an increase in the fees benefiting the mortgage broker may increase without the requirement to provide additional disclosures. These situations are:

(a) The additional disclosure is not required if the borrower's closing costs, excluding prepaid escrowed costs of ownership, on the final settlement statement do not exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower. For purposes of this section "prepaid escrowed costs of ownership" mean any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan; or

(b) The fee or set of fees that benefit the mortgage broker are disclosed as a percentage of the loan amount and the increase in fees results from an increase in the loan amount, provided that:

(i) The increase in loan amount is requested by the borrower; and

(ii) The fee or set of fees that are calculated as a percentage of the loan amount have been disclosed on the initial written disclosure as both a percentage of the loan amount and as a dollar amount based upon the assumed loan amount used in the initial written disclosure; and

(iii) The total aggregate increase in the fee or set of fees that benefit the mortgage broker as a result of the increase in loan amount is less than seven hundred fifty dollars.

This section does not apply to the disclosure required in RCW 19.144.020.

(13) **What action may the department take if I improperly disclose my mortgage broker fees on the good faith estimate and HUD-1/1A statement?** If you fail to disclose your mortgage broker fees as required, the department may request, direct, or order you to refund those fees to the borrower if the result of that disclosure resulted in confusion or deception to the borrower.

(14) **May the department take action against a mortgage broker when mortgage broker fees are disclosed incorrectly on the HUD-1/1A and the incorrect disclosure was made by an independent escrow agent, title company, or lender?** If the mortgage broker can show the department that they disclosed their fees correctly on the good faith estimate, and have instructed the independent escrow agent, title company, or lender to disclose the fees correctly on the HUD-1/1A, and the independent escrow agent, title company, or lender has not followed the instructions, the department may not take action against the mortgage broker.

(15) **What action may the department take if I fail to provide additional disclosures as required under RCW 19.146.030(4)?** Generally, the department may request, direct, or order you to refund fees.

(16) **How will the department determine whether to request, direct or order me to refund fees to the borrowers?** Generally, the department will make its determination by answering the following questions:

(a) Has an initial good faith estimate disclosure of costs been provided to the borrower in accordance with RCW 19.146.030 (1) and (2)(b)?

(b) Were any subsequent good faith estimate disclosures of costs provided to the borrower no less than three business days prior to the signing of the loan closing documents? Additionally, was the subsequent disclosure accompanied by a clear written explanation of the change?

(c) How were the costs disclosed in each good faith estimate (e.g., dollar amount, percentage, or both)?

(d) Did the total costs, excluding prepaid escrowed costs of ownership, on the final settlement statement exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower no less than three business days prior to the signing of the loan closing documents?

(e) If the costs at closing did exceed the most recent disclosure of costs was the need to charge the fee reasonably foreseeable at the time the written disclosure was provided?

(f) If the costs at closing did exceed the most recent disclosure of costs did the mortgage broker provide a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed, no less than three business days prior to the signing of the loan closing documents?

(17) **If I failed to provide the initial good faith estimate or TILA disclosure under RCW 19.146.030 (1) and (2)(a) and (b) what action may the department take?** If you have not provided the initial good faith estimate or TILA disclosure as required, including both delivery and content requirements, the department may request, direct or order you to refund to the borrower fees that inured to your benefit.

(18) **If I received trust funds from a borrower, but failed to provide the disclosures as required in RCW 19.146.030 (1) and (2), what action may the department take?** If you did not provide the disclosures as required, including both delivery and content requirements, the department may request, direct, or order you to refund to the borrower any trust funds they have paid regardless of whether you have already expended those trust funds on third-party providers.

(19) **Under what circumstances must I redisclose the initial disclosures required under the act?** Generally, any loan terms or conditions that change must be redisclosed to the borrower no less than three business days prior to the signing of the loan closing documents. Some examples are:

(a) Adjustable rate loan terms, including index, margin, and any changes to the fixed period.

(b) The initial fixed period.

(c) Any balloon payment requirements.

(d) Interest only options and any changes to the options.

(e) Lien position of the loan.

(f) Terms and the number of months or years for amortization purposes.

(g) Prepayment penalty terms and conditions.

(h) Any other term or condition that may be specific to a certain loan product.

(20) **If a loan application is canceled or denied within three days of application must I provide the disclosures required under RCW 19.146.030?** If you have not used any borrower trust funds and those funds have been returned to the borrower in conformance with these rules, the disclosures pursuant to RCW 19.146.030 are not required.

(21) **Is a mortgage broker that table funds a loan exempt from disclosures?** No. A mortgage broker must provide all disclosures required by the act, and disclose all fees as required by Regulation X, regardless of the funding mechanism used in the transaction.

(22) **What must I provide to the borrower if I am unable to complete a loan for them and they have paid for services from third-party providers?** If you are unable to complete a loan for the borrower for any reason, and if the borrower has paid you for third-party provider services, and the borrower makes a written request to you, you must provide the borrower with copies of the product from any third-party provider, including, but not limited to, an appraisal, title report, or credit report. You must provide the copies within five business days of the borrower's request.

The borrower may also request that you provide the originals of the documents to another mortgage broker or lender of the borrower's choice. By furnishing the originals to another mortgage broker or lender, you are conveying the right to use the documents to the other broker or lender. You must, upon request by the other broker or lender, provide written evidence of the conveyance. You must provide the originals to the mortgage broker or lender within five business days of the borrower's request.

(23) **Must I provide a written fee agreement when I provide residential mortgage loan modification services?** Yes. You must provide a written fee agreement as prescribed by the director when providing residential mortgage modification services. You must provide a copy of the signed fee agreement to the consumer and you must keep a copy as part of your books and records.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-430, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-430, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-430, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-430, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-430, filed 11/21/06, effective 1/1/07.]

WAC 208-660-440 Advertising. (1) **Am I responsible for ensuring that my advertising material is accurate, reliable, and in compliance with the act?** Yes. Each mortgage broker is responsible for ensuring the accuracy and reliability of the advertising material.

(2) **A licensee is prohibited from advertising with envelopes or stationery that contain an official-looking emblem designed to resemble a government mailing or that suggest an affiliation that does not exist. What are some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws?** Some examples include, but are not limited to:

(a) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(b) Envelopes designed to resemble official government mailings, such as IRS or U.S. Treasury envelopes, or other government mailers.

(c) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the mailing.

(d) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(e) Any suggestion or representation that the solicitor is affiliated with any agency, bank, or other entity that it does not actually represent.

(3) **Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the purportedly "free" item through the negotiation process. This is a violation of RCW 19.146.0201 (2), (7), and (11). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations* (16 CFR §251. 1(g) (2003)) available at http://www.ftc.gov/bcp/guides/free.htm.

(4) **When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR?** The required disclosures in your advertisements must be reasonably understandable. Consumers must be able to read or hear, and understand the information. Many factors, including the size, duration, and location of the required disclosures, and the background or other information in the advertisement, can affect whether the information is clear and conspicuous. The disclosure of the APR must be as prominent or

more prominent than any other rates disclosed in the advertisement, regardless of the form of the advertisement.

(5) **The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised?** Whenever a specific interest rate is advertised, the mortgage broker must retain a copy of the lender's "rate sheet," or other supporting rate information, and the APR calculation for the advertised interest rate.

(6) **Must I quote the annual percentage rate when discussing rates with a borrower?** Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 CFR, Part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

(7) **May a mortgage broker or loan originator advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 19.146.0201(7).

(8) **When I advertise, or present a business card to a potential borrower, must I make the disclosures required under the act and these rules?** No. You are not required to make disclosures until you accept a residential mortgage loan application, or until you assist a borrower in preparing an application.

(9) **May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am?** No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

(10) **If I advertise using a borrower's current loan information, what must I disclose about that information?** When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with:

(a) The name of the source of the information;

(b) A statement that you are not affiliated with the borrower's lender; and

(c) The information disclosed in (a) and (b) of this subsection must be in the same size type font as the rest of the information in the advertisement.

[Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-440, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-440, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-440, filed 11/21/06, effective 1/1/07.]

WAC 208-660-445 May I advertise over the internet using a URL address that is not my licensed business name? Yes, provided that any URL address you advertise takes the user directly to your main or home web page. If you want the user to be directed to a different main or home web page, the URL address must contain your license name in addition to any other names or words in the URL address. URL addresses may be used as DBA names upon request to and approval from DFI.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-445, filed 10/5/10, effective 11/5/10.]

WAC 208-660-446 When I advertise using the internet or any electronic form (including, but not limited to, text messages), is there specific content advertisements must contain? Yes. You must provide the following language, in addition to any other, on your web pages or in any medium where you hold yourself out as being able to provide the services:

(1) Main or home page.

(a) The company's license name and NMLS unique identifier must be displayed on the licensee's main or home web page.

(b) If loan originators are named, their NMLS numbers must follow the names.

(c) The main or home page must also contain a link to the NMLS consumer access web site page for the company.

(2)(a) Branch office web page - no DBA. Comply with subsection (1) of this section.

(b) Main office, or branch office web page - DBA. If the company uses a DBA on a web page the web page must contain the main office license name, and the information in subsection (1)(b) of this section, and the web page must contain a link to the NMLS consumer access web site page for the company.

(3) Loan originator web page. If a loan originator maintains a separate home or main page, the URL address to the site must be a DBA of the licensee and the licensee's name must appear on the web page. The web page must also contain the loan originator's NMLS number and a link to the NMLS consumer access web page for the company.

(4) Compliance with other laws. Web site content used to solicit Washington consumers must comply with all relevant Washington state and federal statutes for specific services and products advertised on the web site.

(5) Oversight. The company is responsible for web site content displayed on all web pages used to solicit Washington consumers including main, branch, and loan originators' web pages.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-446, filed 10/5/10, effective 11/5/10.]

WAC 208-660-450 Recordkeeping requirements. (1) **What business books and records must I keep to comply with the act?** The following books and records for your business must be available to the department.

(a) **Mortgage transaction documents.**

(i) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(ii) The initial rate sheet or other supporting rate information;

(iii) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;

(iv) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures are: The good faith estimate, truth in lending disclosures, Equal Credit Opportunity Act disclosures, affiliated business arrangement disclosures, and RESPA servicing disclosure statement;

(v) Documents and records of compensation paid to employees and independent contractors;

(vi) An accounting of all funds received in connection with loans, including a trust account statement with supporting data;

(vii) Rate lock agreements and the supporting rate sheets or other rate supporting document;

(viii) Settlement statements (the final HUD-1 or HUD-1A);

(ix) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;

(x) Records of any fees refunded to applicants for loans that did not close;

(xi) All file correspondence and logs; and

(xii) All mortgage broker contracts with lenders and all other correspondence with the lenders.

(b) **Advertisements.** All advertisements placed by or at the request of the mortgage broker that mention rates or fees, and the corresponding rate sheets for the advertised rates. The copies must include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any advertising distributed directly by delivery, facsimile, or computer network. The record of each advertisement must include the date or dates of publication, the name of the publisher if advertised by newsprint, radio, television or telephone information line, or in the case of a flyer, the dates, methods and areas of distribution.

(c) **Trust accounting records.** See WAC 208-660-410, Trust accounting.

(d) **Other.** All other books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation. Examples include, but are not limited to, personnel files, company policy and procedure documents, training materials, records evidencing compliance with applicable federal laws and regulations, and complaint correspondence and supporting documents. See also the department's *Mortgage Broker Examination Manual*, available on the department web site.

(2) **What books and records must I keep for my trust account?** See WAC 208-660-410, Trust accounting.

(3) **How long must I keep my books and records to comply with the act?**

(a) You must keep the books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation for a minimum of twenty-five months.

(b) You must keep the mortgage transaction documents described in subsection (1)(a) of this section for a minimum of three years. It may be a prudent business practice to keep your books and records longer. For example, if a consumer's loan becomes an adjustable rate mortgage, the consumer may become unhappy that the terms of their mortgage have changed and file a complaint against you. The department must begin an investigation into the complaint. If you do not have the records to show proof of proper disclosures and all other compliance with state and federal laws, the department may rely solely on the consumer's records as evidence in the case.

(4) **Where must I keep my business records?**

(a) You must keep all books and records in a location that is on file with and readily available to the department during normal business hours. In the event of a department examination, the location must have the work space and resources that are conducive to business operations. A readily available location may include places of business, personal residences, computers, safes, or vaults. See WAC 208-660-400(8) for the reporting requirements if the address changes.

(b) If your usual business location is outside of Washington, you may either maintain the books and records at a readily available location in Washington, or pay the department's expenses to travel to the location to examine the books and records stored out-of-state. Travel costs may include, but are not limited to, transportation costs, meals, and lodging.

(5) **May I keep my books and records electronically?** Yes. You may keep the required records described in subsection (1) of this section by electronic display equipment if you can meet all of the following requirements:

(a) The equipment must be made available to the department for the purposes of an examination or investigation;

(b) The records must be stored exclusively in a nonrewritable and nonerasable format;

(c) The hardware or software needed to display the records must be maintained during the required retention period under subsection (3) of this section.

If the department requests the books and records in hard copy, you must provide it in that form and within the time frame requested or directed by the department.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-450, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-450, filed 11/21/06, effective 1/1/07.]

WAC 208-660-500 Prohibited practices. (1) **What may I request of an appraiser?** You may request an area or market survey. While there are no strict definitions of these terms, generally they refer to general information regarding a region, area, or plat. The information usually includes the high, low and average sales price, numbers of properties available for sale or that have been sold within a set period, marketing times, days on market, absorption rate or the mixture of different property types in the specified area, among other possible components. An area survey does not contain sufficient information or is not so defining as to allow an appraiser or reader to determine the value of a specified property or property type.

(2) **How may I discuss property values with an appraiser, prior to the appraisal, without the discussion constituting improperly influencing the appraiser?** You may inform the appraiser of your opinion of value, the borrower's opinion of value, or the list or sales price of the property. You are prohibited from telling the appraiser the value you need or that is required for your loan to be successful.

(3) **What business practices are prohibited?** The following business practices are prohibited:

(a) Directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Engaging in any unfair or deceptive practice toward any person.

(c) Obtaining property by fraud or misrepresentation.

(d) Soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(e) Charging discount points on a loan which does not result in a reduction of the interest rate. Some examples of discount point misrepresentations are:

(i) A mortgage broker or lender charging discount points on the good faith estimate or settlement statement payable to the mortgage broker or any party that is not the actual lender on the resident mortgage loan.

(ii) Charging loan fees or mortgage broker fees that are represented to the borrower as discount points when such fees do not actually reduce the rate on the loan, or reflecting loan origination fees or mortgage broker fees as discount points.

(iii) Charging discount points that are not mathematically determinable as the same direct reduction of the rate available to any two borrowers with the same program and underwriting characteristics on the same date of disclosure.

(iv) Charging total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided when providing residential mortgage loan modification services.

(f) Failing to clearly and conspicuously disclose whether a payment advertised or offered for a residential mortgage loan includes amounts for taxes, insurance, or other products sold to the borrower. This prohibition includes the practice of misrepresenting, either orally, in writing, or in any advertising materials, a loan payment that includes only principal and interest as a loan payment that includes principal, interest, tax, and insurance.

(g) Failing to provide the exact pay-off amount of a loan you own or service as of a certain date five or fewer business days after being requested in writing to do so by a borrower of record or their authorized representative.

(h) Failing to record a borrower's payment, on a loan you own or service, as received on the day it is delivered to any of the licensee's locations during its regular working hours.

(i) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department.

(j) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower in order to verify that the asset is not otherwise insured.

(k) Willfully filing a lien on property without a legal basis to do so.

(l) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction.

(m) Failing to reconvey title to collateral, if any, within thirty days when the loan is paid in full unless conditions exist that make compliance unreasonable.

(n) Failing to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law.

(o) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan. An example is advertising a discounted rate without clearly and conspicuously disclosing in the advertisement the cost of the discount to the borrower and that the rate is discounted.

(p) Engage in bait and switch advertising.

Bait and switch means a deceptive practice of soliciting or promising a loan at favorable terms, but later "switching" or providing a loan at less favorable terms. While bait and switch will be determined by the facts of a case, the following examples, alone or in combination, may exhibit a bait and switch practice:

(i) A deceptive change of loan program from fixed to variable rate.

(ii) A deceptive increase in interest rate.

(iii) The misrepresentation of discount points. This may include discount points that have a different rate buydown effect than promised, or origination fees that a borrower has been led to believe are discount points affecting the rate.

(iv) A deceptive increase in fees or other costs.

(v) A deceptive disclosure of monthly payment amount. This practice may involve soliciting a loan with payments that do not include monthly amounts for taxes and insurance or other reserved items, while leading the borrower to believe that such amounts are included.

(vi) Additional undisclosed terms such as prepayment penalties or balloon payments, or deceiving borrowers about the effect of disclosed terms.

(vii) Additional layers of financing not previously disclosed that serve to increase the overall cost to the borrower. This practice may involve the surprise combination of first and second mortgages to achieve the originally promised loan amount.

(viii) Leading borrowers to believe that subsequent events will be possible or practical when in fact it is known that the events will not be possible or practical.

(ix) Advertising or offering rates, programs, or terms that are not actually available at the time. See WAC 208-660-440(5).

(q) Engage in unfair or deceptive advertising practices. Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace.

(r) Negligently making any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department.

(s) Making any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(t) Advertising a rate of interest without clearly and conspicuously disclosing the annual percentage rate implied by the rate of interest.

(u) Failing to comply with the federal statutes and regulations in RCW 19.146.0201(11).

(v) Failing to pay third-party providers within the applicable timelines.

(w) Collecting or charging, or attempting to collect or charge, or use or propose any agreement purporting to collect or charge any fees prohibited by the act.

(x) Acting as a loan originator and real estate broker or salesperson, or acting as a loan originator in a manner that violates RCW 19.146.0201(14).

(y) Failing to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

(z) Intentionally delay closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(aa) Steering a borrower to less favorable terms in order to increase the compensation paid to the company or mortgage loan originator.

(bb) Receiving compensation or any thing of value from any party for assisting in real estate "flopping." Flopping occurs during some short sales where the value of the property is misrepresented to the lender who then authorizes the sale of the property for less than market value. The property is then resold at market value or near market value for a profit. The failure to disclose the true value of the property to the lender constitutes fraud and is a violation of this chapter.

(cc) Abandoning records. If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format, or proper destruction of the records.

(4) **What additional practices are prohibited when providing residential mortgage loan modification services?** You are prohibited from:

(a) Collecting an advance fee of more than seven hundred fifty dollars;

(b) Collecting an advance fee without a written fee agreement (see also WAC 208-660-XXX);

(c) As a condition to providing loan modification services requiring or encouraging a borrower to:

(i) Sign a waiver of his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(ii) Sign a waiver of his or her right to contest a future foreclosure;

(iii) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(iv) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan;

(v) Cease communication with the lender, investor, or loan servicer or stop or delay making regularly scheduled payments on an existing mortgage unless a mortgage loan modification is completely negotiated and executed with the lender or investor and the modification agreement itself provides for a cessation or delay in making regularly scheduled payments; or

(d) Entering into any contract or agreement to purchase a borrower's property;

(e) Failing in a timely manner to:

(i) Communicate with or on behalf of the borrower;

(ii) Act on any reasonable request from or take any reasonable action on behalf of a borrower;

(f) Engaging in false or misleading advertising. In addition to WAC 208-620-630, examples of false or misleading advertising include:

(i) Advertising which includes a "guarantee" unless there is a bona fide guarantee which will benefit a borrower;

(ii) Advertising which makes it appear that a licensee has a special relationship with lenders when no such relationship exists;

(g) Leading a borrower to believe that the borrower's credit record will not be negatively affected by a mortgage loan modification when the licensee has reason to believe that the borrower's credit record may be negatively affected by the mortgage loan modification.

(5) **What federal guidance has the director adopted for use by the department in determining if a violation under subsection (3)(b) of this section has occurred?** The director has adopted the following documents:

(a) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators "Guidance on Nontraditional Mortgage Product Risks" (released November 14, 2006); and

(b) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and National Association of Consumer Credit Administrators "Statement on Subprime Mortgage Lending," effective July 10, 2007 (published in the Federal Register at Vol. 72, No. 131).

(6) **What must I do to comply with the federal guidelines on nontraditional mortgage loan product risks and statement on subprime lending?** You must adopt written policies and procedures implementing the federal guidelines that are applicable to your mortgage broker business. The policies and procedures must be maintained as a part of your books and records and must be made available to the department upon request.

(7) **When I develop policies and procedures to implement the federal guidelines, what topics must be included?** The policies and procedures must include, at a minimum, the following:

(a) **Consumer protection.**

Communication with borrowers. Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions. Specifically:

• Borrowers must be advised of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new pay-

ment would be or how it was calculated. For example, loan products with low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin must be adequately described to the borrower. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments.

• Borrowers must be advised as to the maximum amount their monthly payment may be if the interest rate increases to its maximum rate under the terms of the loan.

• Borrowers must be advised as to the maximum interest rate that can occur under the terms of the loan.

• Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.

• Borrowers must be made aware of any pricing premium based on reduced documentation.

(b) **Control standards.**

(i) Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

(ii) Reporting to DFI. In a separate written document, as prescribed by the director and submitted with the mortgage broker annual report, every licensee must submit information regarding the offering of nontraditional mortgage loan products.

(8) **May I charge a loan origination fee or discount points when I originate but do not make a loan?** No. You may not charge a loan origination fee or discount points as described in Regulation X, Part 3500, Appendix A.

(9) **What mortgage broker fees may I charge?** You may charge a mortgage broker fee that was agreed upon between you and the borrower as stated on a good faith estimate disclosure form or similar document provided that such fee is disclosed in compliance with the act and these rules.

(10) **How do I disclose my mortgage broker fees on the good faith estimate and settlement statement?** You must disclose or direct the disclosure of your fees on the good faith estimate and HUD-1/1A Settlement Statement or similar document.

(11) **May I charge the borrower a fee that exceeds the fee I initially disclosed to the borrower?** Pursuant to RCW 19.146.030(4), you may not charge any fee that benefits you if it exceeds the fee you initially disclosed unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the initial disclosure was provided; and

(b) You have provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. See WAC 208-660-430 for specific details, disclosures, and exceptions implementing RCW 19.146.030(4).

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2010 c 35. 10-20-125, § 208-660-500, filed 10/5/10, effective 11/5/10. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-500, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-500, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-500, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-500, filed 11/21/06, effective 1/1/07.]

DIRECTOR AND DEPARTMENT POWERS

WAC 208-660-510 Director and department powers—Examination authority. (1) **Why is the department authorized to examine my business?** The department is authorized to examine your business to determine your compliance with the act.

(2) **When may the department examine my business?** The department may examine your business at any time.

(3) **Will the department give me advance notice of an examination?**

(a) The department will generally give you advance notice of at least thirty days of a routine examination to allow you to compile the requested documents and prepare for the examiner's arrival. However, you and the department may agree on an earlier date for the examination. Extensions of time beyond that are at the director's discretion.

(b) The department will not give you advance notice of "for cause" examinations. "For cause" means the department may have reason to believe you have violated the act.

(4) **What are the protocols for an examination of my business?** The examination protocols are detailed in the department's Mortgage Broker Examination Manual. A summary of the manual is available on the department's web site.

The basic protocols include, but are not limited to:

(a) **Frequency of examinations.** The department's examination frequency will be determined using appropriate measurements of risk and random selection.

The primary purpose for measuring risk to determine the examination schedule and frequency cycle is to help the department identify those mortgage brokers whose compliance practices display potential weaknesses requiring examination attention. These same measurements of risk assist the department in determining the need for expanding the scope of an examination or expanding the initial examination time period. The protocols for measuring risk may include, but are not limited to:

(i) The history of licensing;

(ii) Known enforcement issues or problems;

(iii) The number and severity of complaints;

(iv) The licensee's responsiveness to department inquiries;

(v) The licensee's volume of loan activity;

(vi) The number of licensed locations and staff size;

(vii) Prior examination or investigation results; and

(viii) The existence of internal and external systems and controls to ensure compliance.

(b) **Advance notice.** You will generally receive a department notice listing the documents the department will examine at your business. Your preparation before the arrival of the department examiners will help the examination proceed more efficiently. The department will make every effort to minimize the impact of the examination on your business.

(c) **A preexamination meeting at your business.** The department examiner(s) will meet with you upon arrival at your business location.

(d) **The on-site review at your business.** The department examiner will conduct the examination of your business.

(e) **An exit meeting after you have provided all the requested information, and the examiner has completed the preliminary analysis.** The examiner(s) may request additional information from you. After receiving that information and completing the preliminary analysis, the examiner may discuss the preliminary analysis with you.

(f) **Post examination work and report.** The department examiner will prepare an examination report and submit the report and examination file to the review examiner. After making any necessary changes, the department will deliver the report to you unless the violations are deemed serious and the file is delivered to enforcement.

(g) **Notification of violations and opportunity for response.** The department will document in the examination report any violations or deficiencies identified during the examination. You will have an opportunity to respond to the examination findings and any violations or deficiencies unless the violations are deemed serious or are repeat violations and the file is delivered to enforcement.

(h) **A possible referral to enforcement.** While any violation of the act or these rules may be referred to enforcement, it is usually the case that only serious or repeat violations are referred. An enforcement action may result in a suspension or revocation of your license, the imposition of fines, the payment of restitution, or a ban from the mortgage broker industry.

(5) **What is the scope of the examination of my business?** In general, the scope of the examination will include, but is not limited to:

(a) Reviewing trust accounting compliance.

(b) Reviewing loan files.

(c) Conducting interviews to better understand the business, solicitation practices, transactional events, disclosure compliance, and complaint resolution.

(d) Reviewing the business books and records, including employee records.

(6) **When would the department expand the scope of an examination of my business?** If, during an examination, the department finds a clear need to expand the scope of the examination, it may do so. Two examples of a clear need to expand the scope of an examination are:

(a) When the department finds an apparent violation of trust accounting.

(b) When apparent violations of the prohibited practices section of the act are discovered. See RCW 19.146.0201 for prohibited practices.

(c) When there are clear systemic violations requiring greater review than is possible in a routine examination.

These examples are illustrative only and do not limit the circumstances under which the department may decide to expand the scope of an examination.

(7) **Will I receive notice if the department decides to expand the scope of the examination of my business?** Yes. The department will provide you with five business days' written notice if examination findings clearly identify the need to expand the scope of the examination. See subsection (6) of this section for examples of when the department may decide to expand the scope of the examination.

The expanded examination may include a different location and may go beyond the initial five-year time limit.

(8) **Will I have to pay for an examination of my business?**

(a) If you are located in Washington, you do not have to pay for the costs of the examination.

(b) If you are located outside of Washington, you will have to pay for the examiner's travel costs. Travel costs include, but are not limited to, transportation costs, meals, and lodging. Travel reimbursement rates are established by the Washington state office of financial management.

(c) If your examination was the result of a referral from enforcement, the department may charge an investigative fee. The department will not charge an investigation fee in an investigation or examination if it is determined that no violation occurred, or when the mortgage broker or loan originator implements a remedy satisfactory to the complainant and the department, and no department order has been issued.

The department will send you an invoice and you will have thirty days to reimburse the department for the examination and the travel costs. See WAC 208-660-550, Department fees and costs.

(9) **May the department consider reports made by independent certified professionals instead of conducting their own examination of a mortgage broker business?** Yes. Instead of examining a mortgage broker's business, the department may consider the reports of independent certified professionals who have examined the mortgage broker using the same standards used by the department (see the standards in the department's *Mortgage Broker Examination Manual*). The department may then prepare a report of examination that incorporates all or part of the independent certified professional's reports, or the examiner may expand the scope of the examination.

(10) **What are the pros and cons of hiring my own independent certified professional versus waiting for a department examination?** The department's cost of examination will not be charged to you directly, although you may experience some minor business interruption. If you hire your own independent certified professional, you will incur the cost of that examination; however, you will control the time and manner in which the examination is conducted. The greatest benefits you may derive from hiring your own independent certified professional are:

(a) Early notice of problems you may encounter during an examination;

(b) The ability to correct deficiencies or problems at an early stage when the greatest benefit of correction may be derived;

(c) The early implementation of a sound compliance program; and

(d) The ability to control the timing for your convenience.

(11) **If I want the department to consider an independent certified professional's report instead of examining my business, how must I make that request, and who submits the report to the department?** When you receive notice from the department that your business is scheduled for an examination, you must notify the department that you wish the department to consider the report of an independent certified professional instead of the department examining

your business. The independent certified professional must then submit their report directly to the department, in a form acceptable to the department.

(12) **How may the department determine if the independent certified professional's report meets the standards of examination established by the department?** The department will compare the sufficiency of the report submitted by the independent certified professional to the requirements in the department's examination manual. If the report is missing any of the requirements from the manual, the department may require the licensee to provide the missing information.

(13) **If the independent certified professional's report is missing information, how may the department obtain the missing information?** The department may interview, obtain records from, or otherwise contact the licensee, or with the licensee's permission contact the independent certified professional, if additional information is required for the department's review of the report.

(14) **What will the department do if the independent certified professional's report is not sufficient?** If the department determines the report is not sufficient, the department will notify the licensee and schedule an examination of the business.

(15) **What will the department do if the independent certified professional's report is sufficient?** If the department determines the report is sufficient, the department will prepare a report of examination that incorporates all or part of the independent certified professional's report.

(16) **May the department retain professionals or specialists to examine a licensee?** Yes. The department, at its own expense, may retain attorneys, accountants, or other professionals or specialists as examiners, auditors, or investigators to examine a licensee.

(17) **Do I receive any reports from the examination?** Yes.

(a) When you have provided all the requested information, and the examiner has completed the preliminary analysis, the examiner will issue an exit report of examination containing preliminary examination findings.

(b) After additional department review, including the consideration of new information, if any, the department will issue a final report of examination.

(18) **Must I do anything as a result of the examination?** Yes. You will receive instructions from the department on the actions you must take. For example, if adverse findings or deficiencies were cited in the report of examination, you must respond to those findings.

(19) **How do I respond to findings in a report of examination?** You must respond in writing within thirty days of the date the department issues the report of examination. Your response must address any deficiencies noted in the report and describe the corrective actions you have taken.

(20) **What will happen if I do not respond to the report of examination?** If you fail to respond to the report of examination, you may be referred to enforcement where further administrative actions may be taken against you.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-510, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-510, filed 11/21/06, effective 1/1/07.]

WAC 208-660-520 Director and department powers—Investigation authority. (1) **What is an investigation?** An investigation is an inquiry to determine compliance with the act and rules, to assess allegations of wrongdoing, or to evaluate the licensing qualifications of persons subject to the act. The inquiry may involve extensive research, fact gathering, the issuance of directives and subpoenas, witness interviews, and financial and legal analysis. Depending on the results of these efforts, an investigation may result in the pursuit of an enforcement action. An investigation may proceed at the same time as other matters and may continue during an enforcement action.

(2) **How often may the department investigate my mortgage broker or loan originator operations?** For the purpose of investigating violations or complaints, the department may investigate your business as often as necessary to carry out the purpose of the act.

(3) **Will the department give advance notice before requiring me to make my books and records available for its investigation?** The department is not required to give you advance notice before an investigation. However, the department may provide advance notice before an investigation if doing so would be in the best interests of all parties involved, including the department.

(4) **From whom may the department obtain information in an investigation?** The department may obtain information from any person whose testimony may be pertinent to the loans, business, or subject matter of an investigation.

(5) **How may the department obtain information during an investigation?** The department may direct, subpoena, or order a person to submit to a deposition, or produce written information.

(6) **What information may the department obtain during an investigation?** The department may obtain books, accounts, records, files, and any other documents the department deems relevant to the investigation.

(7) **What businesses may the department investigate?** The department may investigate the business of any person who is engaged in the business of mortgage brokering, whether the person is a licensee or whether the person acts or claims to act under, or without the authority of, the act.

(8) **May the director retain professionals or specialists to assist in an investigation, and if so, will I have to pay for those services?** Yes. The department may hire attorneys, accountants or other professionals as needed to conduct or assist in an investigation. The cost for these services will be assessed in accordance with WAC 208-660-550(5), Investigations.

(9) **When may the department charge a mortgage broker or loan originator an investigation fee?** The department may charge an investigation fee when it investigates the books and records of any mortgage broker or loan originator subject to the act.

(10) **Are there circumstances in which the department will investigate a mortgage broker or loan originator but will not charge an investigation fee?** Yes. The department will not charge an investigation fee in a complaint investigation if it is determined that no violation occurred, or when the mortgage broker or loan originator implements a remedy satisfactory to the complainant and the department, and no department order has been issued.

(11) **How is the amount of the investigation fee determined?** The amount of the investigation fee is the number of hours expended by the department related to the investigation multiplied by an hourly rate established by the department. See WAC 208-660-550, Department fees and costs.

[Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-520, filed 11/21/06, effective 1/1/07.]

WAC 208-660-530 Director and department powers—Enforcement authority. (1) **What is a directive?** A directive is a formal request for information from the director. A directive may request the recipient to appear in person to testify or present specific documents or items. A directive may be entitled "directive" or "subpoena."

(2) **What is an administrative enforcement action?** An administrative enforcement action is a formal action, generally initiated by a statement of charges filed by the department against persons who allegedly violated the act. Enforcement actions seek various sanctions, including, but not limited to, license revocation or suspension, business practice prohibition, or fines; and may include ordering restitution for borrowers, recovery of the department's investigation costs, or all of the above.

(3) **What other types of enforcement action may the department pursue against me or my license?** The department may pursue criminal or civil referrals to the attorney general, prosecuting attorneys, or federal authorities, and may initiate civil actions in superior court.

(4) **What does it mean to be found in violation of the act and rules?** For the purposes of evaluating the licensing qualifications of an applicant, any of its principals, or the designated broker, "found in violation of the act and rules" means at least one of the following orders has been issued:

(a) A superior court order stating the applicant, any of its principals, or the designated broker violated any of the provisions of the act or rules; or

(b) A final administrative order after the completion of an administrative hearing and the filing of an initial decision of an administrative law judge stating the applicant, any of its principals, or the designated broker violated any of the provisions of the act or rules; or

(c) An administrative order stating the applicant, any of its principals, or the designated broker violated any of the provisions of the act or rules.

The order containing the finding described above must not have been entered within five years of the filing of the present application. However, if the violation resulted in a conviction of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, the finding must not have been entered within seven years of the filing of the present application.

(5) **May the department sanction me for committing violations in another jurisdiction?** The department may seek sanctions against you for committing a violation in another jurisdiction if the violation could be a basis for the department to seek sanctions under the act or rules. Possible sanctions include those found in RCW 19.146.220.

(6) **May I be subject to a daily fine for violating the act?** Yes. Each licensed mortgage broker and each of its principals, officers, designated brokers, loan originators, employees, independent contractors, and agents must comply with the applicable provisions of the act. Each violation of any applicable provision of the act, or of any order, directive, or requirement of the director may, at the discretion of the director, subject the violator to a fine of up to one hundred dollars for each offense. Each day's continuance of the violation is a separate and distinct offense. In addition, the director may exercise discretion and by order assess other penalties for a violation of the act.

(7) **Under what circumstances will the department hold a designated broker, principal, or owner who has supervisory authority responsible for the actions of others that violate the act?** A designated broker, principal, or owner with supervisory authority is responsible for any conduct violating the act by a licensee, employee, or independent contractor if they:

(a) Directed or instructed the conduct that was in violation of the act, or had knowledge of the specific conduct, and approved or allowed the conduct; or

(b) Knew, or by the exercise of reasonable care and inquiry should have known, of the conduct in time to prevent it, or minimize the consequences, and did not.

(8) **When conduct violating the act has occurred, what may the department consider when assessing the responsibility of the designated broker, principal, and owner with supervisory authority?** The department may consider the following in an effort to determine who is responsible when a violation of the act has occurred. The following list is not limiting or exhaustive of the factors the department may consider:

(a) The adequacy of any background and experience investigation conducted prior to hiring or contracting with any person;

(b) The adoption of policies and procedures for:

(i) Supervision and training;

(ii) Regularly reviewing work performed;

(iii) Training in the requirements of the act and rules;

(iv) Monitoring continuing education requirements and compliance under the act;

(v) Acting on reports of alleged misconduct;

(c) Adopting a system of review for implementation and compliance with the policies and procedures;

(d) Providing copies of the act and rules; and

(e) The frequency and completeness of review conducted on work performed by any person subject to the act.

The items listed in (a) through (e) of this subsection must be in writing, or compliance with them must be documented in writing, and all documents must be retained as part of the mortgage broker business records. See WAC 208-660-450.

(9) **Do I have the right to have an attorney represent me at an adjudicative hearing and in any superior court proceeding?** Yes. You may have an attorney represent you at your own expense, or you may represent yourself.

(10) **Are there any criminal penalties related to violations of the act?** Yes. Violations of RCW 19.146.050 are class C felonies with a maximum penalty of five years in prison or a fine of ten thousand dollars, or both. Violations of RCW 19.146.235(9) are class B felonies with a maximum penalty of ten years in prison or a fine of twenty thousand dollars, or both. All other violations of the act are misdemeanors with a maximum penalty of ninety days in jail or a fine of not more than one thousand dollars, or both.

(11) **Under the act, is it a crime for any person subject to examination or investigation to knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information?** Yes. Knowingly withholding, abstracting, removing, mutilating, destroying, or secreting books, records, computer records, or other information is a class B felony punishable under RCW 9A.20.021 (1)(b).

(12) **Is a mortgage broker responsible for the payment of third-party providers even if the borrower has agreed to pay the fee?** Yes. If a mortgage broker or loan originator orders the third-party provider service, then the mortgage broker is responsible for paying for the service. However, the mortgage broker or loan originator is not responsible for paying the fee if the third-party provider agrees in writing to accept the fee from the borrower.

(13) **When must third-party providers be paid?** Third-party providers must be paid no later than thirty days after the related loan closing documents are filed, or within ninety days of the service, whichever is sooner, unless:

(a) The third-party provider agrees in writing to a different payment arrangement; or

(b) The third-party provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party provider service.

(14) **What is a "bona fide" dispute between a mortgage broker and third-party provider?** A dispute related to the performance or quality of the third-party provider service that has been reported in writing to the third-party provider. The report must specify the disputed areas of performance or quality.

(15) **When must a dispute regarding the performance or quality of a third-party provider be reported?** The report of a dispute regarding the performance or quality of the third-party provider service must be made in writing and provided to the third-party provider before the payment for the services becomes due; that is, no later than thirty days after the related loan closing documents are filed, or within ninety days of the service, whichever is sooner.

(16) **What is a temporary cease and desist order issued by the department?** A temporary cease and desist order is an administrative enforcement action by the director, or designee, ordering a mortgage broker or loan originator to stop conducting business, or to stop doing some specific act.

(17) **When does the department use temporary cease and desist orders?** A temporary cease and desist order may be used when the department determines that a mortgage broker or loan originator is violating the act in a manner that is likely to cause substantial injury to the public.

(18) **What happens to my mortgage broker or loan originator license if the department of social and health services (DSHS) certifies me as out of compliance with a support order under RCW 74.20A.320?**

(a) The director will immediately suspend your license without the opportunity for a hearing if the department receives notice from DSHS that you are out of compliance with their support order regulations.

(b) The director will send you a document entitled "Notice of Suspension for Noncompliance with Child Support Order." Your license is suspended from the date of the notice. The suspension of your license remains in effect until the director is notified by DSHS of your compliance with their order. You must not perform any services under the act that require licensing while your license is suspended.

(19) **If the director suspends my license after notice from DSHS that I am not in compliance with a support order, may my license be reinstated?**

(a) The director will reinstate your license when the department has received written notice from DSHS of your compliance, and verified that you meet all licensing requirements under the act.

(b) The department will send you a notice entitled "Notice of Cancellation of Suspension for Noncompliance with Child Support Order." Your license is reinstated from the date of the notice.

(20) **Who may I contact if I have questions about how DSHS determines I am out of compliance with a support order?** Contact DSHS if you have questions about a DSHS certification of your noncompliance with a support order. Reference their case number when you contact them.

[Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-530, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-530, filed 11/21/06, effective 1/1/07.]

WAC 208-660-540 Director and department powers—General authority. Reserved.

[Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-540, filed 11/21/06, effective 1/1/07.]

WAC 208-660-550 Department fees and costs. (1) **Mortgage broker licenses.**

Mortgage broker - license application fee	$371.00
Mortgage broker - annual assessment (due upon initial licensing, then an annual renewal fee, per location)	$530.00
Mortgage broker late renewal assessment (fifty percent of annual assessment)	$265.00
Mortgage broker branch office - license application fee	$185.00
Mortgage broker branch office - annual assessment (annual renewal fee, per location)	$530.00
Mortgage broker - license amendment	No fee
Mortgage broker - change of designated broker	$25.00

(2) **Loan originator licenses.**

Loan originator - license application fee	$125.00
Loan originator - annual assessment (not due until first renewal; then an annual renewal fee)	$125.00

Loan originator late renewal assessment (fifty percent of annual assessment)	$62.50
Loan originator - cancel association with any mortgage broker	No fee
Loan originator - license amendment - add a mortgage broker relationship	$50.00
Loan originator - license amendment - other	No fee

(3) **Examinations.**

(a) In Washington. The department does not charge a licensee located in Washington for the costs of an examination unless the examination is a referral from enforcement. See WAC 208-660-510(8).

(b) Outside of Washington. The department will charge the licensee for travel costs.

(c) If the department hires professionals, specialists, or both to examine an out-of-state licensee, the professional, specialist, or both will be considered examiners for the purpose of billing the licensee for travel costs.

(4) **Investigations.**

(a) The department will charge forty-eight dollars per hour for an examiner's time devoted to an investigation.

(b) The department will bill the licensee for the costs of services from attorneys, accountants, or other professionals or specialists retained by the director to aid in the investigation.

(5) **Travel costs.** If the mortgage business is out-of-state, the department will charge the business the travel costs associated with an examination or investigation. Travel costs include, but are not limited to, transportation costs (airfare, rental cars), meals, and lodging.

(6) **How is the annual assessment calculated?** The assessment is a flat rate per license.

(7) **How does the department use license application fees?** The fees collected by the department are used to pay the costs of administering the act.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-550, filed 12/1/09, effective 1/1/10. Statutory Authority: Chapters 43.320, 19.146 RCW. 08-14-114, § 208-660-550, filed 6/30/08, effective 7/31/08. Statutory Authority: RCW 43.320.040, 19.146.223. 08-05-126, § 208-660-550, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-550, filed 11/21/06, effective 1/1/07.]

WAC 208-660-600 Administration and facilitation of prelicensing and continuing education. (1) **Who may offer prelicensing and continuing education courses to principals, designated mortgage brokers, and loan originators?** Prelicensing and continuing education is offered by course providers and courses approved through NMLSR.

(2) **On what topics of education will I be tested?**

(a) **Prelicensing education.** The topics of education will be federal law and regulations, ethics (fraud, consumer protection, fair lending) and lending standards for the nontraditional mortgage marketplace.

(b) **Continuing education.** The topics of education will be the same as for prelicensing education, plus Washington specific topics.

(3) **What specific topics should I study in preparation for any of the required tests?**

(a) **General.**

(i) Ethics in the mortgage industry.

The responsibilities and liabilities of the profession including instruction on fraud, consumer protection, and fair lending issues.

(ii) Lending standards for nontraditional mortgage products.

(iii) Arithmetical computations common to mortgage lending including without limitation, the computation of annual percentage rate, finance charge, amount financed, payment and amortization.

(b) **Compliance and internal audit standards.**

Proper use and application of the department's published standards and guidelines for examinations.

Internal audit and compliance practices, standards, methods and procedures.

Developing policies and procedures for regulatory compliance.

Responding to regulatory inquiries, directives, subpoenas and enforcement orders.

Training and supervision of mortgage professionals.

Establishing, managing, reconciling and reviewing a trust account (trust account compliance under the act and these rules).

(c) **Washington law and associated regulations.**

The Mortgage Broker Practices Act.

The Consumer Protection Act.

The Escrow Agent Registration Act.

The Usury Act.

Unfair practices with respect to real estate transactions (RCW 49.60.222).

Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW.

Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW.

Washington principal and agent law.

Any subsequent act or regulation applying to mortgage brokers.

(d) **Federal law and associated regulations.**

The Real Estate Settlement Procedures Act.

Truth in Lending Act.

Equal Credit Opportunity Act.

Fair Credit Reporting Act.

Fair Housing Act.

Home Mortgage Disclosure Act.

Community Reinvestment Act.

Gramm-Leach-Bliley Act.

Home Ownership Protection Act.

Bank Secrecy Act.

Appraisal regulations.

Underwriting.

The S.A.F.E. Act (Title V of the Housing and Economic Reform Act of 2008 ("HERA")) Public Law No. 110-289.

Any subsequent act or regulation applying to mortgage brokers.

(e) **Mortgage services and products.**

Conventional.

Reverse mortgages.

FHA mortgages.

VA mortgages.

Nonprime mortgages.

[Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. 09-24-091, § 208-660-600, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.144.070, 2008 c 109. 09-01-156, § 208-660-600, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 43.320.040, 19.146.-223. 08-05-126, § 208-660-600, filed 2/20/08, effective 3/22/08. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-600, filed 11/21/06, effective 1/1/07.]

WAC 208-660-700 Mortgage broker commission. (1) **What is the role of the mortgage broker commission (commission)?** The commission acts in an advisory capacity to the director on mortgage broker issues. The commission advises the director on the characteristics and needs of the mortgage broker profession.

(2) **Who serves on the commission?**

(a) The director appoints the seven members of the commission for two-year terms. Commission members must have at least five years' experience in the business of residential mortgage lending. The experience must be within the past five years from the date of appointment. When appointing a commission member, the director will consider the recommendations from professional organizations that represent mortgage brokers and loan originators.

(b) Of the seven voting members of the commission, at least three members of the commission must be licensed mortgage brokers, at least two must be licensed loan originators who are not designated brokers, and at least one must be a mortgage broker who is exempt from licensure under RCW 19.146.020(1).

(c) The director or a designee serves as an ex officio, nonvoting member of the commission.

(3) **How do interested parties apply for a position on the commission?** In November of each year the department sends a notification to all mortgage brokers to advise them that the director is accepting applications for appointment to the commission. The director will accept applications in the form of a cover letter and resume until December 15th. The director will select the number of applicants needed to fill the vacancies by January 31st so the appointee(s) can attend the February meeting of the commission.

(4) **What are some of the actions the commission may take?** The commission may:

(a) Adopt and meet according to a regular schedule;

(b) Attend special meetings if called by the chairperson;

(c) Hear testimony, and advise the director on proposed changes to the act; and

(d) Advise the director on the licensing of mortgage brokers and loan originators.

[Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-700, filed 11/21/06, effective 1/1/07.]

WAC 208-660-800 Forms. Reserved.

[Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. 06-23-137, § 208-660-800, filed 11/21/06, effective 1/1/07.]