[Note: Although the format of this electronic Initial Decision and Order differs from that of the printed version, it is identical in content to the printed copy.]

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

In the Matter of:	)	
	)	Case No. 2001-124-C01
ALLSTATE FINANCIAL SERVICES, INC.,	)	OAH Docket No. 2001-DFI-0006
and ROBERT WARNOCK, PRESIDENT,	)	
Designated Broker and Owner,	)	INITIAL DECISION AND ORDER
	)	
Respondents.	)	
_____	)	

STATEMENT OF THE CASE

Robert Warnock (Mr. Warnock) has been a licensed mortgage broker since late 1994. He is the Designated Broker for and owner of Allstate Financial Services, Inc. (Allstate). In early 1998, three clients and one third-party service provider contacted the Department of Financial Institutions (Department or DFI) to file various complaints regarding Allstate. After forwarding copies of these complaints to Mr. Warnock and allowing him time to respond, DFI commenced an investigation into the complaints.

In late 1998 and early 1999, the Department sent a series of four "resolution letters" to Mr. Warnock and Allstate (Respondents), one for each of the above-noted complaints. Each of these letters directed Mr. Warnock and Allstate to take specified actions to resolve the pending complaints. In August 1999, the Department concluded that Mr. Warnock and Allstate would not be resolving any of these complaints as instructed. Therefore, DFI initiated an enforcement action against both Allstate and Mr. Warnock.

While the Department was preparing to file a *Statement of Charges* against Allstate and Mr. Warnock, an additional third-party service provider filed a complaint in August 2000 and another Allstate client filed yet another complaint in January 2001. The Department again forwarded copies of these two complaints to Mr. Warnock and allowed him time to respond. However, these complaints were also not resolved to the Department's satisfaction and were thus added to DFI's ongoing enforcement action.

On March 16, 2001, the Department filed and served on Allstate a *Statement of Charges* seeking to revoke Allstate's license for five (5) years and prohibit Mr. Warnock from working in the mortgage industry for that same period of time. In addition, the Department sought to impose on Allstate and/or Mr. Warnock fines totaling $50,000.00 and an obligation to repay the Department's investigation costs in the sum of $3,267.00. Finally, the Department sought to require Allstate and/or Mr. Warnock to act to immediately resolve the complaints supporting the *Statement of Charges* by paying restitution totaling $5,721.00 to four different complainants.

On March 20, 2001, Mr. Warnock completed an *Application for Adjudicative Hearing* denying all of the allegations contained in the *Statement of Charges*. DFI received this hearing request on April 2, 2001. At a prehearing conference held by the Office of Administrative Hearings (OAH) on July 30, 2001, the parties agreed that a hearing on the merits of the matter would be scheduled for December 17-20, 2001. On December 14, 2001, Mr. Warnock's attorney Greg Wilson requested and was denied a continuance due to his heavy caseload. However, on December 17, 2001, after determining that he might be a material witness to certain allegations in the *Statement*

of Charges, Mr. Wilson requested and was granted a continuance. Due to this probable conflict of interest, Mr. Wilson later withdrew from serving as attorney for Allstate and Mr. Warnock in this matter.

Another prehearing conference was held on January 25, 2002. Although Allstate and Mr. Warnock had not yet obtained substitute legal representation, the hearing was rescheduled for April 30, 2002, through May 3, 2002. On April 10, 2002, Attorney John Long filed a *Notice of Appearance* on behalf of Allstate and Mr. Warnock and asked for a continuance of the hearing date. On April 22, 2002, Attorney Long's request was denied; consequently, Attorney Long withdrew from his representation in the matter.

On April 29, 2002, Mr. Warnock contacted the undersigned Administrative Law Judge (ALJ) Adam E. Torem and insisted on a continuance of the hearing that was scheduled to begin the following day. Mr. Warnock's request was denied and a hearing on the merits of the Department's *Statement of Charges* commenced on April 30, 2002. Mr. Warnock appeared *pro se* on behalf of Allstate and in his own defense; Assistant Attorney General James Brusselback represented the Department.

After six (6) days of proceedings,[1] the hearing record was closed on May 8, 2002. The parties were then given adequate time to order and obtain a transcript of the hearing record if they so desired and to then file post-hearing briefs. By agreement of the parties, these initial post-hearing briefs were to be filed no later than August 5, 2002, with reply briefs to be filed no later than August 26, 2002. On the morning of August 5,

[1] Although originally scheduled for only four (4) days, completing the hearing required additional time. Proceedings were conducted on April 30th, May 1st, and May 2nd, 2002, and then reconvened and completed on May 6th, May 7th and May 8th, 2002.

2002, Mr. Warnock contacted OAH to request a two day extension of time for the filing of his post-hearing brief. Over the Department's objection, ALJ Nan Thomas granted Mr. Warnock's request and his closing brief was filed on August 7, 2002.

Preliminary Matters

At the original prehearing conference held in July 2001, the parties agreed to file their witness and exhibit lists, as well as copies of each proposed exhibit, no later than October 10, 2001. At the prehearing conference held on January 25, 2002, this deadline was reset to March 15, 2002. The Department had already filed its required documents on October 10, 2001, in compliance with the original deadline.

Neither Mr. Warnock nor either of his legal representatives of record ever filed a witness list, exhibit list, or a single piece of documentary evidence before the hearing commenced on April 30, 2002. In fact, Mr. Warnock failed to provide *any* of these required items until *after* the Department completed the presentation of its case in chief.

During the course of the hearing, the Department objected to Mr. Warnock's failure to comply with either prehearing filing deadline and continued failure to disclose a list of witnesses and/or proposed exhibits. The undersigned ALJ reluctantly decided to ignore Allstate's and Mr. Warnock's failure to comply with previous deadlines and, despite the correctness and righteousness of the Department's arguments, overruled the Department's series of objections in this regard. Instead of precluding Mr. Warnock from putting on a defense, the Department's representative was allowed additional time as needed to review Mr. Warnock's exhibits prior to their presentation to the tribunal.

The Department has again raised these deadline compliance issues in its post-hearing brief. The record has been closed since May 8, 2002, and shall not be disturbed at this time. Although the Department's concerns remain valid and some prejudice to DFI certainly occurred due to the last-minute identification of Allstate's witnesses and even later presentation of Allstate's exhibits, the Department's objections were overruled months ago and shall not now be resurrected. Only those exhibits that were offered ***and*** admitted during the course of the hearing were considered in the preparation of this *Initial Decision*. All other exhibits, as well as those portions of the parties' post-hearing briefs which attempted to add new facts to an already cluttered record, were ignored in reaching the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Allstate Financial Services, Inc. is a Washington business offering mortgage brokering services. In accordance with Washington's Mortgage Broker Practices Act (MBPA or Act), Chapter 19.146 of the Revised Code of Washington (RCW), Allstate has been licensed by the Department since November 10, 1994.[2] Robert Warnock is Allstate's owner and is listed with the Department as its Designated Broker. In this capacity, he has paid the company's annual license fees and completed a variety of required continuing education coursework. *See* Exhibits 1 through 23.

[2] On April 14, 2000, Allstate informed DFI that it was changing its business name to Millenium Mortgage and Finance. *See* Exhibit 20. This *Initial Decision* applies equally to that entity and/or any other business name for which Robert Warnock may be registered as the company's Designated Broker.

DFI Complaint Process

2. The Department has established a process through which aggrieved consumers can file complaints about mortgage brokers with DFI. In "Phase I" of this process, DFI forwards the consumer complaint to the company and allows at least 15 days for any response. If the company fails to respond, the process enters "Phase II" in which the Department issues a subpoena for the company's relevant records, allowing another 7 days for a response. After receipt of the mortgage broker's documentation, an examiner reviews the case and determines whether the complaint has any validity.[3]

3. If a consumer complaint is found to be valid, the Department's examiner concludes the process by issuing a "resolution letter" instructing the company and/or broker to take certain steps to resolve any regulatory violations. If a licensed mortgage broker fails to voluntarily comply with either the complaint investigation process or a resolution letter, the Department commences an administrative enforcement action.

4. From February 1998 through January 2001, the Department received six complaints against Allstate and/or Mr. Warnock. The Department followed the above-noted procedure in processing each of these complaints, as further detailed below.

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[3] Over the course of time involved in this matter (1998 through 2002), DFI has modified some of the forms of correspondence utilized in its complaint process. For example, the early versions in 1998 utilized a letter format (e.g. Exhibits 26, 27, 31, 38, 49, 52, 54, 56, 65, 67, 71, and 72). At some point in 1999, the Department began utilizing documents with a more formal appearance, similar to legal pleadings (e.g. Exhibits 43, 78-80, 82, and 85). At hearing, the Department provided a sample of the current cover letter correspondence utilized to explain its revamped complaint process to brokers (*see* Exhibit 92).

Brown Complaint

5. In the first week of October 1996, Ms. Sandra Brown received a mailing from Allstate advertising its ability to refinance her existing mortgage loans. Ms. Brown was seeking to consolidate her existing first and second mortgage payments of $722 and $364 each, respectively (total $1,086/month)[4] and to remodel the kitchen in her home at 1125 North Fife Street, Tacoma. Therefore, she responded to the flyer and, within days, met with Mr. Warnock at Allstate's offices at 7406 27th Street W, Tacoma.[5]

6. At Allstate's offices, Mr. Warnock utilized a computer program to illustrate a proposed new loan for Ms. Brown. On the computer screen, he showed Ms. Brown a

[4] Ms. Brown wished to consolidate $107,000.00 in mortgage debt: a first mortgage with Norwest Mortgage at a rate of 7.5% with a balance of approximately $88,000.00 and a second mortgage with Rainier Pacific Credit Union at a rate of 12% with a balance of approximately $19,000. *See* Exhibit 24, pp 54-55; *see also* Exhibit 35, p 86 (balances) and p 96 (monthly payment amounts). Ms. Brown's $722 monthly payment on the first mortgage included principal and interest as well as an allocation into her escrow account to pay property taxes and home owner's insurance. *See* Exhibit B, pp 13-16.

[5] When Mr. Warnock originally applied for his mortgage broker's license on October 3, 1994, Allstate Financial Services was located at 3901 S. Fife Street, Suite 101, Tacoma. *See* Exhibit 1. On January 9, 1995, he advised the Department that the business was moving to a new office at 1802 Martin Luther King, Jr. Way, Tacoma. *See* Exhibit 7. On September 25, 1996, Mr. Warnock advised the Department of another move, this time to the office's current location at 7406 27st Street West, Suite 212, Tacoma. *See* Exhibit 14; *see also* Exhibit 21. Although this same street address is occasionally referred to as existing within the City of University Place instead of Tacoma (e.g. in Mr. Warnock's Closing Briefs), Allstate has not again relocated its offices since September 1996.

proposed loan with a principal of approximately $107,000.00, a fixed interest rate of 8%, and twice-per-month payments that were to create substantial savings through an early payoff. Mr. Warnock advised that he could close this loan in 21 days and he told Ms. Brown that she need not make another payment on her existing mortgages.

7. Ms. Brown was pleased with the proffered loan terms and the expedited closing schedule. Therefore, she stated her agreement to the proposal. Mr. Warnock told her that he would immediately begin processing the loan transaction and he asked her to sign an authorization allowing Allstate to request a check on her credit history. However, Mr. Warnock did not provide Ms. Brown any documents or disclosures about the new loan before she left Allstate's offices.

8. In reliance on Mr. Warnock's representation that he could close the loan prior to the end of October, Ms. Brown immediately began her kitchen remodel. In addition, she refrained from making a November payment on her other existing loans.

9. Toward the end of October 1996, Ms. Brown had not heard anything from Allstate and therefore placed several telephone calls to Mr. Warnock. He assured her on more than one occasion that the necessary documents would be signed "by the end of the week" but no loan documents were ever presented to Ms. Brown during October.

10. At some point during November 1996, Ms. Brown met with Mr. Warnock to review a set of disclosure forms and associated loan documents, including those titled:

Uniform Residential Loan Application	(*see* Ex 35, pp 95-98 and Ex 36, pp 103-104)
Truth in Lending Disclosure (TIL)	(*see* Ex 35, p 92; Ex 36, p 101; *see also* Ex B, p 6)
Estimated Closing Costs	(see Ex 35, p 82-83)[6]

[6] This form, similar to a *Good Faith Estimate*, is signed by Ms. Brown, but it is not dated.

Disclosure Statement	(*see* Ex 35, p 87 and Ex 36, p 102)
Loan Authorization	(*see* Ex 35, p 88 and Ex 36, pp 100 & 109)[7]

[7] The two copies of the *Loan Authorization* in Exhibit 36 differ only in that in one of the copies the sentence "When approval or commitment for the loan is successfully negotiated for us, we agree to pay up to a max of _3_ % the amount financed to Allstate Financial Services, Inc." has been crossed out. *See* Ex 36, p 109. The other two copies of this document have no such redaction. *See* Ex 35, p 88 and Ex 36, p 100. It is noted that Mr. Warnock provided all of these copies to DFI from his records, not Ms. Brown.

Broker's Fee Agreement	(see Ex 35, p 89 and Ex 36 pp 113)[8]
Cash Deposit Policy	(*see* Ex 35, p 90 and Ex 36 p 111)
Loan Purpose Letter	(*see* Ex 35, p 91 and Ex 36, p 112)
Fair Lending Notice	(*see* Ex 35, p 93 and Ex 36, p 110)
Borrower's Certification	(*see* Ex 35, p 94 and Ex 36, p 99)

11. The *Truth in Lending Disclosure* (TIL) provided to Ms. Brown in November 1996 indicated that her loan's "Annual Percentage Rate" (APR) was fixed at 8%; its "Finance Charge" was $190,020; the "Amount Financed" was $110,580; the "Total of Payments" would be $300,600; and that she would be making 360 payments of $835.

12. Part of the *Broker's Fee Agreement* provided to Ms. Brown indicated:

> **COMMISSION:** A commission will have been earned by company upon Allstate Financial Services Inc. receipt of approval and delivering of message to applicant. Past of approval constitutes an unconditioned obligation to pay Allstate Financial Services Inc. ***a commission equal to 3 % of the principal amount committed or approved***.

See Exhibit 36, p 113 (emphasis added). As calculated for the proposed loan in the amount of $114,000.00, this commission would have been equal to a fee of $3,420.00.

13. Ms. Brown testified that, to the best of her memory, she believes that she never saw or received these documents until at least November 21, 1996. However, Mr. Warnock argued that he provided all of them to her on November 4, 1996, as evidenced by the date written on the documents adjacent to Ms. Brown's signatures. Ms. Brown did acknowledge that it was her signature that appeared on each of the

[8] Although the *Broker's Fee Agreement* contained in Exhibit 35 is undated, the copy contained in Exhibit 36 is dated 11-4-96.

above-noted documents, but she could not say with any certainty whether or not the date was written in her handwriting. After giving due consideration to the passage of ~5 ½ years since she first saw these documents and her testimony on April 30, 2002, I find that Ms. Brown *did* in fact sign and receive these documents on November 4, 1996.

14. At the time Mr. Warnock presented these documents to Ms. Brown on November 4, 1996, he was already aware of some imperfections in her credit history but did not then indicate any belief that he could not secure the promised fixed-rate loan.[9] At some time in late November 1996, Mr. Warnock informed Ms. Brown that her credit rating was not sufficient to support an approval of the proposed loan. In its place, he offered her a different loan with an adjustable rate. Although Ms. Brown initially protested this change in terms, she eventually felt compelled to complete the transaction because she had followed Mr. Warnock's advice not to make payments on her existing mortgages and these were now nearly 2 months delinquent. Allstate may have provided a new *Good Faith Estimate* and a new *Truth in Lending Disclosure* to Ms.

[9] At a minimum, Mr. Warnock was aware of an account from a doctor's office that was in collection status. *See* Exhibit B, p 2. Shortly thereafter, he received a credit history on Ms. Brown indicating other delinquent payments. *See* Exhibit B, pp 3-4. It is unclear when Mr. Warnock became aware of Ms. Brown's history of previous late payments on her existing first mortgage, but this issue may have affected her credit rating. *See* Exhibit B, pp 13-16. In any case, Ms. Brown completed the necessary explanatory statements to address lender concerns. *See* Exhibit B, pp 1 and 5.

Brown on December 11, 1996, but this is impossible to verify. *See* Exhibit B, pp 38-41.[10]

15. On December 16, 1996, Allstate secured approval for a loan for Ms. Brown in the amount of $119,000.00 with an 8.45% interest rate that could be adjusted every six months; the loan approval also indicated that the loan could not be prepaid without penalty for the first three (3) years. Mr. Warnock notified Ms. Brown of this approval, explaining to her that he had negotiated this rate down from the lender's original proposal of 9.75%. *See* Exhibit 36, pp 105 and 107; *see also* Exhibit B, pp 17-20. Ms. Brown had already borrowed funds from her brother in an attempt to bring her existing loans current and, feeling as though she had no other option, accepted the newly proposed loan.

16. The following day, on December 17, 1996, Ms. Brown went into the offices of the Commonwealth Title Company in Tacoma to sign the documents necessary to close the loan. Commonwealth provided Ms. Brown with a *Settlement Statement* (estimated) on U.S. Department of Housing and Urban Development Form 1 ("HUD 1"). This document indicated she was receiving a loan with a principal of $119,000.00 and would be paying off her two existing mortgages as well as a variety of other debts. *See* Exhibit 24, pp 53 and 56; *see also* pp 54-55. In addition to the HUD 1, Commonwealth provided numerous other documents including a disclosure indicating

[10] These documents have Ms. Brown's name on them, but neither are signed or otherwise acknowledged by her. Both of these documents were produced for the first time at the hearing itself, on May 6, 2002, after the Department had completed its case in chief.

that Ms. Brown's payments would begin at $910.79 per month in February 1997 and increase by approximately $130 per month every six months until reaching a maximum payment of $1,220.09 per month in August 1998. *See* Exhibit 36, pp 114-135. 17.

On December 23, 1996, Commonwealth Title forward the final HUD 1 statement to Allstate, indicating that the loan was closed. *See* Exhibit 35, pp 84-86.

18. On January 8, 1998, Ms. Brown filed a complaint with the Consumer Protection Division of the Office of Attorney General in Tacoma (AG). Ms. Brown's complaint indicated that her loan payments went up, not down, as a result of her refinancing through Allstate, and that the current loan was for an amount higher than the value of her home.[11] She stated that as a result of increases in the adjustable rate loan, she was forced to file for bankruptcy. *See* Exhibit 24, p 50-56. On January 27, 1998, the AG forwarded Ms. Brown's complaint to DFI. *See* Exhibit 24, p 57.

[11] According to the evidence submitted, it is impossible to determine if Ms. Brown is correct that her home's market value was not greater than $114,000.00. From the evidence submitted, it would appear that the property had been appraised at $140,000.00. According to a part of the *Loan Approval Sheet* provided to Allstate by IMC Funding on December 12, 1996, Ms. Brown's "as is" property appraised value was deemed to be "140000." *See* Exhibit 36, p 107; *see also* Exhibit 36, p 105 (page one of a *Loan Approval Sheet* from December 16, 1996) for indication that p 107 is actually a portion of a *Loan Approval Sheet*. Notably, p 105 indicates the $119,000.00 loan is an 85% loan-to-value transaction, which would confirm that IMC Funding believed Ms. Brown's home to appraised worth $140,000.00, not $114,000.00. While Ms. Brown might wish to question the accuracy of this appraisal, no other evidence was provided at hearing. Even so, other issues raised in the course of this hearing tend to support her concerns. *See* Findings of Fact No. 83 and 86 as well as Conclusions of Law No. 41 and 43, *below*.

19. On February 26, 1998, DFI sent Ms. Brown a letter acknowledging her complaint and explaining that Allstate would have until March 13, 1998, to respond. *See* Exhibit 25. On that same day, DFI forwarded Ms. Brown's complaint to Allstate along with a cover letter setting the March 13, 1998, response deadline and further explaining that the Mortgage Broker Practices Act places upon the broker the burden of producing documents in support of any defense or explanation. The letter specifically instructed Mr. Warnock that, "at a minimum, this documentation should include a copy of the application, disclosures, and HUD 1 statement." The letter also advised that a failure to comply with its directions was a separate violation of the Act. *See* Exhibit 26.

20. On April 22, 1998, the Department sent another letter to Allstate indicating that DFI had not yet received any response to its previous letter regarding Ms. Brown's complaint. After referring to the Department's statutory authority to conduct an investigation, this letter set a response deadline of May 7, 1998. *See* Exhibit 27. When this deadline passed, the Department referred Ms. Brown's complaint from its consumer services section to its enforcement section. *See* Exhibit 28.

21. On May 14, 1998, Mr. Warnock sent a letter to DFI indicating that his "attorney Craig Wilson is in the process of collecting information" from the lender involved in the matter. Mr. Warnock's letter promised the Department that he and his attorney "will be reviewing these complaints and handling them by the end of next week." *See* Exhibit 29.

22. Over two months later, on July 23, 1998, attorney Greg Wilson wrote to the Department regarding Ms. Brown's complaint against Allstate. After characterizing the

complaint as “a little unclear what the exact problem is,” the letter went on to provide copies of documents that Allstate provided to and Ms. Brown signed on November 4, 1996. Attorney Wilson’s letter concluded by again questioning the merits of the complaint and requesting that it be dismissed. *See* Exhibit 30; *see also* Exhibit 36.

23. On November 20, 1998, the Department sent Allstate and Mr. Warnock a “resolution letter” regarding Ms. Brown’s complaint. This letter explained that the Department had found that Allstate had committed several violations of the Act. This letter went on to request Allstate to take specified remedial action, including alterations to its *Broker Fee Agreement* and *Loan Authorization* disclosure forms and refunding to Ms. Brown certain unauthorized fees in the sum of $3,921.00. The resolution letter set a deadline of December 8, 1998, for Allstate to comply. *See* Exhibit 31.

24. Despite the Department’s resolution letter, neither Allstate nor Mr. Warnock took any action to resolve Ms. Brown’s complaint. However, on August 11, 1999, attorney Wilson sent a letter to the Department requesting a “current status” report on the Brown complaint, as well as several other complaints then pending against Mr. Warnock and Allstate. *See* Exhibit 32.

25. On August 18, 1999, the Department replied to this letter, indicating to Mr. Wilson that no response had ever been received from Allstate on the Brown complaint and that the matter was “pending enforcement.” *See* Exhibit 33. On June 28, 2000, the Department sent a facsimile to attorney Wilson and reiterated that Ms. Brown’s complaint from February 1998 remained unresolved. *See* Exhibit 34.

26. On October 5, 2000, attorney Wilson again wrote to DFI, enclosing several additional documents the Department had requested, including an item originally requested over two and a half years earlier in DFI's initial February 26, 1998, correspondence with Allstate: the HUD-1 provided to Ms. Brown at the closing of her loan. *See* Exhibit 35, particularly pp 85-86.

Matteson Complaint

27. In the spring of 1997, Susan and Charl Matteson were shopping for a new residential home loan. Their son introduced them to Ed Grant, a loan agent working with Allstate. The Mattesons wanted to take out a $50,000.00 mortgage loan against their home in Dupont, Washington.

28. When the Mattesons first spoke with Mr. Grant, they informed him that their key concerns in the transaction were the interest rate and the fees to be charged. Although Mr. Grant did not initially review Allstate's estimated fees with the Mattesons in any detail, he promised them that he would be lower than any other broker's fees. Some days later, Mr. Grant informed the Mattesons that he could obtain a 13.25% interest rate for their loan. The Mattesons indicated that this was acceptable.

29. On or about June 14, 1997, the Mattesons met with Mr. Grant to review a set of disclosure forms and associated loan documents, including those titled:

Truth in Lending Disclosure	(*see* Ex 47, p 170)
Estimated Closing Costs	(see Ex 47, p 168-169)
Disclosure Statement	(*see* Ex 47, p 171)
Loan Authorization	(*see* Ex 47, p 164)[12]

[12] This *Loan Authorization* indicated that "when approval or commitment for the loan is successfully negotiated for us, we agree to pay up to a max of $1300 . . . to Allstate Financial Services."

Broker's Fee Agreement	(see Ex 47, p 167)
Cash Deposit Policy	(*see* Ex 47, p 166)
Loan Purpose Letter	(*see* Ex 47, p 165)
Fair Lending Notice	(*see* Ex 47, p 163)

30. The *Truth in Lending Disclosure* provided to the Mattesons in June 1997 indicated that their loan's "Annual Percentage Rate" was a fixed rate of 13.95% and that they would be making 360 payments of $573 each. However, no information about the "Finance Charge," the "Amount Financed," or the "Total of Payments" was provided on the form.[13] *See* Exhibit 47, p 170.

31. The *Estimated Closing Costs* document provided to the Mattesons indicated a loan origination fee of $1,300.00 and a number of other line items including

[13] At hearing, Mr. Warnock produced another *Truth in Lending Disclosure* purportedly mailed to the Mattesons by Mr. Grant on August 6, 1997, that appears to be somewhat more complete in its preparation. *See* Exhibit E. However, it is notable that Mr. Warnock had never produced this document before the hearing but had instead produced the above-discussed TIL as contained in Exhibit 47, p 170. Both of these handwritten TILs show the same payment amount ($573) and number of payments (360), but the one contained in Exhibit E appears curiously similar to that contained in Exhibit 47, p 183, a typewritten TIL form provided by the lender, Olympia Mortgage, on August 4, 1997. Further, when one considers that the Mattesons' signed their closing papers at Commonwealth Title on August 6, 1997, it is very difficult to conceive of a reason for the *broker* to be sending out a substitute TIL on that same date. Finally, the notes in what purports to be Mr. Grant's conversation log (Exhibit E, p 3) do not match up with other evidence in the record, particularly the date for the signing of the Mattesons' loan documents. Therefore, after much consideration, I find that the TIL contained in Exhibit E cannot be reliably demonstrated to have been sent to the Mattesons on August 6, 1997. Further, it appears that the entire Exhibit E may have been prepared after-the-fact in an attempt to recreate records that Allstate should have been readily able to produce, an attempt to bolster Allstate's defense at hearing.

Escrow Fees	$200.00
Underwriter Review Fee	$200.00
Final Abstracting and Recording Fees	$100.00
Title Insurance	$ 50.00
Tax Service Fee	$ 50.00
Processing Fee	$300.00
Discount Points (1%)	$400.00

Although the document didn't provide a total, these fees, including the origination fee, summed to $2,600.00. A handwritten note in the margin indicated that all of these fees were negotiable. On the second page of the document, an appraisal fee of $350.00 was stated, with another handwritten note that "Allstate will pay half if loan is approved." *See* Exhibit 47, pp 168-69.

32. The *Broker's Fee Agreement* provided to the Mattesons utilized the same form as that provided to Ms. Brown, but instead of an "unconditioned obligation" to pay a 3% fee, the Mattesons' form indicated a 0% fee, noting they were paying a "flat rate."

33. On August 4, 1997, the lender prepared all of the documents necessary to close the loan and provided them to Commonwealth Title. *See* Exhibit 47, pp 177-181.

34. On August 6, 1997, the Mattesons went into Commonwealth's Tacoma office to sign the documents necessary to close the loan. Commonwealth provided them with a HUD-1 indicating they were paying a $1,300.00 loan origination fee as well as these other fees on their $50,000.00 loan:

Appraisal Fee (to Allstate)	$175.00	
Tax Service (to Olympia Mortgage)	$ 69.00	(vs. $50 disclosure)
Underwriting Fee (to Olympia Mortgage)	$350.00	(vs. $200 disclosure)
Courier Fee (to Olympia Mortgage)	$ 25.00	
Admin Fee (to Olympia Mortgage)	$ 65.00	
Settlement Fee (to Commonwealth)	$450.00	
Title Insurance (to Commonwealth)	$275.00	(vs. $50 disclosure)
Various Sales Taxes (to Commonwealth)	$125.94	

Recording Fee	$ 14.00
Reconveyance Processing Fee	$ 70.00
IOLTA Service Fee (to Commonwealth)	$ 27.10

See Exhibit 47, pp 175 and 182; *see also* Exhibit 37, pp 148-49 (comparisons to "disclosure" refer to Exhibit 47, pp 168-69). When added together, these fees came to nearly $1,650.00, several hundred dollars more than originally shown on the *Estimated Closing Costs* form previously provided to the Mattesons. Even so, they proceeded to sign all of the paperwork necessary to accept the loan and close the transaction. Along with the HUD-1, Commonwealth provided numerous other documents including a *Federal Truth In Lending Disclosure* form that indicated the Mattesons' APR, total Finance Charge, Amount Financed, and Total of Payments, Number of Payments, and Amount of Each Payment. *See* Exhibit 47, pp 172-196.

35. On March 9, 1998, Ms. Matteson filed a complaint with the Department's Consumer Services Division. Ms. Matteson's complaint indicated that their loan fees, which they saw for the first time at closing, were much higher than they had expected. She explained that they felt pressed to accept the loan because they were about to take delivery of a new van and didn't want to have to apply for and wait for an alternate loan to be approved. *See* Exhibit 37, pp 144-47.

36. On May 7, 1998, DFI forwarded the Matteson complaint to Allstate along with a cover letter setting a response deadline of May 22, 1998, and further explaining that the Mortgage Broker Practices Act placed the burden of producing documents in support of any defense or explanation upon the broker. The letter specifically instructed Mr. Warnock that, "at a minimum, this documentation should include a copy of the

application, disclosures, and HUD 1 statement." The letter also advised that a failure to comply with its directions was a separate violation of the Act. *See* Exhibit 38. On May 8, 1998, DFI sent the Mattesons a letter acknowledging their complaint and explaining that Allstate would have until May 22, 1998, to respond. *See* Exhibit 39.

37. On May 14, 1998, Mr. Warnock sent a letter to DFI indicating that his "attorney Craig Wilson is in the process of collecting information" from the lender involved in the "Madison" (sic) matter. Mr. Warnock's letter promised the Department that he and his attorney "will be reviewing these complaints and handling them by the end of next week." *See* Exhibit 47, p 197.

38. On July 23, 1998, attorney Greg Wilson wrote to the Department regarding the Mattesons' complaint against Allstate. After indicating that he was "a little unclear what the nature of the Mattesons complaint is," the letter went on to provide copies of documents that Allstate provided to and the Mattesons signed on June 14, 1997. Attorney Wilson's letter concluded by questioning the merits or basis of the complaint and requesting that it be dismissed. *See* Exhibit 40; *see also* Exhibit 47. On July 28, 1998, the Department forwarded this response to the Mattesons for their review. *See* Exhibit 41.

39. On August 18, 1998, the Department determined that attorney Wilson's response did not include documentation of various required disclosures. Therefore, DFI referred the Mattesons' complaint from its consumer services section to its enforcement section. *See* Exhibit 42.

40. On March 18, 1999, the Department sent Allstate and Mr. Warnock a *Request for Action* for resolution of the Matteson complaint. This correspondence explained that the Department had found that Allstate had committed several violations of the Act. This letter went on to request Allstate to take specified remedial action, including alterations to its *Estimated Closing Costs* disclosure form and refunding to the Mattesons the sum of $175.00. The resolution letter set a deadline of April 2, 1999, for Allstate to comply. *See* Exhibit 43.

41. Despite the Department's resolution letter, neither Allstate nor Mr. Warnock took any action to resolve the Mattesons' complaint. However, on August 11, 1999, attorney Wilson sent a letter to the Department requesting a "current status" report on the Matteson complaint, as well as several others then pending against Mr. Warnock and Allstate. *See* Exhibit 44.

42. On August 18, 1999, the Department replied to this letter, indicating to Mr. Wilson that no response had ever been received from Allstate on the Matteson complaint and that the matter was "pending enforcement." *See* Exhibit 45. On June 28, 2000, the Department sent a facsimile to attorney Wilson and reiterated that the Mattesons' complaint from March 1998 remained unresolved. *See* Exhibit 46.

Moreland Complaint

43. In late 1997, Bob and Darlene Moreland were interested in taking out a new 30 year fixed-rate mortgage to consolidate their existing loans. The Morelands' current mortgage had an adjustable 8.5% interest rate; they wanted to replace this and their other outstanding loans with one mortgage loan that would be assumable. They

also wanted to be able to recoup any refinancing costs within 3-5 years. Their son introduced them to Deborah Goerke, a loan agent working with Allstate.

44. When the Morelands first spoke with Ms. Goerke, they informed her of their main goals, as set out above. After being assured by Ms. Goerke that she could obtain an assumable loan meeting their needs, the Morelands set an appointment for Ms. Goerke to come to their home on Sunday, December 14, 1997. Ms. Goerke arrived, along with David Walding, another Allstate employee, and presented a number of documents for the Morelands to fill out, review, and sign, including those titled:

Uniform Residential Loan Application	(see Ex 48, pp 240-243)
Truth in Lending Disclosure	(*see* Ex 48, p 214)
Good Faith Estimate	(see Ex 48, p 210-211)
Loan Authorization	(*see* Ex 48, p 212)[14]
Broker Fee Agreement	(see Ex 48, p 213)
Cash Deposit Policy	(*see* Ex 48, p 218)
Fair Lending Notice	(*see* Ex 48, p 221)
Model Rate Lock Agreement	(see Ex 48, pp 215-217)
Terms Disclosure	(see Ex 48, p 219)

Allstate also provided a notice indicating they were estimating the appraised value of the Morelands' home in Puyallup to be $300,000.00. *See* Exhibit 48, p 220.

45. The *Truth in Lending Disclosure* provided to the Morelands in December 1997 indicated that their loan's "Annual Percentage Rate" was fixed at 7.40%; its "Finance Charge" was $225,653.20; the "Amount Financed" was "$155K"; the "Total of Payments" would be $380,653.20; and that they would be making 360 payments of

[14] This *Loan Authorization* indicated that "when approval or commitment for the loan is successfully negotiated for us, we agree to pay up to a max of 1.5% to Allstate Financial Services, Inc."

$1,057.37 each beginning on March 1, 1998. As the Morelands were receiving a loan in the total amount of $155,000.00, from which they would be making certain prepaid finance charges, this TIL actually overstated the Amount Financed.

46. The *Good Faith Estimate of Settlement Charges* document provided to the Morelands indicated a loan origination fee of 1.5% ($2,325.00) and a number of other line items including:

Escrow Fees	$350.00
Underwriter Review Fee	$575.00
Final Abstracting and Recording Fees	$ 50.00
Attorney Fee / Title Exam	$400.00
Prepaid Taxes & Insurance	$ NA
Processing Fee	$400.00
ACH Fee	$200.00
Appraisal Fee	$400.00
Credit Report	$ 85.00

After adding in estimates for prepaid interest, all of these fees, including the origination fee, were shown to sum to $5,253.00. *See* Exhibit 48, pp 210-11.

47. The *Broker Fee Agreement* provided to the Morelands utilized a form very similar to that provided to Ms. Brown and the Mattesons, this time indicating an "unconditioned obligation to pay Allstate a commission equal to 1.5% of the principal amount committed or approved." *See* Exhibit 47, p 213 *or see* Exhibit 48, p 320.

48. On January 6, 1998, the lender prepared all of the documents necessary to close the loan and mailed copies of them to the Morelands. The lender's *Good Faith Estimate* differed from that initially presented by Ms. Goerke, particularly in that the total monthly payment would be $1,415.09, not $1,057.37. Further, the total estimated settlement charges had climbed from $5,253.00 to $8,148.37, as some fees had

changed and prepaid taxes and insurance were now being required. Additionally, the lender indicated that the loan would ***not*** be assumable. Even so, the fixed interest rate for the loan was somewhat lower, at 7.25%. *See* Exhibit 48, pp 222-232.

49. The Morelands attempted to contact Ms. Goerke about the discrepancies and to express their dissatisfaction with the lender's package. Although Ms. Goerke was out of the office, they spoke with Mr. Walding who informed them that they could ignore the lender's package as it was not representative of their loan.[15] Later that week, on January 11, 1998, Ms. Goerke sent an e-mail message to the Morelands' son in which she explained that "when I send a package to the lender, by law they have to send some bogus reply to the client. Why I'm not sure. All it does is cause confusion." *See* Exhibit 48, p 233. The Morelands' son provided this e-correspondence to them and, satisfied that the lender's paperwork was mistaken, they proceeded with the loan.

50. On January 16, 1998, the Morelands went into Commonwealth's Tacoma office to sign the documents necessary to close the loan. Commonwealth provided them with a HUD-1 containing substantially similar terms to what they had received from the lender. *See* Exhibit 48, pp 236-37. The Morelands refused to sign the documents. Shortly thereafter, another Allstate employee, Ms. Kala Washington contacted the

[15] At hearing, Mr. Warnock produced a signed statement from Mr. Walding dated May 6, 2002, indicating that he did not recall telling the Morelands that their loan would be assumable. *See* Exhibit F. However, as this witness was not produced to provide sworn testimony subject to cross examination, I find that his very recently produced statement is less credible than the Morelands' recollection of events presented both with sworn testimony and documents produced more contemporaneous with events.

Morelands on Allstate's behalf and sought to make an appointment in order to resolve their dissatisfaction with the terms of the loan being provided to them.

51. On January 20, 1998, Ms. Washington came to the Morelands' home and proceeded to explain to them that both Ms. Goerke and Mr. Walding were trainees and not competent to have undertaken the brokerage of their loan. After reviewing the three sets of documents that had been provided to the Morelands, Ms. Washington departed and was to contact the Morelands with a replacement loan proposal.

52. The following evening, on January 21, 1998, the Morelands had their first contact with Mr. Warnock with a telephone call in which he offered to reduce their closing costs by $1,000.00. On January 22, 1998, Ms. Washington informed the Morelands that she could not obtain a more favorable loan package for them. Then, on January 23, 1998, the Morelands decided that they would *not* accept the loan available to them from Allstate. They communicated this decision to Ms. Washington and made an appointment to come into the Allstate office in order to reimburse the company for the cost of the appraisal of their Puyallup home.

53. Upon arriving at Allstate's office, Ms. Washington had the Morelands speak with a lender representative who told them that assumable loans were not available. She then referred the Morelands to meet with Mr. Warnock about their refusal to close the loan transaction. Mr. Warnock stated that the Morelands would have to pay $1,900.00 to Allstate if they refused to complete the transaction. He also indicated that any loan could be assumable and that the lender representative they had just spoken with was incorrect. After some further discussion, Mr. Warnock told the Morelands that

he would put a lien on their property if they did not agree to pay the $1,900.00 he was demanding. Despite these assertions, the Morelands left without paying anything.

54. On January 29, 1998, Mr. Warnock sent a "Notification of Property Lien" to the Morelands. His letter indicated that the Morelands were liable for a fee of 1% of the loan amount of $155,000.00, or $1,550.00, a $400.00 fee for Ms. Washington's processing of the loan documents, and all third-party costs his company had incurred in securing the loan. The letter itemized a total of $933.00 in third-party fees[16] and demanded an immediate total payment of $2,483.00 "to avoid a lein being placed against your property." *See* Exhibit 48, p 205.

[16] Although Mr. Warnock took the position, both in 1998 and at hearing, that Ms. Washington was a third-party provider and not an Allstate employee, the evidence is to the contrary. First, when Kala Washington contacted the Morelands in mid-January 1998 in an attempt to salvage the faltering loan transaction, she represented herself as a representative of Allstate. Second, when Ms. Washington came to the Morelands' home on January 20, 1998, she commented on the suspect qualifications of Ms. Goerke and Mr. Walding, both of whom had also presented themselves to the Morelands as Allstate employees. In this meeting and in all subsequent interactions between Ms. Washington and the Morelands, she acted as though she were an Allstate employee. Finally, even Ms. Washington's notes on "comment sheets" (*see* Exhibit 63, pp 306-08) refer in the plural "we" to her association with Mr. Warnock and Allstate. There is simply a plethora of evidence to support a finding that Ms. Washington was an Allstate employee, not a third-party provider as defined by the Act in RCW 19.146.010(15), and I refuse to find otherwise.

55. The Morelands eventually filed a *Consumer Complaint* with the Department.[17] Among other things, the Morelands' complaint indicated that the loan package received from the lender prior to closing was markedly different than the one they had signed for weeks earlier with Allstate's representatives, that they had been told to throw away "bogus" documents sent to them by the lender, and that Mr. Warnock had threatened to place a lien on their home if they didn't reimburse Allstate for certain fees incurred in the processing of a loan they wouldn't accept. *See* Exhibit 48, pp 198-204.

56. On February 12, 1998, DFI forwarded the Moreland complaint to Allstate along with a cover letter setting a response deadline of February 27, 1998, and further explaining that the Mortgage Broker Practices Act places upon the broker the burden of producing documents in support of any defense or explanation. The letter specifically instructed Mr. Warnock that, "at a minimum, this documentation should include a copy of the application, disclosures, and HUD 1 statement." The letter also advised that a failure to comply with its directions was a separate violation of the Act. *See* Exhibit 49. That same day, DFI sent the Morelands a letter acknowledging their complaint and explaining that Allstate would have until February 27, 1998, to respond. *See* Exhibit 50.

57. On February 23, 1998, Mr. Warnock drafted a letter to DFI explaining that assumable loans of "A" paper were simply unavailable and that Allstate "did everything with-in our power to provide the clients with a mortgage loan that they would be happy

[17] The Morelands also filled out a *Consumer Complaint Form* through the Consumer Protection Division of the Office of Attorney General in Tacoma (AG). *See* Exhibit 48, p 206. Although the form is undated, on March 4, 1998, the AG forwarded the Morelands' complaint to DFI. *See* Exhibit 48, p 207. As discussed below, DFI was already aware of the Morelands' complaint at that time.

with," including offers to reduce their fees by $1,000.00 and decrease their interest rate to 6.875%. Mr. Warnock's letter went on to explain his view of RCW 19.146.070 and that Allstate was still seeking to collect a total of $933.00 from the Morelands. Finally, the letter forwarded copies of various documents associated with the Morelands' loan. The Department received this correspondence on March 9, 1998. *See* Exhibits 51 & 63.

58. On March 10, 1998, the Department sent a follow-up letter to Mr. Warnock, indicating that DFI had not yet received any response to its previous letter regarding the Morelands' complaint. *See* Exhibit 52. At hearing, the Department acknowledged that this follow-up letter was mailed prior to Mr. Warnock's response letter being processed.

59. On March 11, 1998, the Department forwarded a copy of Allstate's response to the Morelands. *See* Exhibit 53. On March 24, 1998, DFI received a letter from the Morelands indicating that Mr. Warnock's approach to the complaint was not satisfactory. *See* Exhibit 48, pp 263-267. That same day, the Department sent Mr. Warnock a letter noting that the complaint remained unresolved and asking him to undertake another attempt at self-resolution. The Department set a deadline of April 8, 1998, for Allstate to submit another follow-up response to the complaint. *See* Exhibit 54.

60. On April 23, 1998, the Department determined that Mr. Warnock had not responded to their letter of March 24, 1998. Therefore, DFI referred the Morelands' complaint from its consumer services section to its enforcement section. *See* Exhibit 55. On October 8, 1998, the Department sent Allstate and Mr. Warnock a "resolution letter" regarding the Moreland complaint. This very detailed letter explained that the Department had found that Allstate had committed several violations of the Act. This

letter went on to request Allstate to take specified remedial action, including alterations to its *Good Faith Estimate of Settlement Charges* disclosure form and ceasing to attempt to collect certain fees from the Morelands. The resolution letter set a deadline of October 23, 1998, for Allstate to comply. *See* Exhibit 56.

61. In response to the Department's resolution letter, Mr. Warnock sent DFI a brief letter dated October 22, 1998, indicating that Allstate would "drop all complaint's and not charge the client's any monies for third-party costs." *See* Exhibit 57. On November 19, 1998, the Department notified Mr. Warnock that his letter and proposed actions were inadequate. DFI reiterated its directive to Allstate and Mr. Warnock to comply with the instructions contained in the previous letter of October 8, 1998, and set a final deadline of December 4, 1998. *See* Exhibit 58.

62. On December 7, 1998, attorney Greg Wilson sent a facsimile to the Department indicating that he had been retained to represent Allstate regarding the Moreland complaint. Attorney Wilson's letter indicated that his office was drafting the necessary response to the Department and would "forward it to you by the end of this week." *See* Exhibit 59. Attorney Wilson never sent DFI the promised response, but on August 11, 1999, he sent a letter indicating his "understanding that Allstate Financial had fully responded" to the Morelands' complaint and requesting a Department advisory on the current status of that and several other pending complaints. *See* Exhibit 60.

63. On August 18, 1999, the Department replied to this letter, indicating to Mr. Wilson that other than Mr. Warnock's inadequate initial response, no other response had ever been received from Allstate on the Moreland complaint and that the matter

was “pending enforcement.” *See* Exhibit 61. On June 28, 2000, the Department sent a facsimile to attorney Wilson and reiterated that the Morelands’ complaint from February 1998 remained unresolved. *See* Exhibit 62.

U.S. Flood Complaint

64. On March 4, 1998, U.S. Flood Research of Everett, Washington, wrote to the Department to “register a formal complaint” against Allstate Financial Services, alleging that Allstate had ordered but not paid for various flood certifications during the last quarter of 1997. The letter indicated that Allstate had not paid U.S. Flood a sum of $95.23. *See* Exhibit 64.

65. On March 10, 1998, DFI forwarded the U.S. Flood complaint to Allstate along with a cover letter setting a response deadline of March 25, 1998, and further explaining that the Mortgage Broker Practices Act places upon the broker the burden of producing documents in support of any defense or explanation. The letter specifically instructed Mr. Warnock that, “at a minimum, this documentation should include a copy of the application, disclosures, and HUD 1 statement.” The letter also advised that a failure to comply with its directions was a separate violation of the Act. *See* Exhibit 65. That same day, DFI sent U.S. Flood a letter acknowledging their complaint and explaining that Allstate would have until March 25, 1998, to respond. *See* Exhibit 66.

66. On April 22, 1998, the Department sent a follow-up letter to Mr. Warnock, indicating that DFI had not yet received any response to its previous letter regarding the U.S. Flood complaint. The Department reiterated the importance of Allstate responding and set a new response deadline of May 7, 1998. *See* Exhibit 67.

67. On May 8, 1998, the Department determined that Mr. Warnock had not responded to any of their correspondence regarding the U.S. Flood complaint. At that time, DFI referred the U.S. Flood complaint from its consumer services section to its enforcement section. *See* Exhibit 68.

68. On May 18, 1998, Mr. Warnock sent the Department a letter explaining that "due to changes in administration" in his company, he had been unaware of the pending complaint from U.S. Flood. After Mr. Warnock indicated his understanding that the lender involved in a loan closing always paid any flood certification fees associated with a transaction, he stated that he was sending U.S. Flood a check for $100 to resolve the matter. *See* Exhibits 69 and 76. U.S. Flood confirmed receipt of this payment in a letter dated June 5, 1998, thanking DFI for its assistance. *See* Exhibit 70.

69. Despite U.S. Flood's indication that Allstate had now paid its outstanding debt, on September 15, 1998, the Department sent Allstate and Mr. Warnock a "resolution letter" regarding the U.S. Flood complaint. This letter explained that the Department had found that Allstate had committed two violations of the Act by failing to timely respond to the Department and by failing to pay a third-party provider within the sooner of 30 days after a loan's closing or 90 days after services were rendered. This letter went on to request Allstate to take remedial action by complying with any future requests for information it might receive from DFI and by submitting a written statement to the Department that Allstate understood its obligations to third-party providers as set out in the Act and would be complying with those requirements. The resolution letter set a deadline of September 30, 1998, for Allstate to comply. *See* Exhibit 71.

70. On November 19, 1998, the Department notified Mr. Warnock that he had failed to reply to its resolution letter regarding the U.S. Flood complaint. DFI reiterated its directive to Allstate and Mr. Warnock to comply with the instructions contained in the previous letter of September 15, 1998, and set a final compliance deadline of December 4, 1998. *See* Exhibit 72.

71. On August 11, 1999, attorney Greg Wilson sent a letter to the Department requesting a Department advisory on the current status of several other complaints that had been filed against Allstate. Although the letter did not mention the U.S. Flood issue by name, it did express a desire to insure that Allstate was "in full compliance with all directives of the Department of Financial Institutions." *See* Exhibit 73.

72. On August 18, 1999, the Department replied to this letter, indicating to Mr. Wilson that Mr. Warnock had never responded to either of DFI's resolution letters regarding the U.S. Flood complaint and that the matter was "pending enforcement." *See* Exhibit 74. On June 28, 2000, the Department sent a facsimile to attorney Wilson and reiterated that the U.S. Flood complaint remained unresolved. *See* Exhibit 75.

Mercer & Associates Complaint

73. On March 4, 1999, Ms. Lisa Riggs, an Allstate employee, filled out a pre-printed *Appraisal Order Form* provided by Mercer & Associates, Inc. Under the portion of the form marked "Billing Information," Ms. Riggs placed an "x" in the box for "C.O.D./Customer" and then wrote a note giving the name of the homeowners, Belynda and Linn Moore, and stating "they will be there to pay you." *See* Exhibit 77, p 393.

74. On March 9, 1999, Mr. Philip Kilner and Mr. Terrance Wood of Mercer & Associates went to Puyallup to appraise the subject property. Belynda and Linn Moore met them on site and paid them a total of $175.00.[18] The following week, on March 15, 1999, both Mr. Kilner and Mr. Wood signed a *Uniform Residential Appraisal Report* estimating the Moores' property value to be $265,000.00. They then submitted an invoice to Allstate charging $400.00 for the appraisal. After crediting the Moores' payment, the invoice indicated a balance due of $225.00. *See* Exhibit 77, pp 394-96.

75. On August 30, 1999, Allstate submitted a payment of $175.00 to Mercer & Associates. Although Mercer & Associates attempted to send another invoice to Allstate in January 2000 using certified mail, Allstate failed to claim the item and it was returned to Mercer & Associates. *See* Exhibit 77, p 398. On August 17, 2000, Mercer & Associates prepared another *Appraisal Invoice* to Allstate requesting payment of the remaining $50.00, as well as $14.31 in accrued interest and a $25.00 collection fee, for a total of $89.31. *See* Exhibit 77, p 397.

76. On August 17, 2000, Mr. Wood completed a *Mortgage Broker Inquiry/Complaint Report* to register a complaint against Allstate Financial Services,

[18] The Mercer & Associates invoice (Ex. 77, p 396) indicates receipt of this $175.00 by money order. However, Ms. Moore's testimony at hearing provided that one of the Moore's friends, Mr. Michael Berndhart, actually wrote out a check to the appraisers and that this check was later returned for not having sufficient funds. Ms. Moore indicated her belief that neither she nor her husband made any replacement payment to Mercer & Associates, but that Allstate did so. Mr. Wood's testimony at hearing corroborates Ms. Moore's recollection of a bounced check, and Mr. Wood also confirmed that his company was later repaid that amount, leaving only the unpaid balance of $50 noted in his complaint.

alleging that Allstate had ordered but not paid for an appraisal of a home in Puyallup from March 1999. The letter included a copy of the appraisal order form and indicated that Allstate had failed to respond to requests for payment. Mercer & Associates indicated that the original outstanding fee was $50.00, but with accrual of $64.31 in interest charges and a $25.00 collection fee, the requested sum was $139.31. *See* Exhibit 77, pp 391-92.

77. On August 18, 2000, DFI forwarded the Mercer & Associates complaint to Allstate and provided fifteen days for Mr. Warnock to file a response. Further, DFI directed Allstate to provide specified documents associated with the transaction, including a copy of the appraisal request, documents from the borrowers' trust account, and the final HUD-1 closing statement. The Department directive advised that failure to comply with its directions was a separate violation of the Act. *See* Exhibit 78. Allstate did not reply to the Department's directive.

78. On September 6, 2000, DFI sent Allstate a subpoena in an attempt to force Mr. Warnock and his company to produce the requested records within seven days. The Department subpoena also advised that failure to comply with its directions was a separate violation of the Act. *See* Exhibit 79.

79. On October 6, 2000, Allstate submitted a $50.00 payment to Mercer & Associates. Allstate did not make the Department aware of this action.

80. On November 2, 2000, the Department determined that Mr. Warnock had not responded to any of their correspondence regarding the Mercer & Associates complaint. At that time, the Department sent Allstate and Mr. Warnock a *Request for*

Action regarding resolution of the Mercer & Associates complaint. This correspondence explained that the Department found that Allstate had committed two violations of the Act by failing to timely respond to the Department and by failing to pay a third-party provider as required by the Act. The Department requested that Allstate take remedial action by paying $50.00 in restitution to Mercer & Associates, by submitting a written statement to the Department that Allstate would respond to the Department's requests for information, and by taking heed of all future requests for information it might receive from DFI. The Department's *Request for Action* set a deadline of November 17, 2000, for Allstate to comply with its terms. *See* Exhibit 80. The Department received no reply from Allstate, including any indication that the $50.00 had already been paid.

Thompson Complaint

81. Jeff and Maureen Thompson are self-employed and own their own construction business. In June of 1999, working with an Allstate employee named Robin Patterson, they had obtained a mortgage that would have a fixed rate for 2 years and then become an adjustable rate loan. On or about September 18, 2000, the Thompsons decided that they were interested in refinancing their existing mortgage and paying off some other credit debt, perhaps resulting in a loan amount that would be higher than the worth of their home in Quincy, Washington. As Ms. Patterson had promised to refinance their earlier loan with no closing costs when it became an adjustable rate loan in 2001, they contacted Allstate to take advantage of this offer. *See* Exhibit 81, p 408.[19] The Thompsons were informed that Ms. Patterson was no longer employed with Allstate and were instead referred to Mr. William Clowney who told them that due to Ms. Patterson's departure, Allstate would not honor her letter.

82. After discussing the Thompsons' refinance goals with them, Mr. Clowney requested that they submit two years of tax documents for both themselves and their business. He then agreed to send out a loan application for the Thompsons to complete. On September 30, 2000, the Thompsons began completing this form but did not actually send it in to Allstate until October 10, 2000. *See* Exhibit 81, p 412-18 and

[19] Although Ms. Patterson never appeared to testify at hearing, Mr. Warnock did present an unsworn statement purportedly signed by Ms. Patterson on May 6, 2002, indicating that she had never provided the Thompsons with such a letter and that it was not her signature on that document. Along with this statement is a copy of Ms. Patterson's Washington Driver's License to serve as a handwriting exemplar. *See* Exhibit L. If one is to believe the assertions in Ms. Patterson's statement, it would require a determination that Jeff and Maureen Thompson created bogus Allstate letterhead on their own computer, drafted the letter themselves, and then signed Ms. Patterson's name to it. The evidence does not support this version of events and, at hearing, Ms. Thompson's credibility was not called into question at all. Therefore, I find that Ms. Patterson did provide the Thompsons with the July 1, 1999, letter.

420. Thereafter, despite several attempts to contact Mr. Clowney, the Thompsons were unsuccessful, first being told that he was out sick and then being informed that he would be out indefinitely due to a problem in his family. At some point, another Allstate employee, Lisa Hoffman, took responsibility for processing the Thompsons' application.

83. On November 1, 2000, Mr. Warnock contacted the Thompsons to inform them that their loan had been approved and that the loan amount would be able to cover all of their existing debt, approximately $175,000.00. When Mrs. Thompson said she doubted their home could appraise for that much, Mr. Warnock told her he would get an appraiser out that would appraise the house at whatever value was needed to support the desired loan. Mr. Warnock then promised that he would order the loan documents by the end of that week.

84. A few days later, Mrs. Thompson provided Allstate with the names of two appraisers from her local area, one in Moses Lake and one in Yakima. Although promised by Ms. Hoffman that she would schedule an appraisal as soon as possible, the whole month of November passed without Allstate even contacting the appraisers to schedule an appointment. Despite leaving numerous messages for Mr. Warnock to contact them, he never returned the Thompsons' calls.

85. In early December, after finally speaking with Mr. Warnock and expressing their frustration with the delays, a lender finally contacted the Thompsons. The lender explained that their credit scores had changed since the original application was filed and that he could now only obtain an 85% loan-to-value (LTV) loan, rather than the 100% LTV loan that Allstate had originally promised. Incensed, the Thompsons again

contacted Mr. Warnock to inquire about their credit scores and he told them that the lender was wrong and had lied to them. At that time, Mr. Warnock contacted Jack Pray, the appraiser from Moses Lake, and requested his services.

86. On December 14, Mr. Pray visited the Thompson residence to perform an appraisal. After completing his work, he informed the Thompsons that Mr. Warnock had told him that they would be paying the $400 fee for his inspection. After explaining to Mr. Pray that this was a cost they had intended to include in their loan amount, they contacted Mr. Warnock. During the course of that conversation, Mr. Warnock told Mr. Pray that if he couldn't appraise the Thompson residence at $175,000.00, he would not pay him. This infuriated Mr. Pray and he hung up on Mr. Warnock. The Thompsons then got Mr. Warnock back on the phone and reminded him that they had agreed to pay for the appraisal out of their loan proceeds, apparently settling the controversy.

87. A few days later, Mr. Warnock called the Thompsons and informed them that he would be ordering loan documents based on their home's value of $145,000.00, not $175,000.00. At that point, other than the loan application package sent to them by Mr. Clowney, they had never received any other documents or disclosures regarding their loan.[20] In late December, the Thompsons began consulting with other mortgage

[20] At hearing, Mr. Warnock presented copies of a completed *Uniform Residential Loan Application*, *Good Faith Estimate*, and *Truth in Lending Disclosure*, all of which had purportedly been sent to the Thompsons on October 17, 2000, in response to the application they had returned on October 10, 2000. *See* Exhibit D, pp 32-38; *compare to* Exhibit 84, pp 457-461 and 465-66 which are indicated to have been mailed on September 26, 2000. However, when comparing the information on these documents with the two handwritten *Applications* completed by the Thompsons (compare handwritten application dated 9-30-00 in Exhibit 81, pp 412-15 and/or Exhibit 84, pp 451-54 and handwritten application dated 1-31-01 in Exhibit 81, pp 424-26, neither of which have any indication of the date they were mailed to the Thompsons), I conclude that the typewritten information contained in Mr. Warnock's Exhibit D was taken from the latter submission. Further, as pointed out in the Department's Post-Hearing Brief (at 14-15), the information contained in the documents submitted to DFI in mid-February 2001

brokers in their local area and, at that point, had decided to stop working with Allstate in their attempt to refinance their existing loan.

88. On or about December 31, 2000, the Thompsons drafted a complaint about their experiences with Allstate and sent it to DFI, where it was received on January 16, 2001. *See* Exhibit 81, pp 402-07. The Thompsons' complaint recounted that they had been promised a new loan with no closing costs, had applied in October 2000, and had not received any documents indicating the terms of their new loan as of the time of their complaint. The complaint also detailed the episode related to obtaining an appraisal of their home. *See* Exhibit 81, pp 405-07.

89. On approximately January 10, 2001, the Thompsons sent a letter to Allstate requesting that their file be released to them so that they could pursue their refinance loan with Western Mortgage in Ephrata, Washington. *See* Exhibit 81, p 409.

90. On January 17, 2001, DFI forwarded the Thompsons' complaint to Allstate and provided fifteen days for Mr. Warnock to file a response. Further, DFI directed Allstate to provide specified documents associated with the transaction, including the borrower's original signed application form, all required disclosures, and a final HUD-1.

(Exhibit 84) contains additional inconsistencies, raising suspicions about their authenticity. Thus, although it would be convenient for Allstate to be able to produce this sort of documentation in its defense, I find that these documents were *not* mailed to the Thompsons on the dates Mr. Warnock has contended (September 26, 2000, or October 17, 2000). Mr. Warnock is either mistaken in his record keeping or is attempting to present to the court his preferred version of events by now resorting to legerdemain.

The Department directive advised that failure to comply with its directions was a separate violation of the Act. *See* Exhibit 82.

91. Within a few days after the Thompsons sent their letter terminating their business relationship with Mr. Warnock, another Allstate employee named Elizabeth contacted the Thompsons to tell them that Mr. Warnock had secured a favorable loan for them from Countrywide. After telling Elizabeth that they no longer wanted to do business with Allstate, they spoke to Mr. Warnock who told the Thompsons that he was aware of their complaint to DFI and, in order to resolve things, not only would he be paying for the appraisal, but he would take 2% off their loan origination fee. Although they had not actually seen any of the loan documents, the Thompsons later decided to accept Mr. Warnock's proposed loan from Countrywide. At this point, another Allstate employee, Ms. Nancy Williams, assumed primary responsibility for the transaction.

92. A few weeks later, on January 31, 2001, Allstate faxed the loan documents to the Thompsons along with a letter confirming that Allstate had changed their loan to a 30 year fixed-rate loan, paid for the associated appraisal, and deducted 2% from the origination fee. This letter indicated that new documents had been ordered and would be at escrow and ready to sign by the end of that week. The *Truth in Lending Disclosure* provided to and signed by the Thompsons that day indicated that they were financing $103,068.33 at an interest rate of 10.75% and making 359 payments of $970.82 each, along with a final payment of $972.46. The *Good Faith Estimate* provided to and signed by the Thompsons that day indicated a loan amount of

$104,000.00 with an interest rate of 10.75% and monthly payments, including taxes and insurance, of $1,135.34. Among the fees disclosed in the GFE were the following:

801.	Origination Fee @ 1.000%	$1,040.00
814.	Processing Fee	$ 400.00
815.	Underwriting Fee	$ 595.00
1101.	Closing or Escrow Fee	$ 264.11
1105.	Document Preparation Fee	$ 500.00

Upon receipt, the Thompsons signed and returned a copy of Mr. Warnock's letter to Allstate on January 31, 2001. The Department did not receive a copy of this letter until February 26, 2001. *See* Exhibit 83; *see also* Exhibit 81, pp 422 and 427-441.[21]

93. On February 1, 2001, the Thompsons went into the Chicago Title Insurance Company's office in Ephrata to sign the documents necessary to close the loan. Chicago Title provided them with a number of documents, including a HUD-1 Statement with scheduled settlement date of February 9, 2001, showing specified fees, including:

801.	Origination Fee	(to Allstate)	$1,040.00
803.	Appraisal Fee		$ 400.00
808.	Administration Fee	(to Allstate)	$ 500.00
811.	Underwriting Fee	(to Am Whlsle Lndr)	$ 595.00
1101.	Settlement or Closing Fee	(to Chicago)	$ 269.50
1105.	Document Preparation Fee	(to Chicago)	$ 53.90

See Exhibit 84, pp 462-63. The Thompsons signed the documents but, due to some delays in Allstate providing information, the loan did not fund until a few days after originally scheduled. The Final HUD-1 differed slightly from the first, including:

[21] At hearing, Mr. Warnock stated that all of these disclosures had been mailed to the Thompsons on January 25, 2001. *See* Exhibit D, p 5 and pp 22-31.

803. Appraisal Fee (to Allstate) (400.00/PD) $ [BLANK]
812. Premium Paid to Broker by Lender (2080.00/B) $ [BLANK]

See Exhibit 81, pp 410-11 and Exhibit 86, pp 473-74 (HUD-1 with settlement date of February 12, 2001).

94. On February 7, 2001, DFI sent Allstate a subpoena in an attempt to force Mr. Warnock and his company to produce the requested records within seven days. The Department subpoena also advised that failure to comply with its directions was a separate violation of the Act. *See* Exhibit 85.

95. On February 6, 2001, Allstate drafted a reply to the Department's directive and forwarded copies of the requested application form, disclosures, and HUD-1. In this letter, Mr. Warnock indicated that when Mr. Clowney sent the Thompsons their application form, he also sent out all required disclosures. *See* Exhibit 84, p 450. Although the documents enclosed with Allstate's letter to DFI included a *Good Faith Estimate* for a $145,000.00 loan dated September 26, 2000, none of the enclosed copies of the disclosures allegedly having been sent to the Thompsons on that day had any indication or acknowledgment that the Thompsons had initialed or ever seen them. Additionally, Allstate's letter did not enclose a copy of any *Truth in Lending Disclosure* provided to the Thompsons with the other disclosures. *See* Exhibit 84, pp 457-61 and 465-66. Thus, I find that Allstate did ***not*** send these documents to the Thompsons as claimed by Mr. Warnock at hearing.

96. After making some attempt to explain the delays involved in processing the Thompsons' application in September and October 2000, Mr. Warnock's letter indicated that "[t]his has been an unfortunate but definitely a learning experience and

we have new procedures in place with our loan officers so that this does not happen again." The Department received this correspondence on February 12, 2001, after it had already sent out the above-noted subpoena. *See* Exhibit 84.

97. On February 22, 2001, at the Department's request, Chicago Title's Ephrata office sent by facsimile to DFI copies of the final HUD-1 and the *Note* from the Thompsons' loan transaction. The Ephrata office confirmed that the Thompsons had signed and closed the loan on February 5, 2001, and that the loan had been funded on February 12, 2001. *See* Exhibit 86.

98. On February 23, 2001, the Thompsons sent the Department an "update" letter regarding their dealings with Allstate and Mr. Warnock. The Thompsons indicated how in early January 2001, Mr. Warnock had convinced them to proceed with the loan from Countrywide. They also indicated that on or about January 29, 2001, another of Allstate's employees, Ms. Williams, informed them that this new loan would also have a fixed rate for only 2 years before becoming adjustable[22] and that although Mr. Warnock did not intend to honor Ms. Patterson's letter with the promise of no closing costs, he would issue them a replacement letter offering to refinance this new loan with no closing costs at some time in the future. The Thompsons were firm and demanded that Ms. Williams contact the lender to alter the terms of the loan to a 30 year fixed rate. The

[22] *See* Exhibit 81, p 423, showing a January 30, 2001, fax transmission from Countrywide to Allstate indicating a $104,000 loan at 10.5%, fixed for 2 years and adjustable thereafter. *Compare to* Exhibit D, p 39, showing that Countrywide was being requested to prepare documents for a $104,000 loan at 10.75%, fixed for 30 years.

Thompsons' "update" also explained other problems they encountered with the loan's closing and funding. *See* Exhibit 87; *see also* Exhibit D, p 5.

99. Shortly thereafter, on approximately February 28, 2001, the Thompsons wrote a letter to Mr. Warnock asking him to refund a total of $2,580.00 to them for fees charged at closing that were not indicated to them in the *Good Faith Estimate* they received on January 31, 2001. *See* Exhibit 89. The Thompsons forwarded a copy of this letter to DFI. *See* Exhibit 88.

100. On March 9, 2001, Mr. Warnock wrote back to the Thompsons expressing his disagreement with their contentions that he had misled them in any way. After setting out his view of the relationship between line numbers on a *Good Faith Estimate* and a HUD-1 Settlement statement, his letter closed by saying:

> You sat with the closing escrow agent who had gone over everything and you also had 3 days since you signed your documents to go over everything and you waited a month later to complain about your rate and fee's. I think that over the months that we have been patient and understanding through this whole process. I understand that it has taken a little while to get this loan done but we had come up with one hurdle after another and bent over backwards to get this done and appease you. No you will not be receiving a check from us for we have done everything that you have ask and then some.

See Exhibit 90. On March 14, 2001, the Thompsons forwarded a copy of this letter to the Department. *See* Exhibit 91.

CONCLUSIONS OF LAW

Jurisdiction

1. The Legislature enacted the Mortgage Broker Practices Act (MBPA or Act) in recognition of the "significant impact on the citizens of the state and the banking and real estate industries" associated with the practices of mortgage brokers.[23] The Act therefore set out to "establish a state system of licensure in addition to rules of practice and conduct of mortgage brokers to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community."[24] DFI is responsible for administering and enforcing the Act.[25]

2. Under the MBPA, a "mortgage broker" is broadly defined as

> any person who for compensation or gain, or in the expectation of compensation or gain . . . holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan.[26]

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[23] *See* RCW 19.146.005. Originally adopted in 1987, the Legislative declaration was readopted in both the 1993 and 1994 amendments to the Act.

[24] Id.

[25] *See* RCW 19.146.220. This listing of exemptions was last updated by the Legislature in 1997.

[26] *See* RCW 19.146.010(12)(b).

It is undisputed that Allstate and Mr. Warnock have held themselves out as able to assist persons in applying for and obtaining residential mortgage loans. Thus, both Allstate and Mr. Warnock fall under this definition. As Allstate and Mr. Warnock are not exempted from the provisions of the MBPA,[27] I conclude that they and their actions are subject to the provisions of the Mortgage Broker Practices Act.

3. The Act goes on to define a "designated broker" as a person designated by a licensee who meets certain experience, education, and examination requirements.[28] Mr. Warnock became Allstate's Designated Broker in June 1995 when he successfully completed the Department's required examination. *See* Exhibit 11.

4. RCW 19.146.245, *Violations -- Liability*, provides as follows:

> A licensed mortgage broker is liable for any conduct violating this chapter by the designated broker, a loan originator, or other licensed mortgage broker while employed or engaged by the licensed mortgage broker.

The Act defines "loan originator" very broadly (emphasis added) as

> a person employed, either directly *or* indirectly, *or retained as an independent contractor* by a person required to be licensed as a mortgage broker, or a natural person who represents a person required to be licensed as a

[27] *See* RCW 19.146.020 for a list of entities and persons exempt from the Act.

[28] *See* RCW 19.146.010(5). RCW 19.146.210(1)(e) requires a designated broker to have at least two (2) years of experience in the residential mortgage loan industry and to pass a licensing examination. The Department also requires all designated brokers to annually enroll in and complete certain continuing education courses in order to maintain their knowledge of regulatory requirements. *See* RCW 19.146.215; *see also* WAC 208-660-042 and -045.

> mortgage broker, in the performance of any act specified in subsection (12) of this section.[29]

The Act goes on to define "independent contractor" as

[29] *See* RCW 19.146.010(10) (emphasis added). The reference to subsection (12) is to the definition of "mortgage broker" which has been previously discussed in Conclusion of Law No. 2.

> 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.[30]

The Act does not contain any exception for not holding mortgage brokers liable for the acts of independent contractors.[31] To the contrary, RCW 19.146.245 specifically extends a mortgage broker's liability to the acts of loan originators, which is specifically defined to include independent contractors, as well as any "other licensed mortgage broker while employed or engaged by the licensed mortgage broker."[32]

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[30] *See* RCW 19.146.010(8).

[31] The Act does distinguish a "third-party provider" from the mortgage broker and his employees and/or independent contractors. *See* RCW 19.146.010(15). As applicable to this case, it is only the Respondents' assertion that Ms. Kala Washington was a third-party provider that raises this issue. As previously noted in footnote 16, however, this contention was found to be unsupportable.

[32] Further, the Act specifically makes an allowance for unlicensed individuals to participate in the mortgage brokerage business, but *only* if a licensed mortgage broker takes responsibility for their actions. According to RCW 19.146.200(1), "a person who independently contracts with a licensed mortgage broker need not be licensed if the licensed mortgage broker and the independent contractor have on file with the director a binding written agreement under which the licensed mortgage broker assumes responsibility for the independent contractor's violations of any provision of this chapter or rules adopted under this chapter; and if the licensed mortgage broker's bond or other security required under this chapter runs to the benefit of the state and any person who suffers loss by reason of the independent contractor's violation of any provision of this chapter or rules adopted under this chapter."

5. Upon review of the provisions of the Act, I conclude that Mr. Warnock and Allstate are fully liable for any violations of the Act committed by Mr. Warnock himself, by any loan originators working with or for Allstate, including independent contractors, or by any of Allstate's employees, specifically including (but not limited to) Ed Grant, Deborah Goerke, David Walding, Kala Washington, Lisa Riggs, Robin Patterson, William Clowney, Lisa Hoffman, "Elizabeth", and Nancy Williams.

Standard of Proof

6. The Department is seeking to revoke Allstate's and Mr. Warnock's license to participate in the mortgage broker industry. According to our Washington Supreme Court, the ordinary burden of proof to resolve a dispute in an administrative proceeding, unless otherwise mandated by statute or due process of law, is preponderance of the evidence.[33] Here, the Mortgage Broker Practices Act, specifically RCW 19.146.221 (emphasis added), provides for that same burden of proof:

> . . . if after hearing the director finds ***by a preponderance of the evidence*** that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.

Thus, the Act itself provides that if DFI can show by a preponderance of the evidence that a mortgage broker has violated Chapter 19.146 RCW, the Director can then impose those sanctions specified in the Act.

[33] Thompson v. Department of Licensing, 138 Wn.2d 783, 797, 982 P.2d 601 (1999).

7. Despite the clarity of this statute, a series of recent court rulings in this state raises the question of whether or not due process concerns require DFI to carry a higher burden of proof in order to revoke Mr. Warnock's license to act as a mortgage broker. In August 2001, the Washington Supreme Court decided the case of Bang Nguyen v. Department of Health[34] and held that due process of law requires proof by "clear and convincing evidence" before a physician can be deprived of his medical license. In Nguyen, the Court was evaluating the Department of Health's (DOH) regulatory action to adopt and apply the preponderance standard in disciplinary proceedings under the Uniform Disciplinary Act (UDA).[35] After thoroughly analyzing the type of interest at stake from both individual and societal perspectives, the Court determined that "the constitutional minimum standard of proof in a professional disciplinary proceeding for a medical doctor must be something more than a mere preponderance."[36] Thus, the Court declared DOH's regulation unconstitutional.

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[34] 144 Wn.2d 516, 29 P.3d 689 (2001).

[35] 144 Wn.2d at 520. Notably, the UDA did not itself set out a burden of proof, but delegated authority to DOH to adopt any rules needed for its disciplinary functions. *See* RCW 18.130.050(1). In adopting WAC 246-10-606, DOH provided "*[e]xcept as otherwise provided by statute*, the burden in all cases is a preponderance of the evidence" (emphasis added).

[36] 144 Wn.2d at 534. The majority opinion in this 5-3 decision concluded that the individual's interest in not being improperly deprived of his property interest (right to practice a chosen profession for

which he had obtained extensive training) required a higher burden of proof. The dissent instead focused on society's interest in being protected from negligent practitioners, concluding that this interest held sway and justified DOH's implementation of the preponderance standard. *See* 144 Wn.2d at 555.

8. Shortly thereafter, Division One of the Court of Appeals distinguished the Nguyen decision when issuing its decision in Eidson v. Department of Licensing.[37] In that case, an Administrative Law Judge (ALJ) upheld the Department of Licensing's (DOL) action to revoke a real estate appraiser's license for three years and impose a $300 fine. On appeal, Division One declined to interpret Nguyen as applicable to *all* types of professional disciplinary proceedings, instead choosing to take a profession-by-profession approach in weighing the individual and public interests involved.[38] Noting that real estate appraisers "are not forced to spend countless hours and large sums of money pursuing a degree" and that alleged violations of the Certified Real Estate Appraiser Act are determinable through "objective standards of conduct," Division One concluded that the less stringent preponderance of the evidence standard was appropriate when an agency sought to revoke a real estate appraiser's license.[39]

9. Even more recently, after the final deadline for filing of post-hearing briefs in this matter, Division Two of the Court of Appeals issued its decision in Nims v. Washington Board of Registration,[40] a case where the Department of Licensing revoked a registered professional engineer's license based upon a preponderance of the evidence presented to a disciplinary Board. Division Two criticized the Eidson ruling:

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[37] 103 Wn. App. 712, 32 P.2d 1039 (2001).

[38] 103 Wn. App. at 718.

[39] 103 Wn. App. at 720-21. The Eidson court noted that in Nguyen the charges against the physician were based on "incompetency, negligence, malpractice, moral turpitude, dishonesty, and corruption," and characterized these as "virtually completely subjective standards."

[40] Slip Opinion No. 27431-1-II, 2002 Wash. App. Lexis 1987 (August 30, 2002).

> . . . [T]he Eidson court asserted or implied that incompetent doctors create a greater risk to human health, safety, and welfare than incompetent appraisers. It then reasoned that doctors the profession creating the greater risk should receive the benefits of a higher (less discipline-friendly) burden of persuasion, while appraisers the profession creating the lesser risk should receive the detriments of a lower (more discipline-friendly) burden of persuasion. That does not make sense to us, and it is not an approach that we are willing to emulate.
>
> Nor can we agree with the Eidson court's view that the time and money spent on training justifies different burdens of persuasion for different professions. In our view, the time and money spent on training has so little bearing on disciplinary proceedings that it cannot, by itself, justify a higher or lower burden of persuasion. Nor can we agree with the Eidson court's reliance on the 'subjective' nature of the charges in Nguyen, as opposed to the 'objective' nature of the charges in Eidson. It is our view that the applicable burden of persuasion should be constant for disciplinary proceedings of like kind, and that the burden of persuasion should not vary according to the nature of the charges in the particular case.
>
> Nguyen is the law of this state, whether one agrees with it or not. Nguyen held that a physician is entitled to a clear, cogent, and convincing burden of persuasion. A registered professional engineer is entitled to the same, so far as is shown here or in Eidson. Accordingly, we hold that the Board erred by basing its findings on a mere preponderance of the evidence, and that it must make new findings based on clear, cogent, and convincing evidence.

Thus, Nims would apply the higher standard of proof to all professional licensing cases.

10. Although one might disagree with Nims' sweeping characterization of the Nguyen ruling, the problem of choosing an appropriate burden of proof in this case is not as difficult a quandary as it might appear. Given the specific language contained in the MBPA, it is unnecessary to resolve this issue based on the case law, especially when considering that an ALJ must follow statutory enactments and may not strike down a statute as unconstitutional.[41] Hence, as directed by the Act, the burden of proof

[41] Yakima County Clean Air Authority v. Glascam Builders, Inc., 85 Wn.2d 255, 257, 534 P.2d 33 (1975). Although the Washington Administrative Procedure Act provides that statutes, rules, and

required in this case is the preponderance of the evidence standard. Even so, even if RCW 19.146.221 is subsequently determined to be unconstitutional, I conclude that under the facts of this case, there is clear, cogent, and convincing evidence to show that the Respondents violated the Act, thus satisfying even the higher burden of proof contemplated by Nguyen and Nims.

Obligation to Make Disclosures – Good Faith Estimate, Truth in Lending, Etc.

11. The MBPA requires mortgage brokers to make certain disclosures to clients who are applying for loans. RCW 19.146.0201 provides in pertinent part as follows:

> **Loan originator, mortgage broker -- Prohibitions -- Requirements.** It is a violation of this chapter for a loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1) (d) or (f) in connection with a residential mortgage loan to:
>
> (6) Fail to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law;

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agency actions can be challenged as unconstitutional, this can only be accomplished through judicial review.

(10)[42] Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest or otherwise fail to comply with any requirement of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and Regulation X, 24 C.F.R. Sec. 3500, or the equal credit opportunity act, 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12, as now or hereafter amended, in any advertising of residential mortgage loans or any other mortgage brokerage activity;

In addition, RCW 19.146.030 provides further guidance regarding disclosures:

[42] Prior to July 27, 1997, this section was codified as RCW 19.146.0201(11). Although its placement in the statute's sequence was altered by the Act's 1997 amendments, its substance was not.

(1) Within three business days following receipt of a loan application or any moneys from a borrower, a mortgage broker shall provide to each borrower 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 and other such disclosures as may be required by rule. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable. This subsection shall not be construed to require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.[43]

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

(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, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be deemed to comply with the disclosure requirements of this subsection;

(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 the real estate settlement procedures act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec. 3500, as now or hereafter amended,

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[43] Prior to July 27, 1997, the first sentence of this section read "Upon receipt of a loan application and before the receipt of any moneys from a borrower, . . ." but the remainder of the statute has remained the same. As relevant to this case, only the events in the Brown case occurred prior to the effective date of the statute's amendment. Thus, as necessary, this *Initial Decision* relies on the statute's earlier language when making any conclusions regarding the Brown complaint.

shall be deemed to comply with the disclosure requirements of this subsection;

(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)[44] 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.

12. A mortgage broker can comply with RCW 19.146.030 by timely providing a client with accurate and written copies of various disclosure forms, including a *Truth in Lending Disclosure* (TIL), a *Good Faith Estimate* (GFE), and other forms developed to clearly communicate the client's rights regarding charges involved in the overall transaction, fees required to secure a particular interest rate, and funds paid out in connection with services being provided by third-parties. Although, as noted above, the

[44] Prior to July 21, 1997, this section required only the disclosure of the lender's name and the relationship between the lender and the mortgage broker. As relevant to this case, the Department's *Statement of Charges* alleged only a single violation of this section, as to the Thompson complaint, the events of which occurred in late 2000 and early 2001.

Department carries the burden of proving that a mortgage broker violated the Act, once a legitimate complaint is made that proper disclosures were not provided, a mortgage broker's own files should provide the best source of information to rebut the allegations.

13. *Calculation of Annual Percentage Rate (APR)*. The APR is the true rate of interest charged on a loan after taking into account the total cost of interest and all other charges, including a mortgage broker's fees. When a borrower is presented with a proposed loan, the data typically includes the present value of the note (loan amount), the payment amount, the number of payments, and the interest rate. In order to calculate the APR, all relevant fees[45] are subtracted from the present value of the note while the payment amount and number of payments are held constant. The equation is then solved for the new interest rate, which is the APR. Due to one variable in this formula being compound rather than simple interest, it has become common in the industry to rely on amortization calculators to perform this computation, and the undersigned relied on a computer program for this purpose.[46]

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[45] Not all fees associated with the transaction are subtracted, but only those fees required to secure the loan. These fees are specified by the federal Real Estate Settlement Procedures Act, which can be found at 12 United States Code (U.S.C.) §2601 *et seq*., and Regulation X, which can be found at 24 Code of Federal Regulations (C.F.R.) §3500.

[46] For purposes of this *Initial Decision*, all APR calculations were checked using a computerized APR calculation program created by the U.S. Department of the Treasury's Office of the Comptroller of the Currency (OCC), available on-line at http://www.occ.treas.gov/APR.htm. The actual methodology for

14. *Failure to Provide Adequate Truth-in-Lending Disclosures*. DFI has alleged that the Respondents failed to provide a complete TIL disclosure in the Matteson loan transaction and a timely TIL disclosure in the Thompson loan transaction.

14a. In the case of the handwritten TIL provided to the Mattesons, only the payment amount and number of payments are provided, along with a number purporting to be the APR. Neither the amount financed, finance charge, nor total of payments was provided, as required by RCW 19.146.030(2)(a). *See* Findings of Fact No. 29-30 and supporting Exhibits.

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proper calculation of an APR is contained in Appendix J to Regulation Z, the federal Truth in Lending Act. Regulation Z can be found at 12 C.F.R. § 226. The Truth in Lending Act itself can be found at 15 U.S.C. §1601 *et seq*.

14b. In the case of the Thompson transaction, a loan application was submitted to Allstate on October 10, 2000, via U.S. Postal Service Express Mail. Although the Respondents claim to have sent the required disclosures to the Thompsons on October 17, 2000, I have previously found these offerings unreliable.[47] The Thompsons did not receive ***any*** disclosures relative to the loan they applied for until late January 2001. *See* Findings of Fact No. 82, 87, and 91-91 and supporting Exhibits. This was clearly ***not*** within three business days following Allstate's receipt of the Thompsons' loan application, as required by RCW 19.146.030(1).

15. The evidence demonstrates that the Respondents did not provide the Mattesons with a complete TIL disclosure and that the Respondents did not timely provide the Thompsons with a TIL disclosure. Thus, I conclude that there is clear, cogent, and convincing evidence that the Respondents violated RCW 19.146.0201(6) and RCW 19.146.030(1)-(2) through these incomplete and/or untimely TIL disclosures.

16. Additionally, DFI has alleged that the Respondents failed to provide accurate TIL disclosures in the Brown and Moreland loan transactions, resulting in

[47] *See* Finding of Fact No. 87 and accompanying discussion in footnote 20. It should be noted that RCW 19.146.0201(8) provides that it is a violation of the Act for any mortgage broker to "negligently make 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." Although DFI refrained from making any such charges in this matter, the undersigned ALJ concludes that the evidence presented in this proceeding, especially the last-minute documentation presented by Mr. Warnock at hearing, would support such allegations. It appears to be the Respondents' good fortune that the Department chose not to pursue additional charges in this regard.

understatements of the APR for both loans. As indicated below, I conclude that the record supports the Department's allegations regarding understatement of these APRs:

16a. In the Brown transaction, the handwritten TIL noted the APR to be 8.0%. *See* Findings of Fact No. 10-11 and supporting Exhibits. However, when the figures included on the TIL presented to Ms. Brown are plugged into an APR calculator, the correct APR is shown to be 8.3046%, a higher number implying higher loan costs.[48]

16b. In the Moreland transaction, the handwritten TIL noted the APR to be 7.40% and the Amount Financed to be $155,000.00. *See* Findings of Fact No. 44-45 and supporting Exhibits. However, $155,000.00 is *not* the correct "Amount Financed" but instead is the loan amount *before* subtracting the relevant fees of $4,718.00. Thus, after correcting the Amount Financed to be $150,282.00 and plugging the other figures included on the TIL presented to the Morelands into an APR calculator, the correct APR is shown to be 7.5638%, a higher amount (implying higher loan costs), and the actual finance charge is calculated to be a corresponding $4,718.00 higher, or $230,371.20.[49]

17. The evidence demonstrates that the Respondents understated the APR for both the Brown and Moreland transactions. In addition to the Act's requirement for timely disclosure of the APR, the Act also prohibits advertising "any rate of interest without conspicuously disclosing the [APR] implied by such rate of interest or otherwise

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[48] Interestingly, the additional TIL produced by Mr. Warnock at hearing regarding the Brown transaction (Exhibit B, p 40) *does* contain an accurately calculated APR.

[49] Even if the actual figures on the TIL presented to the Morelands are plugged into the APR calculator, the figure of 7.40% is still not correct, but overstated by 0.15% from the actual APR of 7.25%.

fail to comply with any requirement of the truth-in-lending act . . ." Thus, I conclude that there is clear, cogent, and convincing evidence that the Respondents violated not only RCW 19.146.0201(6) and RCW 19.146.0201(10), but also RCW 19.146.030(2)(a) through these incorrect disclosures and understatements of the APRs in both the Brown and Moreland loans.

18. *Failure to Provide Adequate Good Faith Estimates* (GFE). DFI has alleged that the Respondents failed to timely provide GFE disclosures in the Brown and Thompson loan transactions, as required by RCW 19.146.030(2)(b).

18a. In the case of the Brown transaction, Mr. Warnock first met Ms. Brown in his office in early October 1996 and discussed obtaining a new loan for her, including loan rates and payments. However, he did not provide her a GFE until at least several weeks later, in early November. *See* Findings of Fact No. 7 and 10 and supporting Exhibits. At the time, RCW 19.146.030(1) required disclosures, including the GFE, be made "upon receipt of a loan application and before the receipt of any moneys from a borrower." It is undisputed that Ms. Brown met with Mr. Warnock several weeks before she received a GFE disclosure; however, the only evidence of her completing and submitting a loan application shows that this occurred on November 4, 1996, the same date that a number of other required disclosures were provided to her, including the TIL disclosure. Although the GFE provided to Ms. Brown is undated, the evidence in the record circumstantially indicates that this GFE was most probably provided to her along with all of the other documents presented to her by Mr. Warnock on November 4, 1996.

18b. In the case of the Thompson transaction, a loan application was submitted to Allstate on October 10, 2000, via U.S. Postal Service Express Mail. As noted above, the Thompsons did not receive ***any*** disclosures until late January 2001. This was clearly ***not*** within three business days following Allstate's receipt of the Thompsons' loan application, as required by RCW 19.146.030.

19. There is not sufficient evidence that the Respondents' responsibilities under the Act to Ms. Brown were actually triggered by "receipt of a loan application" until November 4, 1996, the same date on which I found the GFE was provided. However, the evidence *does* clearly demonstrate that the Respondents did not timely provide the Thompsons with the required GFE disclosure. Thus, I conclude that there is clear, cogent, and convincing evidence that the Respondents violated RCW 19.146.030(1) and (2)(b) (and therefore RCW 19.146.0201(6)) through the untimely disclosure to the Thompsons, but no such conclusion can be made regarding the Brown transaction, even on a preponderance of the evidence.

20. *Failure to Provide Lock-In Disclosures*. DFI has alleged that the Respondents failed to provide appropriate lock-in disclosures in the Brown, Matteson, and Thompson loan transactions, as required by RCW 19.146.030(2)(c) and, as to the Thompson transaction, RCW 19.146.030(2)(e).

20a. In the case of the Brown transaction, the only evidence of a rate lock agreement is found in an undated document submitted by Allstate but unsigned by Ms. Brown. *See* Exhibit 36, p 106. There is no proof that this rate lock document was provided to her "upon receipt" of her loan application, as was then required by RCW

19.146.030(1). However, as indicated above in the discussion regarding the GFE, the record circumstantially indicates that this lock-in agreement was most probably provided to her on November 4, 1996, along with all of the other documents presented to her by Mr. Warnock.

20b. In the case of the Matteson transaction, there is absolutely no evidence that *any* rate lock-in disclosure was provided. Although it is not absolutely necessary under the law to provide such a lock-in agreement, RCW 19.146.030(2)(c) does require an alternate disclosure that the interest rate offered to the borrower has *not* been locked and may be subject to fluctuation. Again, there is no evidence of *any* such disclosure being provided to the Mattesons at any time.

20c. In the case of the Thompson transaction, a loan application was submitted to Allstate on October 10, 2000. As noted above, the Thompsons did not receive ***any*** disclosures until late January 2001, including a *Borrower-Broker Agreement* describing a 15-day lock-in agreement signed by the Thompsons on January 31, 2001. *See* Exhibit 81, p 439. This was clearly ***not*** within three business days following Allstate's receipt of the Thompsons' loan application, as required by RCW 19.146.030. Although the Respondents have supplied a *Borrower-Broker Agreement* purportedly sent to the Thompsons on September 26, 2000 (***before*** the Thompsons ever sent in their loan application), this document is *not* acknowledged in any way by the borrowers, including the date it was supposedly provided to them. *See* Exhibit 84, p 465. Therefore, due to the credibility problems previously noted with regard to this and the

associated documents also presented as having been sent to the Thompsons in September 2000, I cannot consider this version of the *Agreement* to be reliable.

21. The evidence demonstrates that the Respondents did not provide the Mattesons with *any* lock-in disclosure and that the Respondents did not timely provide the Thompsons with the applicable lock-in disclosure. Thus, I conclude that there is clear, cogent, and convincing evidence that the Respondents violated RCW 19.146.030(2)(c) and (e) (and therefore RCW 19.146.0201(6)) through these omissions regarding provision of lock-in disclosures to the Mattesons and the Thompsons; however, no such conclusion can be made regarding the Brown transaction, even on a preponderance of the evidence.

22. *Failure to Provide Adequate Third-Party Notices*. DFI has alleged that the Respondents failed to timely provide third-party disclosures in the Thompson loan transaction, as required by RCW 19.146.030(2)(d) and (f). As noted above, the Thompsons did not receive ***any*** disclosures until late January 2001, including a *Third Party Disclosure* describing their responsibility to pay for costs incurred if they chose not to take an approved loan, a *Cash Deposit Policy Disclosure Brokers/Borrowers Agreement* describing that any moneys paid for third-party services were to be held in a trust account, and an *Appraisal Disclosure* indicating their right to a copy of the appraisal report, each signed by the Thompsons on January 31, 2001. *See* Exhibit 81, pp 427, 430, and 433-434. This was clearly ***not*** within three business days following Allstate's receipt of the Thompsons' loan application, as required by RCW 19.146.030. Therefore, I conclude that there is clear, cogent, and convincing evidence that the

Respondents violated RCW 19.146.030(2)(d) and (f) (and therefore also violated RCW 19.146.0201(6)) through these omissions regarding timely provision of third-party disclosures to the Thompsons.

Prohibition Against Charging Certain Fees

23. RCW 19.146.0201 provides in pertinent part as follows:

> **Loan originator, mortgage broker -- Prohibitions -- Requirements.** It is a violation of this chapter for a loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1) (d) or (f) in connection with a residential mortgage loan to:
>
> (4) Solicit or enter 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;
>
> (12) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or 19.146.070.

24. *Improper Increases in Closing Costs*. RCW 19.146.030(4)[50] provides:

> A mortgage broker shall not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the written disclosure pursuant to this section, 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. However, if the borrower's closing costs, excluding prepaid escrowed costs of ownership as defined by rule, does not exceed the total closing costs in the most recent good faith estimate, no other disclosures shall be required by this subsection.

[50] Prior to July 27, 1997, this section was codified as RCW 19.146.030(5). Although its placement in the statute's sequence was altered by the Act's 1997 amendments, its substance was not. The pre-1997 codification is relevant in this matter only to Ms. Brown's complaint.

Essentially, this portion of the Act prohibits a mortgage broker from raising a borrower's fees associated with the loan without good cause and appropriate notice to the client. As explained by the Department in its *Brief*, this prevents "bait-and-switch" scenarios.

25. In this case, DFI has alleged that the Respondents charged impermissible fees in the Brown loan transaction, based upon a failure to ever provide Ms. Brown with a *Good Faith Estimate* of the costs involved in the loan. *See* Exhibit 31, p 70. Based upon my prior findings and conclusions regarding this GFE, above, the Department's allegation in this regard can not be sustained. Thus, I conclude that there is ***not*** clear, cogent, and convincing evidence that the Respondents violated RCW 19.146.030(5) on this particular basis, nor can such a conclusion be made, even on a preponderance of the evidence.

26. *Fees on Loans that Do Not Close*. RCW 19.146.070 provides as follows:

> (1) Except as otherwise permitted by this section, a mortgage broker shall not receive a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed upon by the borrower and mortgage broker.
>
> (2) A mortgage broker may:
>
> (a) If the mortgage broker has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed upon by the borrower and the mortgage broker, and the borrower fails to close on the loan through no fault of the mortgage broker, charge a fee not to exceed three hundred dollars for services rendered, preparation of documents, or transfer of documents in the borrower's file which were prepared or paid for by the borrower if the fee is not otherwise prohibited by the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended; or
>
> (b) Solicit or receive fees for third party provider goods or services in advance. Fees for any goods or services not provided must be refunded to the

> borrower and the mortgage broker may not charge more for the goods and services than the actual costs of the goods or services charged by the third party provider.

This section of the Act essentially prohibits a mortgage broker from charging a fee of more than $300.00 when a borrower decides not to complete an approved loan transaction. Of course, the law allows the mortgage broker to recover any costs actually incurred for a third-party provider's services in support of such a canceled loan.

27. In this case, DFI has alleged that the Respondents indicated an ability to or actually did charge impermissible fees in the Brown, Matteson, and Moreland loan transactions, in violation of RCW 19.146.070 and, thereby, RCW 19.146.0201(12).

27a. Ms. Brown did receive a loan from Allstate in December 1996, albeit a different loan than that she originally requested and one that was not to her satisfaction. *See* Findings of Fact No. 15-18 and supporting Exhibits. Even so, the *Broker's Fee Agreement* presented to Ms. Brown on November 4, 1996, contained language stating that upon a lender's approval of the loan application, Ms. Brown would incur an "unconditioned obligation to pay Allstate" a commission equal to 3% of the loan amount. *See* Finding of Fact No. 12 and supporting Exhibit. In Ms. Brown's case, this figure equated to a commission of $3,420.00, much higher than the maximum fee of $300.00 permitted by RCW 19.146.070. The language contained in this disclosure violated this portion of the Act and, despite the fact that Ms. Brown *did* receive a loan from Allstate, this does not effectively moot the issue because it was not "on the terms and conditions agreed upon by the borrower and mortgage broker."

27b. The Mattesons did receive a loan from Allstate in August 1997, albeit a different loan than that they had originally requested and one that was not to their satisfaction. *See* Findings of Fact No. 34-35 and supporting Exhibits. Even so, the undated *Broker's Fee Agreement* presented to the Mattesons stated:

> **COMMISSION:** A commission will have been earned by company upon Allstate Financial Services Inc. receipt of approval and delivering of message to applicant. Past of approval constitutes an unconditioned obligation to pay Allstate Financial Services Inc. a commission equal to 0 % of the principal amount committed or approved. *FLAT RATE*

See Exhibit 47, p 167 (words "flat rate" handwritten). Further, the *Loan Authorization* presented to the Mattesons on June 14, 1997, contained the following language:

> When approval or commitment for the loan is successfully negotiated for us, we agree to pay up to a max of $1300 % the amount financed to Allstate.....

See Exhibit 47, p 164. Thus, I conclude that the "flat rate" referred to in the *Broker's Fee Agreement* was a commission of $1,300.00, much higher than the maximum fee of $300.00 permitted by RCW 19.146.070. The language contained in this disclosure violated this portion of the Act and, despite the fact that the Mattesons *did* receive a loan from Allstate, this does not effectively moot the issue because it was not "on the terms and conditions agreed upon by the borrower and mortgage broker."

27c. Unlike Ms. Brown and the Mattesons, the Morelands did *not* receive a loan from Allstate. *See* Findings of Fact No. 50-53 and supporting Exhibits. The undated *Broker's Fee Agreement* presented to the Morelands (apparently on December 14, 1997), contained language indicating that upon a lender's approval of the loan application, the Morelands would incur an "unconditioned obligation to pay Allstate" a commission equal to 1.5 % of the loan amount. *See* Findings of Fact No. 44 and 47

and Exhibit 48, p 213.[51] Given the Moreland's proposed loan of $155,000.00, this figure equated to a commission of $2,325.00, much higher than the maximum fee of $300.00 permitted by RCW 19.146.070(2)(a). Clearly, the language contained in this document violated this portion of the Act.

27d. Further, Mr. Warnock's subsequent attempt to collect a slightly lower 1% commission of $1,550.00 as well as other non-third-party provider costs (specifically a processing fee of $400.00 for Ms. Kala Washington's work on the loan) was also obviously in excess of the amount authorized by the statute (*see* Finding of Fact No. 54). This egregious violation of the Act is even further aggravated by Mr. Warnock's near-quotation of and reference to an RCW provision in the letter he sent to the Morelands asserting his right to collect these fees:

> The Mortgage Broker has obtained for the borrowers, Mr and Mrs Robert Moreland a written commitment from a lender for a loan on the terms and conditions agreed upon the borrowers and the broker, and the borrower failed to close on the loan through no fault of the mortgage broker, the borrowers are liable for a fee of 1% of the loan amount $155,000.00 equals to $1550.00 plus all third party cost.

[51] *See also* Exhibit 48, pp 210-11, the *Good Faith Estimate of Settlement Charges* provided to the Morelands on December 14, 1997. It contains a similar provision but indicating borrower liability for only a 1% fee.

In accordance to section 8 of RCW 19.146.070.[52]

See Exhibit 48, p 205.

27e. Finally, it should be noted that Mr. Warnock's letter to the Morelands sought to collect a fee of $105.00 for third-party services provided by Commonwealth Title & Escrow. Although RCW 19.146.070 permits the collection of third-party provider fees when a loan does not close due to a borrower backing out of the transaction, the Act limits such collection to the actual costs incurred. Here, there is no evidence of the actual costs Commonwealth Title incurred, such as an invoice to Allstate for the failed transaction. The HUD-1 drawn up in anticipation of the loan closing indicates that Commonwealth would have been entitled to various fees well in excess of the $105.00 sought in Mr. Warnock's letter (*see* Exhibit 48, p 237), but there is also evidence that potentially indicates Commonwealth would have only received $55.00 as a fee for the cancellation of a title insurance policy (*see* Exhibit 48, p 269). Thus, due to a lack of solid evidence to support any finding that Commonwealth (and/or Allstate) actually did incur the $105.00 cost that Mr. Warnock sought to collect from the Morelands, this action was also in violation of the Act.

28. Additionally, the *Estimated Closing Costs* document that I have found was provided to Ms. Brown contains language that violates RCW 19.146.070. This same form was provided to the Mattesons. The top of the second page of this form refers to a

[52] It should be noted that "section 8 of RCW 19.146.070" does not exist and has never existed.

"non-refundable deposit" received from the borrower. *See* Exhibit 35, pp 82-83 and/or Exhibit B, pp 38-39; *see also* Exhibit 47, pp 168-69. Although no deposit was apparently paid by Ms. Brown or by the Mattesons, this does not address the implication contained in Allstate's form that such a non-refundable deposit could be requested from a client. The Act simply does not permit such an arrangement.

29. After reviewing the available evidence in each of these complaints, I conclude that there is clear, cogent, and convincing evidence that the Respondents violated RCW 19.146.070 by indicating an ability to or actually attempting to charge Ms. Brown, the Mattesons, and the Morelands a fee or fees in excess of those permitted under the Act when the borrower does not receive or close upon the agreed loan. Again, I conclude that the fact that Ms. Brown and the Mattesons actually obtained loans from the Respondents does not negate the applicability of this provision of law. An additional violation of this section occurred when Allstate indicated to Ms. Brown and the Mattesons an ability to collect an impermissible fee, whether or not the loan transaction successfully closed. I further conclude that each of these violations is also a violation of the prohibitions contained in RCW 19.146.0201 (4)[53] and (12).

[53] I note that the Department's *Statement of Charges* did not actually allege that the Respondents violated this particular section of the Act. Therefore, because the Respondents were not specifically put on notice of a need to defend against such charges, my conclusion that RCW 19.146.0201(4) was violated will not be relied upon in the calculation of the appropriate sanction in this matter.

Maintenance of Accurate Records, Allowing Inspection, and Complying with Department's Investigations

30. RCW 19.146.060 provides in pertinent part as follows:

> (2) Except as otherwise provided in subsection (3) of this section [regarding out-of-state mortgage brokers], a mortgage broker shall maintain accurate and current books and records which shall be readily available at the mortgage broker's usual business location until at least twenty-five months[54] have elapsed following the effective period to which the books and records relate.
>
> (4) "Books and records" includes but is not limited to:
>
> (a) Copies of all advertisements placed by or at the request of the mortgage broker which mention rates or fees. In the case of radio or television advertisements, or advertisements placed on a telephonic information line or other electronic source of information including but not limited to a computer data base or electronic bulletin board, a mortgage broker shall keep copies of the precise script for the advertisement. All advertisement records shall include for each advertisement the date or dates of publication and name of each periodical, broadcast station, or telephone information line which published the advertisement or, in the case of a flyer or other material distributed by the mortgage broker, the dates, methods, and areas of distribution; and
>
> (b) Copies of all documents, notes, computer records if not stored in printed form, correspondence or memoranda relating to a borrower from whom the mortgage broker has accepted a deposit or other funds, or accepted a residential mortgage loan application or with whom the mortgage broker has entered into an agreement to assist in obtaining a residential mortgage loan.

The Department adopted WAC 206-660-140(3) to supplement the Act's definition of "books and records" as follows:

> Books and records include without limitation: The original contracts for the broker's compensation, an accounting of all funds received in connection with

[54] Prior to July 27, 1997, this section required a mortgage broker to maintain books and records for nearly twice as long, a period of 4 years.

> loans, a copy of the settlement statements as provided to borrowers, a record of any fees refunded to applicants for loans that did not close, copies of the good faith estimates and all other written disclosures, and all other correspondence, papers or records relating to loan applications.

31. In this case, DFI has alleged that the Respondents failed to maintain a copy of and provide to the Department a copy of the Matteson's loan application. A review of the entirety of the documents Allstate submitted to DFI regarding the Matteson loan transaction supports this allegation (*see* Exhibit 47). Although it might appear that Allstate was not required to keep a copy of such documents after September 1999 (twenty-five (25) months after the Matteson's loan closed), it is important to note that the Department first notified Allstate of the Matteson's complaint in May 1998 (*see* Exhibit 38). Thus, at the time that the Department first requested documents regarding the Matteson transaction, the Act required Allstate to be maintaining those books and records. Allstate should have provided the Matteson's loan application to DFI. Therefore, I conclude that there is clear, cogent, and convincing evidence that the Respondents violated RCW 19.146.060(2) by failing to keep a complete copy of the documentation involved in the Matteson loan.

32. Although the Department's *Statement of Charges* does not allege any additional violations of RCW 19.146.060(2) with regard to the other complaints involved in this matter, it became readily apparent at hearing that Allstate's record keeping leaves much to be desired. For each and every complaint that DFI forwarded to Allstate, this mortgage broker's response was slow and, when a response was forthcoming, less than complete. However, as indicated below (with a slight exception as to Ms. Brown's complaint), Allstate was put on notice of ***all*** the complaints within the

25 month period that it was required to maintain transactional records at its usual business location:

Complainant	Last Day of Transaction	Date Notified of Complaint	Number of Months
Brown	Dec 23, 1996	Feb 26, 1998	26
Matteson	Aug 6, 1997	May 7, 1998	10
Moreland	Jan 29, 1998	Feb 12, 1998	01
U.S. Flood Research	Last Qtr 1997	Mar 10, 1998	06 (max)
Mercer & Associates	Mar 15, 1999	Aug 18, 2000	18
Thompson	Feb 1, 2001	Jan 17, 2001	-1

If Allstate's files were maintained in the fashion contemplated by RCW 19.146.060(2), Mr. Warnock should not have encountered any of the record retrieval difficulties that he so painstakingly recounted at hearing. Even so, I decline to go beyond DFI's *Statement of Charges* on this point and make any further conclusions that the Respondents violated RCW 19.146.060(2) in this regard.

33. Apparently, the Department seeks to make this and a related point through alleging violations of a separate portion of the statute for each of the six complaints involved in this case. RCW 19.146.235, *Director -- Investigation powers -- Duties of person subject to examination or investigation*, provides in pertinent part as follows (emphasis added):

> For the purposes of investigating complaints arising under this chapter, the director may at any time, either personally or by a designee, examine the business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person shall act or claim to act under or without the authority of this chapter. For that purpose the director and designated representatives shall have access during regular business hours to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. ***The director or designated person may*** direct or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject

matter of any such examination or investigation, and may ***direct or order such person to produce books, accounts, records, files, and any other documents the director or designated person deems relevant to the inquiry.*** If a person who receives such a directive or order does not attend and testify, or does not produce the requested books, records, files, or other documents within the time period established in the directive or order, then ***the director or designated person may issue a subpoena*** requiring attendance or ***compelling production of books, records, files, or other documents.*** No person subject to examination or investigation under this chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

34. Specifically, DFI has alleged that the Respondents failed to provide timely and/or adequate responses to the Department's notification of complaints pending against Allstate. Even a cursory review of the record compiled in this matter shows a pattern of untimely and inadequate responses to the Department, when any response was given at all. The following table summarizes a majority of the relevant dates:

Complaint	Date Notified of Complaint	Date of DFI Follow-Up[55]	1st Response (with documents)
Brown	Feb 26, 1998	Apr 22, 1998	Jul 23, 1998
Matteson	May 7, 1998	- - - - - - - - - -	Jul 23, 1998
Moreland	Feb 12, 1998	Mar 10, 1998	Mar 9, 1998
U.S. Flood Research	Mar 10, 1998	Apr 22, 1998	May 18, 1998
Mercer & Associates	Aug 18, 2000	Sep 6, 2000	- - - - - - - - - -
Thompson	Jan 17, 2001	- - - - - - - - - -	Feb 6, 2001

34a. In the Brown complaint, the Department initially gave Allstate over two weeks to reply to its initial request, setting a response deadline of March 13, 1998. The Department's follow-up letter gave Allstate an additional two weeks, with a deadline of May 7, 1998. Despite these deadlines, Mr. Warnock made his first attempt to reply on May 20, 1998, failing to send any documents but only a letter stating that his attorney

[55] Although the Act authorizes the Department to issue subpoenas, the Department did not utilize this tool in this case except in the complaint filed by Mercer & Associates. *See* Exhibit 79.

would be responding “by the end of next week.” When the attorney finally submitted a reply supported by documentation, that reply was incomplete. Although DFI’s resolution letter of November 20, 1998, made it clear that Allstate was to take specific actions to resolve the matter, neither Mr. Warnock nor his attorney made any attempt to comply with its response deadline. To date, Allstate has not completed DFI’s taskings.

34b. In the Matteson complaint, the Department initially gave Allstate over two weeks to reply to its initial request, setting a response deadline of May 22, 1998. Mr. Warnock’s first attempt to reply on May 14, 1998, though timely, failed to send any documents but only a letter stating that his attorney would be responding “by the end of next week.” When the attorney finally submitted a reply supported by documentation, that reply was incomplete. Although DFI’s resolution letter of March 18, 1999, made it clear that Allstate was to take specific actions to resolve the matter, neither Mr. Warnock nor his attorney made any attempt to comply with its response deadline. To date, Allstate has not completed the Department’s taskings.

34c. In the Moreland complaint, the Department initially gave Allstate two weeks to reply to its initial request, setting a response deadline of February 27, 1998. Mr. Warnock’s made his first attempt to reply on March 9, 1998, sending only some of the requested documents. When the Department indicated that this reply was inadequate and set a new response deadline of April 8, 1998, Mr. Warnock failed to send any additional response. Although DFI’s resolution letter of October 8, 1998, made it clear that Allstate was to take specific actions to resolve the matter, Allstate’s attempt to comply with its response deadline by simply ceasing to pursue any collection

action against the Morelands was wholly inadequate. Allstate's subsequent replies to the Department remained incomplete. To date, Allstate has not addressed the Department's demands with regard to the Morelands' complaint.

34d. In the U.S. Flood complaint, the Department initially gave Allstate two weeks to reply to its initial request, setting a response deadline of March 25, 1998. The Department's follow-up letter gave Allstate additional time, with a deadline of May 7, 1998. Despite these deadlines, Mr. Warnock made his first attempt to reply on May 27, 1998, indicating only that he had sent a $100.00 payment to the complainant. Despite the Department's resolution letter of September 15, 1998, which set out clear actions needed to remedy the complaint, Allstate never did make any attempt to provide the documents requested by the Department or otherwise comply with that letter.

34e. In the Mercer & Associates complaint, the Department initially gave Allstate over two weeks to reply to its initial request, setting a response deadline of September 3, 2000. The Department's subpoena gave Allstate until September 13, 2000, to respond. Despite these deadlines, Mr. Warnock made no attempt to reply to the Department, corresponding directly and only with the complainant. Although DFI's resolution letter of November 2, 2000, made it clear that Allstate was to take specific actions to resolve the matter, neither Mr. Warnock nor his attorney made any attempt to comply with its directives. To date, Allstate has not completed DFI's taskings.

34f. In the Thompson complaint, the Department initially gave Allstate over two weeks to reply to its initial request, setting a response deadline of February 1, 2001. Although Mr. Warnock made an attempt to reply on February 6, 2001, sending a

portion of the requested documents, this response was incomplete. Allstate never produced its files in the Thompson loan for Department inspection until the hearing in this matter was well underway.

35. Throughout the Department's investigation (*see* Exhibits 29 and 47 [at p 197]) as well as at the hearing itself, Mr. Warnock regularly suggested that he was not able to respond to the Department's requests for information without the assistance of his attorney, Mr. Greg Wilson. However, this explanation for delay is rather inscrutable because on some occasions, Mr. Warnock ***did*** correspond directly with the Department, without resort to legal counsel (*see* Exhibits 69 and 84). Under the Act, it is a mortgage broker's individual responsibility to maintain relevant books and records. The Act does not allow a licensee to delegate this responsibility to a lawyer or other agent. As Allstate's Designated Broker, Mr. Warnock was solely responsible to answer when the Department came calling, whether with a complaint or simply to inspect his records.

36. After a thorough review of the record in this matter, I conclude that there is clear, cogent, and convincing evidence that the Respondents violated RCW 19.146.235 by failing to comply with the Department's authority to investigate each and every one of the six complaints addressed in this proceeding.

Obligation to Timely Pay Third-Party Providers

37. RCW 19.146.0201 provides in pertinent part as follows:

> **Loan originator, mortgage broker -- Prohibitions -- Requirements.** It is a violation of this chapter for a loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1) (d) or (f) in connection with a residential mortgage loan to:

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

38. In this matter, two third-party providers complained and DFI alleged that Allstate failed to fully compensate them following completion of their services.

38a. First, U.S. Flood Research complained that they had not been paid $95.23 for several flood certifications that were completed in October, November, and December 1997. The Department received this complaint on March 9, 1998, and forwarded it to Allstate for a response the following day. When Mr. Warnock finally responded on May 18, 1998, he did not provide any of the relevant documentation requested by the Department, but only four "example" HUD-1 statements showing that in his experience, these types of third-party fees were typically paid by the lender.[56]

38b. Through his response, Mr. Warnock essentially conceded a violation of RCW 19.146.0201(11) by paying off U.S. Flood's outstanding fees on May 11, 1998,[57] well over 90 days after the last possible completion date of any of these third-party services performed in 1997. Mr. Warnock's statement of belief that the lender should

[56] Notably, none of these HUD-1 statements named U.S. Flood Research as the vendor for the flood certification services involved in the example loan closing transactions.

[57] Mr. Warnock submitted a copy of a check for $100.00 payable to U.S. Flood Research drawn upon an account bearing both his own name and "Allstate Financial," but showing a different address than that of his business. *See* Exhibit 76, p 390.

have taken care of these payments does not excuse his own failure to ensure compensation to a third-party. The Act places this burden squarely on the shoulders of the licensed mortgage broker.

38c. Second, Mercer & Associates complained that they were not fully paid for an appraisal that was completed on March 15, 1999. Although Allstate made a payment to them on August 30, 1999, a balance of $50.00 remained owing until October 6, 2000, when Allstate responded to their complaint filed with DFI by making a payment of $50.00 directly to the third-party provider (without notifying the Department). There is no evidence on record of the closing date of the loan associated with this appraisal, let alone the date any such documents would have been recorded. In addition, there is no evidence on record that Mr. Warnock provided any notification to Mercer & Associates, whether written or otherwise, that he was raising any dispute with their billing to him. Thus, as with the previous example, it is only possible to evaluate Allstate's compliance with this portion of the Act by measuring ninety days from the completion of the third-party's services and determining whether or not Allstate had paid for the services in full on that date.

38d. Here, Mercer & Associates performed the appraisal in question on March 9, 1999, and completed the *Appraisal Report* on March 15, 1999. Allowing for the passage of ninety days, the Act required that payment in full be made on or before June 13, 1999. Allstate failed to make *any* payment until August 30, 1999, more than two months after the deadline imposed by the Act, and failed to pay the full amount owing until October 6, 2000, nearly sixteen months too late.

38e. Mr. Warnock's argument that the client was fully responsible for the purchase of this appraisal, although factually supportable at least in part through Lisa Riggs' handwritten instructions on the *Appraisal Order Form*, is not a defense to this statutory requirement. Even if I were to allow for an extension of the 90 day payment deadline due to the potentially confusing situation regarding the client's intent to pay for the appraisal as testified to by Mr. Warnock and Ms. Moore at hearing, this would not cure Allstate's failure to make diligent attempts to resolve the third-party's claims for payment until prompted to do so by DFI.

39. After considering all of the available evidence on these issues, I conclude that there is clear, cogent, and convincing evidence that the Respondents violated RCW 19.146.0201(11) by failing to ensure timely payment to both U.S. Flood Research and to Mercer & Associates for the third-party provider services described above.

Obligations to Refrain from Deceptive Practices

40. RCW 19.146.0201 provides in pertinent part as follows:

> **Loan originator, mortgage broker -- Prohibitions -- Requirements.** It is a violation of this chapter for a loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1) (d) or (f) in connection with a residential mortgage loan to:
>
> (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
>
> (2) Engage in any unfair or deceptive practice toward any person;
>
> (3) Obtain property by fraud or misrepresentation;
>
> (7) Make, 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 or engage in bait and switch advertising;
>
> (9) Make 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.

In essence, these sections of the statute reinforce the State Legislature's declaration[58] regarding the need for "honesty and fair dealing" between mortgage brokers and our state's citizens. In order to avoid a transgression of these prohibitions, a mortgage broker need only adhere to a policy of openness, trustworthy offers, and full disclosure.

41. In this case, DFI has alleged that the Respondents engaged in misleading and/or deceptive practices in the Moreland and Thompson loan transactions, variously violating RCW 19.146.0201(1), (2), (3), and (7).

41a. In the Moreland transaction, the evidence indicates that Allstate engaged in a "bait-and-switch" when it initially presented a loan with monthly payments of $1,057.37 and, later, the monthly loan payments had ballooned to $1,415.09. *See* Findings of Fact Nos. 45 and 48 and supporting Exhibits. Although the Morelands noticed and complained about this dramatic (33%) increase in financial responsibility, at closing they were presented with the same objectionable higher-payment loan. *See* Finding of Fact No. 50 and supporting Exhibits.

41b. Although the mere engaging in "bait-and-switch" tactics is by itself sufficient to violate the Act, Ms. Goerke, Allstate's primary representative on the

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[58] *See* RCW 19.146.005.

transaction, tried to explain away the lender's federally required disclosures by further increasing the level of confusion in the transaction. Worse yet, she did not undertake to reassure the borrowers directly, but enlisted their son to do so. In her e-mail, she said:

> Heard your dad had quite a fright the other day about the package that he received in the mail. I should of called him to warn him it would be coming. When I send a package to the lender, by law they have to send some bogus reply to the client. Why I'm not sure. All it does is cause confusion. Tell your dad I'm sorry about that. And I'm sure David cleared it up for me since I was out of the office at the time.

Federal law obligates lenders to make various disclosures to borrowers, separate and apart from those required of mortgage brokers. Ms. Goerke's characterization of a lender's documentation sent out to the Morelands in compliance with federal Truth In Lending laws as "some bogus reply" is nothing short of astounding. Whether this was an indication of the level of Ms. Goerke's ignorance of the mortgage industry or another step in the campaign of smoke and mirrors to have the Morelands accept whatever loan package Allstate cared to put in front of them at closing is immaterial. Regardless of the intent, this course of dealing with the Morelands violated the Act.

41c. When the Morelands balked and refused to accept the unassumable loan presented to them on January 16, 1998, Allstate, through both Ms. Washington and Mr. Warnock, made further attempts to convince them to accept the loan. All that the Morelands wished to do was pay Allstate for the third-party costs incurred for the appraisal of their home and gracefully walk away for the transaction. Mr. Warnock did not permit the Morelands to do this, attempting to exact legally impermissible fees from them and then actually threatening to place a lien on their home. *See* Findings of Fact No. 51-54 and supporting Exhibits.

41d. As previously noted, the majority of the fees Mr. Warnock threatened to collect through the lien were unlawful. When considered in their entirety, the series of events surrounding the Morelands' visit to Allstate's office in late January 1998 and the eventual letter threatening the lien are a scheme by Allstate to mislead and deceive the Morelands.

41e. In the Thompson transaction, Robin Patterson, an Allstate "senior loan officer" made a July 1999 promise to refinance the Thompson's then new loan "for no closing costs" because the loan accomplished in 1999 would convert to an adjustable rate loan two years later. When the Thompsons sought to take advantage of this promise, Allstate declined to honor its terms. Further, Ms. Patterson eventually submitted an unsworn statement to the effect that she never provided the Thompsons with the letter and that it wasn't her signature that appeared on the document. *See* Finding of Fact No. 81; *see also* Exhibit 81, p 408 and Exhibit L.[59]

41f. As indicated above, I have found that Ms. Patterson did present the Thompsons with the letter offering to refinance their loan with no closing costs. Thus, Allstate's failure to honor this commitment made on behalf of the company was improper, violating the Thompson's reliance on Ms. Patterson's earlier assurance. Although there is no evidence that Mr. Warnock was directly involved in this 1999

[59] While the circumstances leading to such a letter raise questions of their own and certainly pique the undersigned's curiosity, the loan transaction involving Ms. Patterson is not before this tribunal.

promise to the Thompsons, the promise was made on behalf of Allstate. Therefore, when Mr. Warnock refused to honor the promise, his actions converted the promise into a device that misled the Thompsons back to Allstate for another mortgage transaction.

41g. Additionally, Allstate engaged in deceptive behavior with regard to the loan sought by the Thompsons at the end of 2000 and in early 2001. As previously noted, before any appraisal had even been requested, Mr. Warnock suggested that he could obtain a $175,000.00 loan for the Thompsons. Further, Allstate failed to timely send any loan documents or disclosures to the Thompsons, leaving them to rely solely on the word of Allstate's various agents and employees. When viewed altogether, this behavior also amounts to an unfair and deceptive practice in violation of the Act.

41h. In addition to these instances, it appears that Mr. Warnock's course of dealing with Ms. Brown would also have been a violation of RCW 19.146.0201(1), (2), (3), and perhaps even RCW 19.146.0201(5).[60] When Ms. Brown first came into Allstate's offices to inquire about possible refinance options, Mr. Warnock presented her with an attractive offer. When she indicated her interest in obtaining the proffered loan, Mr. Warnock advised her that she need not make further payments on her existing mortgages because he could obtain and close the new loan before the end of the current month, only three weeks away. *See* Finding of Fact No. 6.

[60] I recognize that the Department's *Statement of Charges* does not contain an allegation that the Respondents violated RCW 19.146.0201(5). *See* additional discussion at Conclusion of Law No. 49 and its accompanying footnote.

41i. When Mr. Warnock failed to live up to this pledge, it placed Ms. Brown in an unfavorable position with regard to her outstanding debts, making her delinquent. Further, because those creditors had security interest in her house, missing further payments could have jeopardized her status as a homeowner. Finally, because she had already commenced her remodeling, Ms. Brown did not have any excess funds available to bring her debts current. In essence, Ms. Brown was trapped in a situation created by Mr. Warnock's initial (mis)representation to her, making her dependent on Allstate to provide her with a new loan, whether she liked the terms or not. If this sort of chicanery does not qualify as a deceptive and misleading practice under the Act, then it is difficult to imagine a situation that would.[61]

42. After considering all of the available evidence on these issues, I conclude that there is clear, cogent, and convincing evidence that the Respondents violated RCW 19.146.0201(1), (2), and (7) by engaging in a "bait-and-switch" with regard to the loan packages offered to the Morelands and making an unlawful threat to place a lien on the Moreland's property. I further conclude that there is clear, cogent, and convincing evidence that the Respondents violated RCW 19.146.0201(1), (2), and (3) by failing to honor Ms. Robin Patterson's promise to the Thompsons. Despite the above discussion

[61] Although I am somewhat surprised by the Department's failure to bring charges to address this particular conduct, perhaps the overwhelming volume of misdeeds involved in the six complaints handled simultaneously in this matter assures that some of Allstate's misconduct must go overlooked. Again, as noted in a previous footnote, I will not be relying on any uncharged misconduct in the calculation of the appropriate sanction in this matter, below.

of illegitimate behavior by Allstate with regard to Ms. Brown, I decline to enter here any conclusion adverse to Allstate regarding that particular loan.

43. Finally, I note that although the evidence in this case does not indicate that Mr. Warnock or any other Allstate employee ever actually paid a property appraiser for the purpose of influencing his or her judgment as to the true market value of any parcel of real estate, one portion of the Thompson complaint does raise concerns in this area. Specifically, the facts indicate that Mr. Warnock threatened to withhold payment on an appraisal of the Thompson property if Mr. Pray could not submit a report valuing the home at $175,000.00. Only the Thompsons' own previously stated willingness to pay for the appraisal costs resolved that impasse. *See* Findings of Fact No. 83 and 86; *see also* Exhibit 81, p 406. Thus, although there may not be sufficient evidence to support a conclusion that the Respondents violated RCW 19.146.0201(9), the facts set out above should be a signal of pealing alarm bells tolling the presence of unethical behavior by Mr. Warnock.[62] Therefore, I note my concerns at this point but will not consider the matter beyond the discussion contained in this paragraph.[63]

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[62] WAC 208-660-190 provides that "[a]ny threat, whether oral or written, direct or implied, by a mortgage broker to withhold payment of the standard appraiser's fee constitutes the making of a payment for the purpose of influencing the independent judgment of the appraiser with respect to the value of the property, in violation of RCW 19.146.0201(9)." Under this rule's interpretation, the peal of alarm bells

regarding Mr. Warnock's above-noted behavior ring even louder.

[63] As in a previous footnote, I point out that the Department's *Statement of Charges* did not allege that the Respondents violated RCW 19.146.0201(9). Therefore, even if the evidence had been sufficient to support a conclusion that this section of the Act had been violated, due to the Respondents not being specifically put on notice of a need to defend against such a charge, I could not rely on such a conclusion in the calculation of the appropriate sanction in this matter. Of course, for that same reason, my suspicion as to the nature of Mr. Warnock's behavior in this incident shall also not be relied upon in that calculation.

Investigation Fees

44. RCW 19.146.228(2) provides that the Director of the Department of Financial Institutions shall establish fees sufficient to establish the costs of administering the Act, including "an investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter." This statute goes on to note that "mortgage brokers shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of the chapter occurred or when the mortgage broker provides a remedy satisfactory to the complainant and the director and no order of the director is issued." Thus, if an investigation finds that a complaint is unwarranted or can be fully addressed by the mortgage broker without Department intervention, investigation fees are not assessed, regardless of the amount of time invested by the Department.

45. In this matter, the Department undertook an investigation into six different complaints filed against Allstate and Mr. Warnock. In none of these did the Department determine that Allstate had not violated at least some portion of the Act. Further, Mr. Warnock did not present a remedy satisfactory to the Department in any of the complaints, although he did pay the invoices submitted by U.S. Flood Research and Mercer & Associates, satisfying those third-party provider complainants. Finally, DFI issued a resolution letter in all of the complaints except the Thompson matter, and only refrained from doing so in that case because it the Department was already in the process of issuing a *Statement of Charges*. Moreover, the results of this administrative hearing have essentially upheld and ratified the end results of the DFI investigations.

Therefore, I conclude that the Department is authorized by statute to impose fees to cover its investigation costs and collect said fees from Allstate.

46. The Department's *Statement of Charges* indicated its intent to order the Respondents to pay the Department for 72.6 hours of investigation and examination activities at a rate of $45.00 per hour for a total of $3,267.00. Given the number of complaints and the magnitude of documentation involved in this matter, I conclude that this is an eminently reasonable assessment.

Summary of Violations

47. In sum, I conclude that the Respondents violated the following provisions of the Mortgage Broker Practices Act, with many of these sections violated multiple times:

RCW 19.146.030(1) and RCW 19.146.030(2)(a) through (f)
Failure to make required disclosures

RCW 19.146.060(2)
Failure to maintain accurate and readily accessible books and records

RCW 19.146.070
Improperly receiving fees on loans that did not close

RCW 19.146.0201(1), (2), (3), and (7)
Engaging in schemes to mislead borrowers, directly or indirectly
Engaging in unfair or deceptive practices
Obtaining property by fraud or misrepresentation
Making false or deceptive statements regarding terms or conditions

RCW 19.146.0201(4)
Solicit or enter into a contract that indicates the mortgage broker may earn a fee through "best efforts" alone even if no loan is actually obtained for the borrower

RCW 19.146.0201(6)
Failure to make required disclosures from RCW 19.146.030

RCW 19.146.0201(10)
Advertising rates without conspicuously disclosing APR

RCW 19.146.0201(11)
Failure to timely pay third-party providers

RCW 19.146.0201(12)
Attempt to charge or collect fees prohibited by RCW 19.146.070

RCW 19.146.235
Failure to comply with DFI requests and directives

48. Despite this lengthy list of violations committed, I conclude that the Respondents did *not* commit the following violations of the Act as alleged in the Department's *Statement of Charges*:

RCW 19.146.030(2)(b) and (2)(c) (as to GFE and lock-in agreement in Brown loan)
Failure to make required disclosures

RCW 19.146.030(5) (as to Brown loan)
Improper collection of fees benefitting the mortgage broker

49. Although I have concluded that the Respondents did not commit all of the violations alleged against them in the Brown complaint, it is necessary to point out that the Respondents' actions in that transaction may have caused the most harm. As a result of Mr. Warnock's advice, Ms. Brown found herself in a financial tailspin from which she could not escape without accepting an undesirable loan from Allstate.[64] That

[64] RCW 19.146.0201(5) indicates that it is a violation of the Act for a mortgage broker to "solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a person exempt from licensing under RCW 19.146.020 (1) (f) or (g) or a lender with whom the mortgage broker maintains a written correspondent or loan brokerage agreement under RCW 19.146.040." Although the Department's *Statement of Charges* did not allege a violation of this section, it appears that the root cause of Allstate's problems with Ms. Brown came from Mr. Warnock's failure to ensure the interest rate and loan product he was suggesting for Ms. Brown was actually available to her. *See* Findings of Fact No. 6-7 and 14-18. Thus, I conclude that there is clear, cogent and convincing evidence that in addition to all of the other violations already set out in this *Initial Decision*, Mr. Warnock also violated RCW 19.146.0201(5). Even so, as previously noted, due process concerns prevent consideration of this additional violation when an

variable rate loan was no panacea, though, as Ms. Brown soon couldn't afford the rising payments and testified that she had to make another escape by filing bankruptcy. This is exactly the sort of behavior the Legislature was attempting to protect its citizens from when it enacted the Mortgage Broker Practices Act.

50. Additionally, it must be pointed out that DFI's *Statement of Charges* only alleged a violation of the record keeping requirements of RCW 19.146.060(2) as to the Matteson complaint. When that statute's clear language requiring maintenance of "accurate and current books and records" that must be "readily available" at the broker's office is considered in light of the entirety of events discussed in this *Initial Decision*, it becomes obvious that the Department could (and should) have charged Mr. Warnock and his brokerage with a violation of this provision of the Act for each and every one of the six complaints involved herein, as it did with regard to RCW 19.146.225.

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appropriate sanction is determined.

51. Applicants for a mortgage broker's license must demonstrate financial responsibility, sufficient experience, good character, and general fitness to participate in an industry where members of the public will rely on these traits when entering into what might be some of the largest financial transactions they will ever encounter in their entire lives.[65] The Legislature was entirely correct in its declaration that "the brokering of residential real estate loans substantially affects the public interest." After reviewing all of the evidence available in this matter and personally observing Mr. Warnock's reaction to and handling of the allegations brought against him at the hearing, I must conclude that Mr. Warnock does not possess the requisite capabilities and character necessary to allow him to hold a mortgage broker's license. Robert Warnock may very well be a nice person and an upstanding member of his family, church, and other community organizations, but he is not competent to continue in his chosen career field.

Appropriate Penalty

52. RCW 19.146.220 instructs the Director of DFI to enforce the Act and any related rules regarding the licensing of mortgage brokers. That law also indicates that:

> (2) The director may impose the following sanctions:
>
> (b) Suspend or revoke licenses for:
> (iii) Failure to comply with any directive or order of the director; or
> (iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201(1) through (9) or (12), 19.146.205(4), or 19.146.265;

[65] *See* RCW 19.146.205(1)(f) and RCW 19.146.210(1)(c)-(f).

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

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

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

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

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

(ii) Pay restitution to an injured borrower; or

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

(i) Any violation of 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

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

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

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

Additionally, RCW 19.146.220(3) notes that "[e]ach day's continuance of a violation or failure to comply with any directive or order of the Director is a separate and distinct violation or failure." Based upon the above summary of violations committed, I conclude that the Director is certainly authorized to seek a sanction in this matter.

53. Based upon the quantity of violations of RCW 19.146.0201(1), (2), (3), (4), (6), and (7) and the Respondents' well-demonstrated disregard for the Act and the Director's authority to enforce it, I conclude that the Director is authorized by RCW 19.146.220(2)(b) and (e) to both revoke Allstate Financial Services, Inc.'s license and to remove its Designated Broker, Robert Warnock, from office and prohibit his further

participation in the mortgage brokerage industry, both for the five-year period requested in the *Statement of Charges*.[66]

54. Further, based upon the above-noted various and sundry violations of multiple sections of RCW 19.146.0201, additional violations of RCW 19.146.030 and RCW 19.146.265, and the Respondents' failure to comply with numerous directives of the Department's director, I conclude that the Director is authorized to impose fines on the Respondents per the authority of RCW 19.146.220(2)(c).

55. Finally, under the authority of RCW 19.146.220(2)(d), I conclude that the Director may order the Respondents to pay restitution to the borrowers injured by Allstate's and Mr. Warnock's actions in this case.

56. The Department has adopted rules to implement RCW 19.146.220(2) and determine appropriate amounts for fines and penalties when the Act is violated. WAC 206-660-165 provides that "[e]ach violation of any applicable provision of the Mortgage Broker Practices 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." Further, this regulation echoes the statute's position that each day of a continuing violation may be treated as a separate incident.

[66] The Director's authority for these actions is also contained in WAC 208-660-160.

57. The Department has calculated what they consider to be a sufficient and appropriate sanction by itemizing the Respondents' violations of the Act and multiplying the total number of days of sanctionable activity by $100.00 per day. Reviewing the case very conservatively, the Department computed the fine for each section of the Act violated by using periods of either 10, 30, 40, or 45 days, not periods of months or even years as could certainly be the case.[67] According to the Department, the total sanctions sought amount to $50,000.00. *See Statement of Charges* at 17-19.

58. Although it appears obvious to the undersigned ALJ that the Department's calculation was designed to reach the desired amount of $50,000.00 and not attempt to justify a higher fine, I conclude that the evidence in this case does support a ***much*** higher fine if the full weight and authority granted in RCW 19.146.220(2)(c) was brought to bear on this situation. Even so, I conclude that the purpose of the Act is served by the imposition of a fine in the amount of $50,000.00 for the misconduct addressed in

[67] For example, regarding the violations of RCW 19.146.235 (failure to comply with the DFI Director's directives and/or subpoenas), the Department calculated a fine of $23,000.00 based upon a 45 day violation in the Brown complaint ($4,500.00), a 45 day violation in the Matteson complaint ($4,500.00), a 45 day violation in the Moreland complaint ($4,500.00), a 40 day violation in the U.S. Flood Research complaint ($4,000.00), a 45 day violation in the Mercer & Associates complaint ($4,500.00), and a 10 day violation in the Thompson complaint ($1,000.00). Looking only to even one of either the Brown, Matteson, or Moreland complaints that were forwarded to Allstate in the first half of 1998, none of which were ever fully addressed by the Respondents, a fine could be crafted for a period of several years, resulting in a monetary penalty in excess of $700,000.00. The Department showed considerable restraint in requesting a fine of $23,000.00 for violations of RCW 19.146.225 and a total fine of only $50,000.00.

this proceeding. Therefore, I hereby adopt the Department's calculation of the sanction in this amount as set out in the *Statement of Charges*.

59. Additionally, under the auspices of RCW 19.146.220(2)(d)(ii), the Director is authorized to order restitution to injured borrowers. In this case, the Department's *Statement of Charges* sought to have the Respondents pay restitution, as follows:

- to Ms. Brown..... in the amount of $3,921.00
- to the Mattesons..... in the amount of $ 175.00
- to Mercer & Associates.... in the amount of $ 50.00
- to the Thompsons..... in the amount of $1,575.00

In total, the Department's *Statement of Charges* sought to order restitution to these four injured parties in the sum of $5,721.00.

59a. In the case of the Brown transaction, I concluded that Allstate violated the Act by failing to properly disclose the correct APR and by utilizing disclosures that indicated an ability to earn a fee or commission even if Ms. Brown did not obtain a loan. Additionally, I concluded that Allstate failed to properly comply with the Department's investigation of her complaint. Based upon the record, I conclude that it is appropriate for Allstate to refund to Ms. Brown the $3,000.00 loan origination fee as well as the processing fee of $400.00 and administration fee of $100.00, for a total of $3,500.00. Although the Department's Statement of Charges also seeks additional reimbursement to Ms. Brown for the appraisal ($350.00) and credit report ($71.00) fees, I conclude that Ms. Brown would have incurred these costs regardless of how Mr. Warnock acted in this transaction. Therefore, I decline to order Allstate to reimburse her these costs.

59b. With regard to the Matteson loan, I concluded that the Respondents violated the Act by failing to provide Truth in Lending and rate lock-in disclosures, by

utilizing disclosures that indicated an ability to earn a fee or commission even if the Mattesons did not obtain a loan, and by failing to maintain accurate books and records. Additionally, I concluded that Allstate failed to properly comply with the Department's investigation of their complaint. Based upon the record, I conclude that it is appropriate for Allstate to refund $175.00 to the Mattesons, as requested by the Department.

59c. In the case of the Mercer & Associates complaint, I concluded that the Respondents violated the act by failing to ensure timely payment for third-party provider services. However, the record reflects that the Respondents have already paid all appropriate restitution to this third-party provider, specifically the $50.00 requested to be paid by the Department in its *Statement of Charges*.

59d. Finally, with regard to the Thompson loan transaction, I concluded that the Respondents violated the Act by failing to timely provide any of the disclosures required by the Act and by failing to honor Robin Patterson's previous promise to deliver a loan without closing costs. Additionally, I concluded that Allstate failed to properly comply with the Department's investigation of their complaint. Based upon the record, I conclude that it is appropriate for Allstate to refund to the Thompsons the $1,040.00 loan origination fee as well as the processing fee of $500.00 and credit report fee of $35.00, for a total of $1,575.00, as requested by the Department.

60. After giving full consideration to the impact of the violations committed by Allstate and Mr. Warnock on each of the consumers for whom the Department seeks restitution, I conclude that each of them is an "injured borrower" and therefore, under

the Act, eligible to receive restitution for their injuries. Therefore, I order that the Respondents provide restitution to each of these borrowers, as follows:

- to Ms. Brown..... in the amount of $3,500.00
- to the Mattesons..... in the amount of $ 175.00
- to Mercer & Associates.... in the amount of $ 50.00
- to the Thompsons..... in the amount of $1,575.00

Thus, the total restitution ordered by this *Initial Decision and Order* is $5,300.00.

61. I note that the Respondents have already paid the required restitution amount to Mercer & Associates (*see* Finding of Fact No. 79). This *Initial Decision* does not intend to require any additional payment with regard to that complainant, but only to confirm the Director's power to have ordered such reimbursement as necessary. Therefore, the total amount of restitution still owing is not $5,300.00, but is instead $5,250.00.

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ORDER

In accordance with the Findings of Fact and Conclusions of Law set out above, IT IS HEREBY ORDERED That

(1) The mortgage broker license issued by the Department to Allstate Financial Services, Inc., is hereby revoked for a period of five years;

(2) Allstate's Designated Broker, Robert Warnock, is immediately removed from office and hereby prohibited from any further participation as an officer, principal, employee, or loan originator in the conduct of the affairs of any licensed mortgage broker or mortgage broker subject to licensing under the Act, for a period of five years;

(3) Allstate and/or Mr. Warnock shall pay a fine in the amount of $50,000.00 as a penalty for violating multiple sections of the Mortgage Broker Practices Act;

(4) Allstate and Mr. Warnock shall immediately pay to the above-noted injured borrowers the remaining restitution in an amount totaling $5,250.00

(5) Allstate and/or Mr. Warnock shall pay to the Department a total of $3,267.00 as costs involved in the investigation and examination of these six complaints made against them; and

(6) Allstate shall ensure that it maintains all of its books and records in compliance with RCW 19.146.060.

DATED at Olympia, Washington, this _____ day of November 2002.

WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS

By _____

Adam E. Torem
Administrative Law Judge

NOTICE TO THE PARTIES

Under RCW 34.05.464 and WAC 10-08-211, any party to an adjudicative proceeding may file a *Petition for Review* of this *Initial Decision and Order*. Any *Petition for Review* shall be filed with the Director of the Department of Financial Institutions within twenty (20) days of the date of service of the *Initial Order*. Copies of any such *Petition* must be served upon all other parties or their representatives at the time the *Petition* is filed with the Director.

Petitions for Review shall specify the portions of the *Initial Decision and Order* to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition. Any party may file a reply to a *Petition for Review*. Replies must be filed with the Director within ten (10) days of the date of service of the *Petition* and copies of the reply must be served upon all other parties or their representatives at the time the reply is filed with the Director.

After the time for filing a *Petition for Review* has elapsed, the Director of the Department of Financial Institutions will issue a *Final Decision and Order* in this matter. In accordance with RCW 34.05.470 and WAC 10-08-215, any *Petition for Reconsideration* of such *Final Decision and Order* must be filed with the Director within ten (10) days of service of the *Final Decision and Order*. It should be noted that *Petitions for Reconsideration* do not stay the effectiveness of the *Final Decision and Order*.

Judicial Review of the *Final Decision and Order* is available to a party according to the provisions set out in the Washington Administrative Procedure Act, RCW 34.05.570.

Initial Decision and Order mailed to:

Agency Representatives:

AAG James R. Brusselback
Office of the Attorney General
Government Compliance & Enforcement Division
P.O. Box 40100
Olympia, WA 98504-0100

Respondents:
Allstate Financial Services, Inc.
7406 27th Street West, Suite 212
Tacoma, WA 98466

Robert Warnock
Designated Broker
Allstate Financial Services, Inc.

7406 27th Street West, Suite 212
Tacoma, WA 98466

Agency Personnel:
Chuck Cross
Department of Financial Institutions
P.O. Box 41200
Olympia, WA 98504-1200

Office of Administrative Hearings:
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P O Box 42488
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