STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF: Nationscapital Mortgage Corp., et al., Respondents.	DFI Case No. 97-083-C01 ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND FINAL ORDER

I. DIRECTOR'S CONSIDERATION

A. Review. This matter has come on before the Director of the Washington State Department of Financial Institutions (Director) pursuant to chapter 34.05 RCW for review of the Findings of Fact, Conclusions of Law, and Initial Order filed by Administrative Law Judge Elmer E. Canfield on January 18, 2002. This review is pursuant to the Petitions for Review of the Initial Order filed by the Respondents (Nations) and the State of Washington (State) on February 19, 2002.

B. Process. Nationscapital Mortgage Corp. (Nations) operated as a mortgage broker in the State of Washington for several years prior to May of 1998. Following operations of its predecessor GAMC, Nations held broker-operating authority in Washington beginning in May 1995.

Department of Financial Institutions (DFI) received complaints against Nations from Washington consumers. In June of 1997, DFI began an investigation of Nations.

On May 13, 1998, DFI issued Nations a Statement of Charges and Notice of Intention to Enter an Order (No. 97-083-C01). The Charges were retroactively amended on September 25, 1998. The Statement of Charges, including the Amended Charges, will be referred to as "Charges" for purposes of this order. As set out in the Charges, DFI seeks to

revoke Nations' mortgage broker license, impose fines, restitution and other penalties against Nations and individual Respondents.

Respondents timely filed a request for an administrative hearing.

DFI subsequently entered into Consent Orders with two of the Respondents, Brad Chisick and Steven Willis, who are no longer parties to this proceeding.

Prehearing conferences were held before Administrative Law Judge Elmer E. Canfield (the ALJ) of the Office of Administrative Hearings on July 22, 1998, October 20, 1998, February 9, 1999, May 14, 1999 and August 11, 1999. These conferences were held by conference call from Olympia, Washington.

Forty days of hearings were held before Administrative Law Judge Elmer E. Canfield, of the Office of Administrative Hearings between the dates of January 31, 2000 and October 25, 2000. The hearings were held in Olympia, Washington; Tacoma, Washington; Seattle, Washington; and Vancouver, Washington.

The ALJ issued the Findings of Fact, Conclusions of Law, and Initial Order on January 18, 2002, and the parties filed Petitions for Review on February 19, 2002 . The State filed its Reply to Respondent's Petition for Review, dated March 1, 2002, and the Respondents filed a Response to State's Petition for Review on February 25, 2002. On April 2, 2002, Acting Director Mark Thomson disqualified himself as the Reviewing Officer as a result of previous involvement with the investigation of Nationscapital, and appointed Dennis Dellwo as reviewing officer.

The Respondents filed a Motion and Memorandum to Disqualify Dennis Dellwo as Reviewing Officer on April 30, 2002. On June 20, 2002 the State filed their Response in Opposition to Respondents' Motion to Disqualify Dennis Dellwo as Reviewing Officer. On May 14, 2002, the Respondents filed a Request for Production of Documents to Mark Thomson. On July 18, 2002, Dennis A. Dellwo issued an Order on Motions denying Respondents' Motion to Disqualify Dennis Dellwo as Reviewing Officer and Respondents' request for leave to conduct discovery.

On August 5, 2002, the Respondents submitted a letter, signed by Gary Roberts, indicating he would be on vacation and requested that, prior to the receipt of Respondents'

Supplemental Factual Materials and Legal Memorandum, this decision not be published. No additional materials or legal memorandum has been received.

C. **Record.** The record considered by the undersigned includes: the Statement of Charges and Notice of Intention to Enter an Order (no. 97-083-C01); Amended Charges; Consent Orders; Respondents' Motions In Limine and Memorandum in Support and the State's Memorandum in Opposition; Statement of Charges; Redacted Statement of Charges and Notice of intention to Enter an Order; the Respondents' set of subpoenas for consumers; Respondents' Motion for production of Test Results From the State of Washington with an Affidavit of Attorney in Support of Motion; Department's Motion for a Protective Order re: test results and Mortgage Broker Examination together with Memorandum in Support: Motion of Steve Willis for Partial Summary Judgment; and Memorandum in Support of Motion; *Suboenas Duces Tecum* for 15 individuals from Respondent; State's Memorandum in Opposition to Motion for Summary Judgment of Kraus and Williams; Affidavit of Chuck Cross; State's Motion to Compel Nationscapital's Answer to the State's Discovery Requests; Affidavit in Support of Motion to Compel Discovery and Certificate of Compliance; State's Response to Motion For Protective Order Limiting Discovery, with Attachments A-D; Affidavit of Alice Blado and Chuck Cross In Opposition to Motion For Protective Order with Attachment A; Application for Judicative Hearing by Respondents; Notices of Pre-hearing Conferences; Respondent's Motion and Memorandum to Disqualify John Bley as Reviewing Officer; Verbatim Reports of Proceedings before Elmer E. Canfield, Administrative Law Judge both on tapes and transcribed; Motion for Protective Order Limiting Discovery; Declaration of Steven Tubbs Regarding Discovery; Respondents' Requests for Discovery; the Pre-hearing Conference Orders and Notices of five Pre-hearing Conferences; Order Denying Motions for Prehearing Orders; Notice of Deposition Upon Oral Examination of Scott Johnson and Steve Willis; Order Granting Department's Motion to Compel and Denying Appellants' Motion for Protective Order Limiting Discovery; Witness Lists for Department; Miscellaneous Notices and letters from the Court and the Parties; Findings of Fact, Conclusions of Law and Initial Order of the ALJ; Hearing Memorandum of Gary Roberts for Respondents; States Response to Respondent's Petition for Review; States' Petition for Review; Respondents'

Response to States Petition for Review; the documentary evidence admitted at the Hearing; and numerous other files and records in this matter necessary to evaluate both the Respondents' and the State's Petitions for Review.

D. Appearances. Gary Roberts, Attorney at Law, appeared as counsel for Nationscapital Mortgage Corp., Jamie Chisick, Michael Buff, Kevin Kraus and Darin Williams (Steven B. Tubbs had appeared as counsel for Nations, *et al.*, at earlier proceedings). Alice M. Blado, Assistant Attorney General, appeared for the Department of Financial Institutions (DFI)--also appearing for DFI were Richard A. McCartan, AAG, and Marlo DeLange, AAG. Respondent Scott Johnson appeared *pro se*. For the Petitions for Review, Gary Roberts appeared on behalf of the Respondents and Alice M. Blado on behalf of the State. Melanie DeLeon, AAG, appeared on behalf of Mark Thomson on Respondent's Motion to Disqualify Reviewing Officer.

E. Issues Raised in Petition for Review. After complete review of the above Record, the undersigned has considered the Respondents' and State's exceptions and disposed of them as follows:

1. The Respondents' petition for review

(a) Respondent Exceptions 1, 5, 26, 28, 29, 30, 31, 42, 44, 45, 50, 55, and 56: WAC 10-08-211(3), which was adopted by DFI in WAC 208-08-020, requires that a "petition for review shall specify the portions of the Initial Order to which exception is taken and shall refer to the evidence of the record which is relied upon to support the petition." These exceptions do not meet that standard and the Reviewing Officer will not address them.

(b) Respondent Exception 2: The Respondents contend there is no substantial evidence that GAMC or Nationscapital misled or misinformed DFI about their name change. Upon review, the undersigned finds that Finding of Fact 6 does not declare that GAMC or Nationscapital misled or misinformed DFI about their name change. Finding of Fact 6 cites to various portions of the record where Nationscapital requested assistance in processing its name change from GAMC to Nationscapital. This exception is without merit.

(c) Respondent Exception 3 and 24: The Respondents contend that there is no substantial evidence that Riverview Escrow Co. performed escrow services in Washington or that it was required to be licensed in Washington. This exception is without merit. Finding of Fact No. 7 does not state that Riverview Escrow Co. is required to be licensed. The finding simply states the undisputed facts that Nationscapital used Riverview's services and that Riverview did not hold a Washington license to operate as an escrow company in Washington. The Request For Admission Response by the Respondent, NO. 103, verifies that an affiliated business arrangement existed between Nations and Riverview Escrow Company, Inc., within the meaning of Regulation X of RESPA. This and the testimony in this case verify that Nations used Riverview's services in Washington. This is a correct finding.

(d) Respondent Exceptions 4, 6, 7 and 8: The Respondents except to Findings No. 13,16, 17 and 18 contending that there is no substantial evidence that the documents DFI received from Willis constituted "manuals" or that those documents were used in whole or in part in the state of Washington. Nations further objects to the findings that suggest the telemarketing manual is unlawful or that Jamie Chisick supervised Kraus or Kraus supervised Scott Johnson. After review of the briefing, the testimony and related exhibits, the undersigned finds substantial evidence that reflects that the documents are manuals and were used in Washington by Nations' staff. The evidence is clear that Nations instructed its employees to use the manuals and the misleading techniques found therein. These exceptions are without merit.

(e) Respondent Exception 10: Nations excepts to Finding No. 20 and contends that there is no substantial evidence supporting those findings or that Jamie Chisick or other individual defendants knew of, participated in or approved any misrepresentations by Willis. Nations also excepts to generalized findings that are not tied to specific acts. Upon review of this exception, Finding of Fact No. 20, the record, and the parties' briefing, the undersigned finds there is substantial evidence supporting the statements found in Findings of Fact No. 20 and this exception is without merit.

(f) Respondent Exception 12: Nations objects to Finding No. 22 claiming there is no substantial evidence to support the finding and it is not probative of anything. Upon review

of this Finding Of Fact and review of the record, the undersigned finds that there is substantial evidence to support such finding and the evidence is probative of Jamie Chisick's knowledge of the existence of complaints from Washington State borrowers. This exception is without merit.

(g) Respondent Exception 13 and 14: Nations excepts to Finding of Fact No. 24 and contends that here and throughout the initial opinion, the findings are general and do not relate to each specific borrower for whom DFI contends there were violations. Further they object to the findings themselves as being inaccurate. A review of the record by the undersigned confirms that there is substantial evidence to support the findings. The facts are sufficiently specific and probative to provide the ALJ with facts necessary to enter the findings found in the Initial Order. These exceptions are without merit.

(h) Respondent Exception 15: Nations excepts to Finding No. 25 to the extent that it does not recognize that Nations' failure to produce records shortly after June 24, 1997 was due solely to DFI's refusal to enter into an agreement to protect the confidentiality of those records which required Nations to seek and obtain court protection. Upon review of the full record, the undersigned finds that Finding No. 25 is supported by substantial evidence, however, it is correct that Nations objected to the production of the records without an agreement to protect the confidentiality of those records. A protective order was eventually obtained through the courts. Finding of Fact No. 25 should be amended to reflect this additional information.

(i) Respondents' Exception 16: The Respondents object to Finding of Fact No. 31, contending that it does not recognize that DFI's institution of a unilateral temporary cease and desist order was an abuse of the department's power. Finding No. 31, however, is a statement of facts, listing what the DFI did and not a conclusion of law. The exception is without merit and is rejected.

(j) Respondents' Exception 17: The Respondents do not object to findings 32 and 35 but seek an additional finding which would declare that the Department never took action in Superior Court claiming that Nationscapital was in violation of the stay, that it was the court's intent that the parties work together to resolve problems identified by DFI and that DFI refused to meet with Nationscapital in good faith in an effort to resolve these problems.

The State contends these requested findings are irrelevant to the issues in this case and that the Respondents misconstrue the record. Upon review of the record, the undersigned finds the requested findings irrelevant to the issues in this case. This exception is without merit and rejected.

(k) Respondent Exception 18: Nations excepts to Finding No. 42 in that it is incomplete and misleading because it makes it appear that Nations was not cooperating with the investigation when there is no substantial evidence to support that conclusion. Nations points out that DFI was given prior notice that it was closing its doors in recognition of the Jewish holiday. The State has not responded to this exception. The Finding should be amended to reflect the fact that notice of closure for this period was provided to DFI.

(l) Respondent Exception 19: Nations excepts to Finding No. 43, contending that there is no substantial evidence for such a finding. Upon review of the record and briefing of the parties, the undersigned finds there is substantial evidence to support this finding and the exception is without merit.

(m) Respondent Exception 20: Nations excepts to Finding No. 45. Nations contends that there were no "missing" files. As loans were closed, the files were closed and sent to DFI. Upon review of the Finding and the record, the undersigned finds that No. 45 accurately reflects the situation on November 26, 1997. The word "missing" is used to indicate the records were not initially provided to DFI and were provided later. This exception is without merit.

(n) Respondent Exception 21: Nations excepts to Finding No. 47 because they believe it does not address concerns that Nations had about sending most of its experienced staff from California to Washington for lengthy testimony. They contend this would have prevented the company from doing its business. They also contend that there is no substantial evidence that Nations sought to "impose conditions" on DFI's directive. Upon review of the record, the undersigned finds that there is substantial evidence supporting Finding No. 47 and the exception is without merit.

(o) Respondent Exception 23: Nations excepts to Finding No. 55 in that they contend there is no substantial evidence that Chisick supervised Darin Williams or that on every day from May 30, 1995, Nations conducted business from an out of state location. However,

upon review of the Finding and review of the testimony and arguments, the undersigned finds substantial evidence supporting Finding of Fact No. 55 and finds this exception without merit.

(p) Respondent Exception 25: Nations excepts to Finding No. 102 and contends that Nations did not use the estimated cost analysis form in an effort to convince borrowers to go through it alone but rather used it to help educate borrowers on the advantage of paying more than the required payment each month. However, Finding No. 102 does not address the estimated cost analysis form. This form is addressed in Finding No. 103. The undersigned will treat Nations exception to Finding No. 102 as an exception to Finding No. 103.

Upon review of the testimony and briefing, the undersigned finds that there is substantial evidence supporting Finding No. 103, including that the form was used to convince prospective borrowers to go through with the loan. This exception is without merit.

(q) Respondent Exception 32: Nations excepts to Findings and Conclusions of Law No. 15 to the extent that the Initial Order concludes that Jamie Chisick dealt with Salick in any material way or that Chisick participated in or approved any false statement or unfair or deceptive loan practice in regard to Salick or Hines or that any of the acts or statements were known to or approved by Chisick. This exception is found without merit. The record, including the testimony and briefing, provide substantial evidence to support this conclusion.

(r) Respondent Exception 33: Nations excepts to all findings stated in Conclusions of Law Nos. 16, 17, 19 and 20. Nations contends there is no substantial evidence to support those findings and they are arbitrary and capricious. However, upon review of the record, the law, the testimony and briefing, the undersigned find that there is substantial evidence to support the findings and they are not arbitrary and capricious. The exception is without merit.

(s) Respondent Exception 34: Nations excepts to the Initial Order alleging that it contains a pattern of sweeping generalized conclusions about false statements or deceptive

practices. Nations does not cite any legal authority for this exception. A review of the Initial Order does not support their conclusion. This exception is without merit.

(t) Respondent Exception 35: Nations excepts to the fine of $64,300 being imposed personally on Chisick for 643 violations when they contend there is no substantial evidence that he participated in or approved any alleged wrongful conduct. Upon review of the law and the complete record, the undersigned finds that there is substantial evidence that Chisick is liable for the 643 violations. Nations exception is premised upon an incorrect reading of the law and facts herein. The evidence in the record does show that Chisick was aware of the company's wrongful conduct. He can be held liable in this case where he has knowledge of the company's violations and hands on control over the company's management. (State v. Lundgren, 94 Wn. App 236, 971 P.2d 948 (1999)). The exception is without merit.

(u) Respondent Exception 36: Nations excepts to Conclusion No. 21. Nations contends that the fines stated in Conclusions No. 20 and 21 are duplicative. They again repeat the objections found in their exception 35. Upon review of these two Conclusions, the undersigned finds that RCW 19.146.0201(7), is the basis for the fines found in Conclusion No. 21 while different sections of that statute, RCW 19.146.0201(1,2 and 3), is the basis for the fines in Conclusion No. 20. The conclusions are not duplicative and the exception is without merit.

(v) Respondent Exception 37: Nations excepts to Conclusion No. 24 because they claim it misstates the law. The Undersigned, upon review of the law, finds that Conclusion No. 24 as modified herein (see 3(f), infra) is a correct statement of the law and the exception is without merit.

(w) Respondent Exception 38: Nations excepts to Conclusion No. 26 and contend the required disclosure would be false and misleading if Nations gave it. However, upon review of the law and briefing, the undersigned finds that RCW 19.146.030(2)(e) and (3) requires the refundable lock-in fees disclosure to be given. The Department developed a model refundable lock-in fee disclosure that all mortgage brokers were required to use unless they obtained the Department's approval to use an alternative form. Nations did not

provide the model disclosure and did not obtain the Department's approval to use an alternative form. The exception is without merit.

(x) Respondent Exception 39: Nations objects to Conclusion No. 31 and contends that it is not specific about which customers were not provided with the truth-in-lending and good faith estimate disclosures until the time of signing. However, upon review of the record, the undersigned finds there is substantial evidence supporting this conclusion. The Initial Order reflects the proper summary of facts. The record reflects substantial evidence of specific instances in which Nations did not provide the required disclosures. This Conclusion is appropriate and the exception is without merit.

(y) Respondent Exception 40: Nations excepts to Conclusion No. 42 and contend that such conclusion is based on the requirement that the broker make a written disclosure explaining the reason for the increase in fees. Nations contend the Department was not relying on this provision of law and must be held to this position. A review of the record demonstrates substantial evidence that Nations did not provide a written disclosure as required by law and was in violation of the law, RCW 19.146.030(4). Any claim that the Department was "not relying on this provision of law" does not tie the hands of the ALJ in the rendering of this decision. The Conclusion is a correct statement of the law and of the violation by Nations of that law. The exception is without merit.

(z) Respondent Exceptions 41: Nations excepts to Conclusion No. 45 and contend that it is arbitrary and capricious for the Department to find that Chisick is not personally liable for the failure to provide disclosures because he did not personally participate in or knowingly approve the disclosure violations (Conclusion No. 33) and then find that he is personally liable for restitution to borrowers for failure to make the same disclosures with respect to the good faith estimate of fees. Upon review of Conclusions of Law 33, 38, and 45 and review of the record, arguments of the parties, the undersigned finds that the Respondent's exception here has merit to the extent they assert that the two conclusions are inconsistent. The Department has similar objections. These Conclusions are in conflict with each other by finding personal liability for failure to provide one type of disclosure, but no personal liability for failure to provide a different disclosure. The undersigned finds that there is substantial evidence supporting the conclusion that Jamie Chisick should be subject to

personal liability for the disclosure violations referred to in Conclusion No. 33. The change requested by the Respondent is found without merit. See also State's exception to Conclusion No. 33. (3(h) infra)

(aa) Respondent Exception 43: Nations excepts again to Conclusion No. 45 claiming there are no findings specific to each consumer for whom restitution is ordered showing the basis on which personal liability for Chisick is found. Upon review of the Record and review of the Findings of Fact found herein, the undersigned finds substantial evidence that Jamie Chisick was personally involved in consumer complaints about fees, and that he participated in the wrongful conduct, or with knowledge approved of the conduct, and should be held jointly and severally liable for the restitution levied in Conclusion of Law No. 45. This exception is without merit.

(bb) Respondents' Exceptions 22, 44 and 45: The Respondents object to the admission of hearsay evidence, primarily evidence of the response to the questionnaires DFI sent to consumers. The Respondents however fail to demonstrate how the admission of hearsay evidence resulted in any erroneous Findings of Fact or Conclusions of Law. RCW 34.05.452(1) provides for the admission of Hearsay in an administrative proceeding. "Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs...." The questionnaires were not offered to prove the truth of the matter asserted in the survey, nor was this evidence used for purposes of determining the amount of restitution. The presiding officer chose to admit this evidence and upon review, the undersigned finds this was an appropriate exercise of discretion. This exception is rejected and found to be without merit.

(cc) Respondent Exception 46: Nations excepts to Conclusion No. 52 contending that there is no substantial evidence as to what days Nations conducted activities from an unlicensed location or that Nations did so every day for 978 days. Nations further objects to the continuance of the fine after the September hearing before Judge Berschauer because DFI was in bad faith to the extent that it refused to process and approve Nations' application for license of their other locations. The undersigned finds there is substantial evidence that Nations conducted business with Washington consumers from unlicensed

locations from February 19, 1995 through January 31, 1998. Nations has shown no legal argument supporting a requirement that there must be a showing of unlicensed activity occurring each day of the period designated. To require such a showing would make the States' burden of proof so onerous as to vitiate the statute's deterrent purpose by rendering it nearly impossible to demonstrate a continuing violation. Further, the claimed refusal to process and approve Nations' application for licensing of other locations does not change the effect of the violations. This exception is without merit.

(dd) Respondent Exception 47: Nations excepts to Conclusion No. 53 for the reason stated in their exception above and they further contend that the standard for imposing personal liability is misapplied. Conclusion No. 53 is based on substantial evidence and properly imposes personal liability on Jamie Chisick. This exception is without merit. See (cc) above.

(ee) Respondent Exception 48: Nations excepts to Conclusion No. 55 and contend that there is no substantial evidence to support the fine and that it punishes Nations for exercising its statutory and constitutional rights in violation of its right to counsel and first amendment and due process rights under the U.S. and Washington Constitutions. Furthermore, Nations contend that there are no findings of fact to support the conclusions. The Respondent does not explain how its right to counsel, and due process rights were violated, nor do they provide any legal authority in support of their contentions. However, after a review of the record and the arguments of the Respondent, the undersigned finds there is not sufficient evidence supporting the fine. The manner in which this fine was assessed is unclear and because of that the undersigned must find the exception has merit. This fine is eliminated and the order should be so modified.

(ff) Respondent Exception 49: Nations excepts to Conclusion No(s). 61 and 62 contending that there are no findings adequate to support the conclusion of a suspension or its length. Nations further contend that there are no standards adopted at this proceeding for imposition of or the length of suspensions. They contend that failure to provide standards is contrary to statute and violates constitutional due process guarantees. They further believe the suspensions should commence, if ordered, at the time Nations surrendered its license. The authority for suspension and its length is clear and is found

specifically at RCW 19.146.220(1)(2)(e) as well as other provisions of the Mortgage Broker Practices Act, Chapter 19.146 RCW. Upon review of the record, including the transcripts of the hearings, the undersigned finds substantial evidence supporting both the suspensions and their length. This exception is without merit.

(gg) Respondents' Exception 51: The Respondents object to Finding No. 62 claiming that there is no substantial evidence to support the finding that DFI's focus was for Nations to comply with DFI's request for records. The complained of portion is the last sentence of that Finding which reads, "DFI's focus was for Nations to comply with DFI requests for records." Upon review of Finding No. 62 and the record, this last sentence, while correct, is unnecessary here and should be eliminated from this Finding.

(hh) Respondents' Exceptions 53 and 54: The Respondents contend the hearings officer erred and abused his discretion in allowing Janet Irish and Steve Willis to testify when they were not on the Department's witness list and were added after the time required for disclosure of witnesses. Upon review of the Model Rules of Procedure, Chapter 10-08 WAC and the APA, Chapter 34.05 RCW, it is clear that the presiding officer can permit additional witnesses to be called by the parties or by himself. The presiding officer determined that Steve Willis was not a surprise witness and there was still an opportunity for Nations to depose him. The Court further found that the purpose of specifying dates for the parties to exchange witness lists was to avoid surprise and any additions to a witness list beyond that date were to be provided on an as-soon-as-possible basis. Janet Irish was allowed by the ALJ to testify after hearing arguments and determining that the parties would not be prejudiced. The Record and briefing reflects that the presiding officer acted within his authority and properly exercised his discretion to permit these witnesses to testify, and these exceptions are without merit.

(ii) Respondents' Exception 57: The Respondents contend the hearings officer erred in ordering restitution for Ihrig and any other person who had filed a complaint and had their complaint closed by the Department prior to June 24, 1997. The undersigned reviewed the record and determined that the DFI did not consider the Ihrig case closed and was seeking restitution. The ALJ heard the arguments of the parties and rejected the Respondent's objection. Upon review, the undersigned finds that Ihrig was not a closed

case and the restitution was properly assessed. Further, the Respondent does not specify who the other persons are or the portions of the Initial Order to which exception is taken. This exception is without merit.

(jj) Respondents' Exceptions 9, 11, 59 and 64: The Respondents object to the admission of any evidence of settlement agreements. The Respondents contend that all evidence of a settlement agreement is always inadmissible. ER 408 does in fact exclude evidence of settlement negotiations when offered to prove liability or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. However, such evidence is not required to be excluded when offered for another purpose. As the Washington State Court Rules' Official Comments state, this conclusion is consistent with previous Washington State law, which admitted evidence of compromise and offers of compromise when offered for some purpose other than liability. (Meisenholder Sec. 9.) See Matteson v. Ziebarth, 40 Wn.2d 286, 242 P.2d 1025 (1952) (admitted to prove lack of good faith where good faith in issue); Robinson v. Hill, 60 Wash. 615, 111 P. 871 (1910) (admitted to prove employer-employee relationship). The evidence of settlement agreements was not used to prove liability, invalidity of the claim, or amount. In the case before us, the information was used to demonstrate that Chisick was aware of consumer's allegations. I find the admission was appropriate and the exception without merit.

(kk) Respondent Exceptions 58, 60, 61,62, 63, 65, 66, 67 and 68: Nations excepts to Findings 22 and 70 through 101, Borrower Testimony, contending there is no substantial evidence to support the findings and that they are misleading and incomplete. Upon review of the transcripts, including the testimony of each of the borrowers, and briefing, the undersigned finds substantial evidence to support these findings and the exceptions are without merit.

(ll) Respondent Exception 69: Nations excepts to the hearing officer's refusal to allow the testimony of Dr. Jacobsen for the reasons stated at the hearing The witness was offered to testify about problems Mr. Willis had with certain drugs and alcohol and what effect that would have had on his capacity to do the things he testified he was doing on the job. The Doctor had not met or examined Mr. Willis, but had only reviewed Mr. Willis' testimony in

the record. The State objected to this testimony and offered State v. Israel, 91 Wn.App. 846 (1998) as dispositive. The Israel case is very similar because it involved the issue of whether to allow an expert to testify that a co-conspirator in a crime had a mental disorder. The court held that there was no tenable basis for admitting the testimony. Based on review of the record, the undersigned finds that there was no tenable basis in this case for allowing the testimony of Dr. Jacobsen. Nations offered a multitude of evidence relating to Willis' credibility, including references to an alcohol problem, inconsistent statements, and his criminal history. Nations was fully allowed to make its arguments relating to Mr. Willis' credibility without testimony from Dr. Jacobsen. Further, Nations has cited no authority supporting this exception. The hearing officer's refusal to allow the testimony was appropriate and the exception is without merit.

(mm) Respondents' Exception 27: The Respondents contend that the DFI does not have the authority to conduct its investigation of Nationscapital, stating that the Department is limited to investigating open complaints and may investigate and levy charges and seek restitution only for those persons who filed complaints and whose complaints were open on or after June 24, 1997. This was fully argued in a Motion in Limine filed prior to the hearing before ALJ Canfield. The objection was fully and properly considered and the Administrative Law Judge rejected the Respondents' arguments. The undersigned has reviewed these arguments together with the record and Chapter 19.146 RCW, as amended, and finds that the DFI has the necessary investigative authority and the Respondents' Exception is rejected.

(nn) Respondents' Exception 52: The Respondents contend the standard of proof for the suspension and imposition of fines is "clear and convincing evidence" because they deal with the subject of professional license revocation. A recent case, Nims v. Board of Registration, 113 Wn.App. 499, 505, 53 P.3d 52 (Aug. 2002) holds that Nguyen v. Dep't of Health, Med. Quality Ass. Commission, 144 Wn.2d 516, 29 P.3d 689 (2001) is the law of this state on the evidence standard for revoking a professional license. In Nims, the court held that a registered professional engineer is entitled to the clear, cogent, and convincing burden of persuasion. However, these cases did not address the standard of proof required for imposition of fines or restitution

RCW 34.05.464 gives the officer reviewing an initial order the same decision-making authority that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing. RCW 19.146.221 provides that the standard of proof is a preponderance of the evidence. The evidence supporting the imposition of fines or restitution certainly met this standard. Moreover, my review of the record herein reveals that even if the standard of proof for suspension and the imposition of fines and the ordering of restitution was the clear and convincing standard, the undersigned finds that the evidence herein is overwhelming, much of it undisputed, and more than sufficient to meet a clear and convincing standard of proof. The order entered is appropriate.

2. **The Respondent's Objectin to State's Petition for Review:**

The Respondents object to the State's Petition for Review of the Initial Order, contending that it was not filed in accordance with the directions of the presiding officer, to wit, it was not filed in care of Deborah Bortner, Securities Administrator, at the address provided in the Notice of Further Appeal Rights on page 75 of the Initial Order.

In regards to filing of a petition for review, the APA in RCW 34.05.464 (1)(b) provides that review of an initial order is commenced when " a party to the proceedings files a petition for administrative review of the initial order." RCW 34.05.010(6) provides that "'Filing' of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head." DFI does not have a rule designating a place for receipt of official documents.

The Initial Order required a petition for review to be filed with the "Director of Financial Institutions, c/o Deborah Bortner, Securities Administrator, 210 - 11th Avenue SW, Room 300, Olympia, WA 98504 (PO Box 9033, Olympia, WA 98507-9033). The State sent their petition for review to Mark Thomson, Acting Director, DFI, PO Box 41200, Olympia, WA 98504-1200. Regardless of which address is used, the end result is that the acting director would receive the petition.

Upon review of the record and law involving service, the undersigned believes the State substantially complied with the statutes and the Initial Order. The State mailed the

Petition directly to the acting director instead of to the director in care of someone else. Substantial compliance is defined as "actual compliance in respect to the substance essential to every reasonable objective of a statute." Petta v. Department of Labor and Industries, 68 Wash. App. 406, 409, 842 P.2d 1006 (1992). In re Saltis, 94 Wash. 2d 889, 621 P.2d 716 (1980) held there was substantial compliance where a statute required a petition to be served on the director of the Department of Labor & Industries, but the petition was actually delivered to the department (not directly to the director). The court found substantial compliance with the statute because there was actual compliance with the substance of the statutory requirement. (Although this case was based on the prior administrative procedure act, the undersigned believes it is appropriate to apply the reasoning in the case to the service issue in this case.) The undersigned finds that the State's filing of their Petition for Review was in substantial compliance with the statute and the directions in the Initial Order.

3. **The State's petition for review**

(a) State's Exception to Finding of Fact No. 3: The State contends the third sentence of this Finding contains an incorrect statement because Scott Johnson does not work for DFI as a 'field rep.' out of the Nations Bellevue Office. This is in fact an error and should be corrected. The word "Nations" should replace the word "DFI" in this sentence.

(b) State's Exception to Finding of Fact No. 6: The State requests that certain language be added to No. 6. This language gives the date DFI issued an interim license to GAMC and the details of GAMC's application for a license. The Respondents object to the language, contending that there is no substantial evidence in the record concerning the application. Upon review of the record, the undersigned finds substantial evidence in the record for the findings suggested by the State and the language should be added.

(c) State's Exceptions to Findings of Fact No. 71, 78, 81, 86, 92, 93, 95, 96, 98 and 100: The State asks that each of these findings be amended to read that the borrowers were not informed that Jamie Chisick had an ownership interest in Riverview Escrow. This language would replace the existing statement that erroneously finds the borrowers were

not told Nations had an ownership interest in Riverview Escrow. The Respondents have not objected to this addition and such change in these Findings is appropriate.

(d) State's Exception to Conclusion of Law No. 10: The State seeks the addition of language obtained from a 1999 State Court of Appeals decision and a 1975 U. S. Supreme Court decision. Upon review of State v. Lundgren, 94 Wn. App 236, 971 P.2d 948 (1999), the undersigned believes the following language adequately states that case's conclusions and should be added to Conclusion of Law No. 10: "It has also been held that a corporate officer can be held liable if the officer has knowledge of the company's violations and hands on control over the company's management."

(e) State's Exception to Conclusion of Law No. 11: The State contends that Conclusion of Law No. 11 erroneously concludes that Jamie Chisick should not be held individually liable for violations of RCW 19.146.060(3) (regarding a mortgage broker's obligation to maintain its books and records in the state of Washington). While there is reference in Conclusion of Law No. 53 to Jamie Chisick's responsibility to make himself reasonably informed of the law, his company operations and whether his company was operating in compliance with the law, this does not make Conclusion of Law No. 11 incorrect. The requested change to No. 11 is denied.

(f) State's Exception to Conclusion of Law No. 24 and 30: The State disagrees with these Conclusions of Law to the extent they conclude Nations "received an application" thereby triggering an obligation to provide disclosures "at the time its employee obtained the borrower's signature on the application". The State contends that these conclusions are not consistent with federal regulations and the Department's longstanding administrative interpretation. Upon review of the law and arguments of the parties, the undersigned finds that the existing Conclusions of Law 24 and 30 are incorrect and the first sentence of Conclusion of Law No. 24 should be modified to read:

> Nations was in receipt of an application for purposes of RCW 19.146.030 when Nations accepted from the borrower in person, or by mail, telephone or some other electronic medium, adequate information to complete the standard FNMA 1003 application form.

Conclusion of Law No. 30 should be modified by striking the fourth sentence regarding Nations' obligation to provide disclosures.

(g) State's Exception to Conclusions of Law No. 32 and 33: This Exception seeks the correction of a typographical error. This error should be corrected. The Statutory reference found in Conclusions of Law No. 32 and the last sentence of No. 33 should be corrected to read RCW 19.146.0201(6).

(h) State's Exception to Conclusion of Law No. 33: The State disagrees with the conclusion in No. 33 that Jamie Chisick should not be personally assessed a fine for Nations' disclosure violations. The State contends that as President of the company, Jamie Chisick was ultimately responsible for all aspects of Nations' operations. The State also argues that Conclusion of Law No. 33 is in direct conflict with Conclusion of Law No. 38. After review of the record and briefing of the parties, the undersigned finds this exception to have merit. There is substantial evidence Jamie Chisick was ultimately responsible for all aspects of Nations' operations. For the same reasons given in Conclusion No. 38, Jamie Chisick should be held individually liable for fines for disclosure violations under RCW 19.146.0201(6). Conclusion of Law No. 33 should be modified to include personal liability of Jamie Chisick for a fine of $64,300.00 for violation of RCW 19.146.0201(6).

(i) State's Exception to Conclusion of Law No. 65: The State asks for a change in this Conclusion's language to state that Nations' application for a branch license for its Portland and California locations is denied. ALJ Canfield found this issue was moot based on the fact that Nations has ceased doing business as a mortgage broker in Washington and surrendered its mortgage broker license. The ALJ's finding that this issue is moot is correct since RCW 19.146.265 only authorizes a "licensed mortgage broker" to apply for branch licenses. Additionally, on page 5 of Respondents' Reply to State of Washington's Petition for Review, the respondents state: "For the record, Nations withdraws its application for branch licenses." The issue is in fact moot as reflected in Conclusion of Law No. 65.

(j) State's Exception to Initial Order No. 6: The State seeks the amendment of Order No. 6 to reflect the assessment of additional fines against Jamie Chisick consistent with their request for modification of Conclusions of Law No. 11 and 33. Modification to Conclusion of Law No. 33 was granted and therefore, the amendment of No. 6 is necessary to that extent.

(k) State's Request for Additional Initial Order No. 12: This request for an additional Order No. 12 is unnecessary due to the rejection of the State's request for changes to Conclusion of Law No. 65 and is denied.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed and considered the briefs of the parties and the files and records herein, and disposed of the exceptions raised by the Respondents and the State, the undersigned adopts and incorporates by reference the Findings of Fact and Conclusions of Law as found by the Administrative Law Judge Elmer E. Canfield in the Initial Order dated January 18, 2002, with only the following modifications:

1. The third sentence of Finding of Fact No. 3 is revised to read: Scott Johnson worked for Nations as a "field rep." out of the Nations Bellevue office.

2. The following language is added at the beginning of Finding of Fact No. 6:

> DFI issued an interim mortgage broker license to General Acceptance Mortgage Corp. (GAMC) on November 14, 1994. Exhibit 2. Jamie Chisick was identified on GAMC's application as the President of GAMC. Jamie Chisick signed the "Signature and Oath of Applicant" portion of the application stating that RCW 19.146 and the regulations promulgated thereunder had been reviewed by the applicant's principals and responsible parties and that all such employees and independent contractors would be made aware of such laws and regulations and changes enacted thereafter.

3. Finding No. 25 is amended to include the addition of the following language before the last two sentences of that finding:

> Nations objected to the production of the records without an agreement to protect the confidentiality of those records. Such protection of confidentiality was obtained through the courts.

4. Finding No. 42 is amended to include the following language at the end of said paragraph:

Nations gave DFI notice that it was closing its doors in recognition of the Jewish holiday occurring during that period of time.

5. Finding No. 62 is amended to eliminate the last sentence contained therein.

6. Findings of Fact No. 71, 78, 81, 86, 92, 93, 95, 96, 98 and 100 are modified to correct the existing language to reflect that such customer was not advised that Jamie Chisick had an ownership interest in Riverview Escrow. The Initial Order incorrectly states in the first or second paragraph of each Finding that such customer was not informed that "Nations" had an ownership interest in Riverview Escrow.

7. Conclusion of Law No. 10 is amended by adding the following sentence to the end of that paragraph:

> It has also been held that a corporate officer can be held liable if the officer has knowledge of the company's violations and hands on control over the company's management. State v. Lundgren, 94 Wn. App 236, 971 P.2d 948 (1999).

8. Conclusion of Law No. 24 is modified to replace the first sentence with the following:

> Nations was in receipt of an application for purposes of RCW 19.146.030 when Nations accepted from the borrower in person, or by mail, telephone or some other electronic medium, adequate information to complete the standard FNMA 1003 application form.

9. Conclusion of Law No. 30 is modified by striking the fourth sentence regarding Nations' obligation to provide disclosures.

10. Conclusions of Law Nos. 32 and 33 are amended to correct a statutory cite. The correct cite is: RCW 19.146.0201(6).

11. Conclusion of Law No. 33 is modified by replacing the entire conclusion with the following:

> This Tribunal will uphold the assessment of disclosure fines of $64,300.00 under RCW 19.146.0201(6) personally against Jamie Chisick. Jamie Chisick was aware of the disclosure violations and was responsible for the overall operation of Nations.

12. Conclusion of Law No. 55 is amended by striking the last sentence and replacing it with the following:

However, because the evidence is not clear as to how the DFI calculated the amount of the fine they are seeking, a fine pursuant to RCW 19.146.235 will not be imposed.

III. FINAL ORDER

Based on the foregoing, and having considered the entire record and being otherwise fully advised, **NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. Nations' license to hold itself out as a mortgage broker to Washington consumers is revoked.

2. Nations shall pay fines as follows:

   a. $64,300.00 for violations of RCW 19.146.0201(1), (2) & (3).

   b. $64,300.00 for violations of RCW 19.146.0201(6).

   c. $29,300.00 for violations of RCW 19.146.0201(7).

   d. $9,100.00 for violations of RCW 19.146.0201(8) pre-July 21, 1997.

   e. $37,100.00 for violations of RCW 19.146.0201(8).

   f. $37,100.00 for violations of RCW 19.146.0201(10).

   g. $20,775.00 for violations of RCW 19.146.050 as follows:

      i. $14,025.00 for 187 days late (Ex. 61).

      ii. $1,950.00 for 26 commingling/failures to deposit (Ex. 68).

      iii. $4,800.00 for 64 commingling or conversion (Ex. 69).

   h. $97,800.00 for violations of RCW 19.146.060(3).

   i. $97,800.00 for violations of RCW 19.146.265.

3. Nations shall pay an investigation fee of $29,040.75.

4. Nations shall maintain its books and records in compliance with RCW 19.146.060 and all applicable rules.

5. Nations and Jamie Chisick, jointly and severally, shall pay restitution in the amount of $712,527.19 to 120 consumers as set out in Exhibit No. 66–Prater was removed since Nations has already paid restitution to Prater. This restitution shall be paid only once by Nations and/or Jamie Chisick.

6. Jamie Chisick shall pay fines as follows:

a. $64,300.00 for violations of RCW 19.146.0201(1), (2) & (3).

b. $64,300.00 for violations of RCW 19.146.0201(6).

c. $29,300.00 for violations of RCW 19.146.0201(7).

d. $37,100.00 for violations of RCW 19.146.0201(10).

e. $97,800.00 for violations of RCW 19.146.265.

7. Jamie Chisick is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of twenty (20) years.

8. Michael Buff is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of five (5) years.

9. Scott Johnson is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of five (5) years.

10. Kevin Kraus is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of five (5) years.

11. Darin Williams is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of five (5) years.

IV. NOTICE OF FURTHER APPEAL RIGHTS

A. Reconsideration. Pursuant to RCW 34.05.470, Parties have the right to file a petition for reconsideration stating the specific grounds upon which relief is requested. The request

must be filed in the Office of the Director of the Department of Financial Institutions, P.O. Box 41200, Olympia, WA 98504-1200, within ten (10) days of service of the Final Order upon the Parties. The petition for reconsideration shall not stay the effectiveness of this Order nor is a petition for reconsideration a prerequisite for seeking judicial review of this matter.

A timely petition for reconsideration is deemed denied if, within twenty (20) days from the date the petition is filed, the Department does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition.

B. Stay of Order. The Reviewing Officer has determined not to consider a petition to stay the effectiveness of this order. Any such request should be made in connection with a petition for judicial review made under chapter 34.05 RCW and RCW 34.05.550.

C. Judicial Review. Under the provisions of chapter 34.05 RCW, the parties have the right to petition the superior court for judicial review of this agency action. The requirements for filing a petition for judicial review are contained in RCW 34.05.510 and the sections following.

D. Service. For purposes of filing a Petition for Reconsideration or Judicial Review, service upon Parties is deemed completed upon deposit of this order in the U.S. Mail. An affidavit of service is attached hereto.

Dated this 27 day of January 2003 at Spokane, Washington.

Dennis A. Dellwo
Reviewing Officer

CERTIFICATE OF SERVICE

I, Dennis A. Dellwo, HEREBY CERTIFY that I caused a true and exact copy of the foregoing **Entry of Findings of Fact, Conclusions of Law and Final Order** to be mailed, postage prepaid, to the below listed parties on this 27 day of January, 2003:

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CASE #: 32851-8-II
Nationscapital Mortgage Corp. etal, Appellants v. Dept. of Financial Institutions etal, Respondents

Counsel:

An opinion was filed by the court today in the above case. A copy of the opinion is enclosed.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:llp
Enclosure
cc: Judge Richard Hicks

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

NATIONSCAPTIAL MORTGAGE CORP., JAMIE CHISICK; MICHAEL BUFF; KEVIN KRAUS and DARIN WILLIAMS, Appellants, v. STATE OF WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS and SCOTT JOHNSON, Respondents.	No. 32851-8-II PART PUBLISHED OPINION

HOUGHTON, J. -- Following a 10-month investigation of consumer complaints that Nationscapital Corporation, a mortgage broker, misrepresented loan terms and conditions, the Department of Financial Institutions (DFI)[1] brought an enforcement action against Nationscapital Corporation and certain of its officers and employees, alleging numerous violations of the Mortgage Broker Practices Act (Act), chapter 19.146 RCW. An administrative law judge (ALJ) found that Nationscapital Corporation committed most of the alleged violations. The ALJ also found the Nationscapital Corporation president personally liable for some violations. With

[1] DFI provides regulatory oversight for the state's financial service providers. The legislature created it in 1993, when it merged two state agencies, the Division of Banking and the Division of Securities. Chapter 43.320 RCW. DFI regulates banks, credit unions, mortgage brokers, consumer loan companies, and securities issuers and salespeople.

some revisions, a reviewing officer adopted the ALJ's findings and conclusions and issued a final order assessing fines totaling $457,575 and restitution of $712,527 to 120 borrowers.

Nationscapital Corporation and its president and officers (Nationscapital) appeal, arguing that DFI (1) exceeded its statutory authority by investigating Nationscapital and bringing an enforcement action beyond that necessary to resolve the specific consumer complaints filed with DFI; (2) erroneously ordered restitution to 120 borrowers who did not initiate a complaint; (3) violated the appearance of fairness doctrine and/or its due process rights by permitting a biased agency head to appoint the reviewing officer; (4) erred in holding the corporation's president, Jamie Chisick, personally liable for fines and restitution; (5) acted arbitrarily and capriciously in banning one of its officers, Michael Buff, from the mortgage broker business for five years; and (6) entered findings unsupported by substantial evidence. Finding no error, we affirm.[2]

FACTS

FACTS RELEVANT TO INVESTIGATIVE AUTHORITY

DFI granted Nationscapital a mortgage broker's license in May 1995. During the next two years, DFI received seven consumer complaints about Nationscapital's loan terms and conditions. Following DFI's procedures, DFI asked Nationscapital to provide a written response to the consumer complaints. In each instance, Nationscapital stated that it had fully disclosed the loan terms and conditions and that the consumers could have, but did not, choose to rescind the loan. Again, following its procedures, DFI closed the first five complaints after consumers failed to indicate their dissatisfaction with Nationscapital's response.

[2] In the unpublished portion of this opinion, we reject Nationscapital's latter three arguments.

In April 1997, John and Carol Salick filed a complaint with DFI, alleging that Nationscapital misrepresented their loan terms and conditions. In May 1997, Nevada Prater also filed a complaint, alleging that Nationscapital misrepresented her loan terms and conditions. In addition, Prater filed a class action lawsuit in federal district court.

The Salicks claimed that Nationscapital told them their loan costs would not exceed $1,500 for an $88,000 refinancing loan, but their actual costs were over $13,000. DFI reviewed copies of the loan documents the Salicks provided. The Truth in Lending Disclosure Statement (TIL) stated: "These are FEES NOT paid by the Borrower . . . BROKERS FEE . . . $8,805.00." Ex. 67 at 2. Under that statement is a line-item broker-origination fee of $8,805. Based on the TIL and verbal representations Nationscapital employees made, the Salicks incorrectly believed they were not responsible for the $8,805 broker-origination fee.

Alarmed by the Salick loan documents, DFI investigators suspected that the documents typified a broader practice of misrepresenting loan terms and conditions. In June 1997, DFI began investigating the consumer complaints. On June 23, 1997, DFI issued a demand for production of records for "All files for loans originated in the State of Washington as requested by the Director's agents" and "All trust account records for the client's trust account (specific records and documents to be identified by the Directors agents)." Ex. 15.

Three DFI employees, including Chuck Cross, appeared unannounced at the Bellevue office and served the demand. Two Nationscapital employees were present, Steve Willis and Scott Johnson. Willis is a licensed broker who managed the Bellevue office. When the investigators asked to see Nationscapital's business records, Willis told them that all records were maintained at the corporate headquarters in California. The Act requires a mortgage broker to maintain its records in Washington.

Cross asked Willis to explain Nationscapital's process for soliciting loans in Washington. Willis said Nationscapital used a "predictive dialer" from a location in California, which leaves a recorded message on a consumer's answering machine. Ex. 16 at 4. Also, Nationscapital relied on calls placed by California telemarketers. And Nationscapital received referrals from the First Alliance Mortgage Corporation (FAMC), a consumer loan company owed by Jamie Chisick's father. Willis further stated that the corporate headquarters would send a package of documents to the Bellevue office and that he or another Nationscapital employee would visit the consumer's home to obtain signatures on loan application documents. The Bellevue office then forwarded the documents to California for processing, including the preparation of closing documents by an escrow company Jamie Chisick owned. Finally, a Bellevue office employee would visit the consumer's home again to obtain signatures on the closing documents. The Act prohibits loan solicitation and processing by unlicensed out-of-state mortgage brokers.

Willis also told Cross he relied on Nationscapital's training manuals, which instructed him how to behave when he visited consumers' homes to obtain signatures on loan documents. Cross asked to see the manuals. After some resistance, Willis gave the investigators three manuals from an office shelf. These manuals instructed Nationscapital employees to avoid answering direct questions about loan terms and conditions, trained them in evasive techniques, and advised them to make false representations to consumers. The Act prohibits mortgage brokers from misleading consumers about loan terms and conditions.

Cross then asked Willis whether Nationscapital had a trust account in Washington. Willis said he did not know. The Act requires mortgage brokers to comply with detailed trust account regulations.

Cross also questioned Willis and Johnson about the Salicks' allegations. In particular, he showed Willis the Salicks' loan disclosure documents. Willis and Johnson appeared confused by the apparently inconsistent disclosure statements. Cross asked Willis whether the Salick transaction was typical. Willis said that it was. Willis also said that the Bellevue office handled about 200 loan transactions annually.

In August 1997, DFI ordered Nationscapital to cease and desist business as a Washington mortgage broker. Additionally, DFI ordered Nationscapital to return its business records to Washington and to make them available for DFI's review. Nationscapital sought and obtained a temporary order to stay the agency action, which permitted Nationscapital to continue doing business but ordered it to refrain from specific unlawful behaviors, including making false and misleading statements, falsely notarizing documents, failing to make timely disclosure of lending information, and maintaining its records outside of Washington. The court also ordered Nationscapital to make its records available for DFI's review and to file required documents with DFI documenting compliance with trust account regulations.

On September 25, 1997, DFI issued a third demand to Nationscapital for records production. In addition to the information previously requested, the demand requested records of General Acceptance Mortgage Corporation (GAMC),[3] which conducted business as a mortgage broker in Washington for a year before changing its name to Nationscapital. DFI also requested a list of Washington consumers solicited by either GAMC or Nationscapital; a list of all borrowers for whom either company originated a loan in Washington; and details of any disputes with consumers, together with associated correspondence and settlement agreements.

[3] Not to be confused with GMAC Mortgage Corporation, a subsidiary of the General Motors Acceptance Corporation.

FACTS RELATED TO JAMIE CHISICK

Jamie Chisick owned Nationscapital and served as its president and secretary. He oversaw Nationscapital's operations, including telemarketing and loan processing activities conducted out of the California headquarters. Chisick, together with Buff, prepared the telemarketing and document signer manuals used to solicit Washington consumers. He also supervised training activities at the California headquarters. And Chisick hired and supervised Willis, who ran the Washington office. In several instances, he personally dealt with consumer complaints about loans originated in Washington.

FACTS RELEVANT TO APPOINTMENT OF REVIEWING OFFICER

During the investigation period, John Bley served as DFI's director and Mark Thomson served as deputy director. Thomson participated in all major decisions concerning the investigation of Nationscapital. He also participated in defining the scope of the investigation and in preparing the statement of charges against Nationscapital. Nationscapital deposed him and called him as a witness during the administrative hearing.

By the time the ALJ entered his initial order, Bley had left the agency and Thomson served as DFI's acting director. Before resigning, Bley appointed Dennis Dellwo, an attorney, as the reviewing officer. Because of his involvement in the investigation, Thomson disqualified himself from serving as the reviewing officer. But he confirmed Bley's appointment of Dellwo as the reviewing officer.

Dellwo notified the parties in writing that he had served as a state representative and as a member of the House Financial Institutions Committee at the time the legislature amended the Act in 1993 and 1994. He stated that he had supported the amendments.

Nationscapital did not respond to Dellwo's letter. But it asked Dellwo to disqualify himself on other grounds, arguing that Thomson should not be allowed to appoint the reviewing officer because he was himself disqualified. Nationscapital alleged:

> "Nations feels that what has happened is that the most biased person in the state chose a reviewing officer who he believes shares that bias. Nations believes that Thomson's bias against Nations is so strong that without question, Thomson would not choose a person to serve as a reviewing officer unless Thomson felt strongly that the reviewing officer he chose shared his biases."

Administrative Record (AR) at 733.

Nationscapital further requested discovery in order to determine any prior communications or prior relationship between Thomson and Dellwo and the basis for Thomson's selection of Dellwo. Thomson declined to respond to Nationscapital's request for production of documents. Dellwo refused to disqualify himself.

Both Nationscapital and DFI petitioned for review of the ALJ's initial order. The reviewing officer reviewed the ALJ's findings and conclusions and issued a 24-page final order. In it, the reviewing officer responds to each of the exceptions Nationscapital and DFI raised. In most instances, the reviewing officer affirmed the ALJ, concluding that substantial evidence in the record supported the ALJ's findings. In some instances, the reviewing officer agreed with Nationscapital that the ALJ's findings and conclusions should be modified.

For instance, the ALJ found that Nationscapital failed to produce records DFI demanded. The reviewing officer modified the finding to reflect that Nationscapital grounded its refusal on DFI's unwillingness to enter a confidentiality agreement. The reviewing officer also amended another factual finding related to Nationscapital's failure to produce records to reflect that, during a particular period, it was closed in recognition of the Jewish holidays.

The reviewing officer ruled in favor of Nationscapital on the issue of its liability for fines related to its failure to cooperate with investigators for 166 days, beginning August 18, 1997. After concluding that the ALJ inadequately described the basis for the fines, the reviewing officer eliminated them from the final order.

Both Nationscapital and DFI objected to the ALJ's conclusion that Chisick was personally liable for one type of disclosure violation but not personally liable for another. The reviewing officer agreed that the conclusions were inconsistent, but he found that the record evidence supported a determination that Chisick was personally liable for both types of violations.

Nationscapital appeals.

ANALYSIS

STANDARD OF REVIEW

We review de novo the interpretation of a statute. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Our fundamental objective in statutory interpretation is to give effect to the legislature's intent. *Campbell & Gwinn*, 146 Wn.2d at 9-10. If a statute's meaning is plain on its face, then we must give effect to that plain meaning as an expression of legislative intent. *State ex rel. Citizens Against Tolls (CAT) v. Murphy*, 151 Wn.2d 226, 242, 88 P.3d 375 (2004). We discern plain meaning not only from the provision in question but also from closely related statutes and the underlying legislative purposes. *Wash. Pub. Ports Ass'n v. Dep't of Revenue*, 148 Wn.2d 637, 647, 62 P.3d 462 (2003). If a statute is susceptible to more than one reasonable interpretation, after this inquiry, the statute is ambiguous and we may resort to additional canons of statutory construction or legislative history. *Campbell & Gwinn*, 146 Wn.2d at 12.

We should give effect to all statutory language; we consider statutory provisions in relation to each other, harmonizing them to ensure proper construction. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 560, 14 P.3d 133 (2000). We avoid construing a statute in a manner that results in unlikely, absurd, or strained consequences. *Glaubach v. Regence Blueshield*, 149 Wn.2d 827, 833, 74 P.3d 115 (2003). Instead, we favor an interpretation consistent with the spirit or purpose of the enactment over a literal reading that renders the statute ineffective. *Glaubach*, 149 Wn.2d at 833. Furthermore, we uphold an agency's interpretation of the statutes it administers if it reflects a plausible construction of the statute's language, not contrary to legislative intent. *Seatoma Convalescent Ctr. v. Dep't of Soc. & Health Servs.*, 82 Wn. App. 495, 518, 919 P.2d 602 (1996), *review denied*, 130 Wn.2d 1023 (1997).

The Administrative Procedure Act (APA), RCW 34.05.570, governs judicial review of an agency order. We may grant relief from an agency order only if the party challenging the order demonstrates its invalidity based on the reasons specifically set forth in the statute. RCW 34.05.570(1)(a),(b), (3). Nationscapital asserts invalidity of the DFI order because it: (1) violates the constitution, (2) exceeds the agency's statutory authority, (3) is based on an erroneous interpretation or application of the law, (4) is not supported by substantial evidence, (5) involves an improperly denied motion for disqualification, (6) is inconsistent with an agency rule, and (7) is arbitrary and capricious. RCW 34.05.570(3)(a),(b),(d),(e),(g), (h), and (i).

We apply a substantial evidence standard to an agency's findings of fact but we review de novo its conclusions of law. *Heidgerken v. Dep't of Natural Res.*, 99 Wn. App. 380, 384, 993 P.2d 934, *review denied*, 141 Wn.2d 1015 (2000). We review an agency's interpretation of statutes and implementing regulations under the error of law standard, which permits us to

substitute our judgment for the agency's. *Aponte v. Dep't of Soc. & Health Servs.*, 92 Wn. App. 604, 616-17, 965 P.2d 626 (1998), *review denied*, 137 Wn.2d 1028 (1999). But when an administrative agency administers a special field of law and possesses quasi-judicial functions because of its expertise in that field, we accord substantial weight to the agency's interpretation of the governing statutes and legislative intent. *Overton v. Econ. Assistance Auth.*, 96 Wn.2d 552, 555, 637 P.2d 652 (1981) (deferring to the Department of Revenue's interpretation of tax exemptions for manufacturers). Furthermore, we give substantial deference to agency views when it bases its determination on factual matters, especially factual matters that are complex, technical, and close to the heart of the agency's expertise. *Hillis v. Dep't of Ecology,* 131 Wn.2d 373, 396, 932 P.2d 139 (1997) (deferring to the Department of Ecology's determination that watershed assessments are an appropriate means of evaluating water permits).

An agency action is arbitrary and capricious where willful and unreasoning and taken without regard to the attending facts or circumstances. *Wash. Indep. Tel. Ass'n v. Wash. Util. & Transp. Comm'n*, 148 Wn.2d 887, 905, 64 P.3d 606 (2003). Where room for two opinions exists, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous. *Wash. Indep. Tel. Ass'n*, 148 Wn.2d at 905.

The substantial evidence standard is highly deferential to the agency fact finder. *ARCO Prods. Co. v. Wash. Utils. & Transp. Comm'n*, 125 Wn.2d 805, 812, 888 P.2d 728 (1995). The evidence must be of a sufficient quantum to persuade a fair-minded person of the truth of a declared premise. *In re Electric Lightwave, Inc.*, 123 Wn.2d 530, 542-43, 869 P.2d 1045 (1994). We will not weigh the evidence or substitute our judgment regarding witness credibility for that of the agency. *Affordable Cabs, Inc. v. Employment Sec.*, 124 Wn. App. 361, 367, 101 P.3d 440

(2004). And we consider unchallenged findings of fact as verities on appeal. *Davis v. Dep't of Labor & Indus.*, 94 Wn.2d 119, 123, 615 P.2d 1279 (1980).

DFI'S STATUTORY AUTHORITY TO INVESTIGATE NATIONSCAPITAL

Nationscapital contends that DFI exceeded its statutory authority by conducting an overly broad investigation. It argues that DFI may only investigate a mortgage brokerage to the extent necessary to evaluate and resolve specific consumer complaints. In its view, when DFI investigates a complaint, it may not broadly inquire into a mortgage broker's activities in order to discover violations that no consumer complained about.

DFI responds that the Act confers broad investigative authority on the agency and that Nationscapital's narrow construction contravenes both the plain and unambiguous language of the statute and the legislative purpose as evidenced in closely related statutes and legislative history.

The Act sets forth DFI's investigative powers as follows:

> *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*. . . .
>
> *Once during the first two years* of licensing, the director may visit, either personally or by designee, the licensee's place or places of business to *conduct a compliance examination*. The director may examine, either personally or by designee, a sample of the licensee's loan files, interview the licensee or other designated employee or independent contractor, and undertake such other

> activities as necessary to ensure that the licensee is in compliance with the provisions of this chapter. . . . *After this one visit within the two-year period* subsequent to issuance of a license, the director or a designee may visit the licensee's place or places of business *only* to ensure that corrective action has been taken or *to investigate a complaint*.

RCW 19.146.235 (emphasis added).

Nationscapital asserts that the statute permits a relatively broad investigation for purposes of a compliance examination only once during a mortgage broker's first two years of operation and, after that, DFI may investigate a licensee only to the extent necessary to resolve specific consumer complaints. Thus, it argues, DFI should have limited its investigation to those records related to the Salick and Prater loan transactions instead of demanding production of all Nationscapital's loan files and other documents. Nationscapital contends that DFI lacked authority to: (1) investigate all the consumer loans Nationscapital originated in Washington, (2) order restitution to 120 borrowers who never filed a complaint, (3) assess penalties and fines for violations unrelated to the complaints received, or (4) hold it responsible for the costs of an overly broad investigation.

Nationscapital's construction does not comport with the statute's plain meaning that we discern through the legislative purposes underlying the Act and closely related statutes. The legislature declared that the residential mortgage broker business "substantially affects the public interest." RCW 19.146.005. The legislature's stated purpose in regulating mortgage brokers is "to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community." RCW 19.146.005. The legislature granted DFI's director "the power and broad administrative discretion to administer and interpret" the Act to fulfill that purpose. RCW 19.146.223. Further, the legislature declared that any violation of the Act is a

per se unfair or deceptive act or practice and an unfair method of competition for purposes of the Consumer Protection Act (CPA), chapter 19.86 RCW.

Nationscapital's construction of RCW 19.146.235 would not further the legislature's purpose of promoting honesty and fair dealing or preserving public confidence in the lending and real estate community. Under Nationscapital's interpretation, DFI would have to turn a blind eye to violations where no consumer specifically complained about them and address only those complaints brought by individual consumers. Such a narrow focus on individual complaints is contrary to the legislative declaration that the business of residential mortgage brokers affects the public interest and that violations of the Act implicate the CPA.

An unfair or deceptive act or practice is one that has a capacity to deceive a substantial portion of the public. *Sing v. John L. Scott, Inc.*, 134 Wn.2d 24, 30, 948 P.2d 816 (1997). By declaring violations of the Act to be per se unfair or deceptive acts or practices, the legislature indicated its concern with *deterring* deceptive conduct *before* injury occurs. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 785, 719 P.2d 531 (1986). And following our case law on the CPA, a public interest declaration suggests that the legislature is not primarily concerned with remedying individual harm but, rather, with avoiding the repetition of harmful conduct or activity affecting the broader public. *See Hangman Ridge,* 105 Wn.2d at 790 ("it is the likelihood that additional plaintiffs have been or will be injured in exactly the same fashion that changes a factual pattern from a private dispute to one that affects the public interest"). Nationscapital's interpretation would hamper DFI from detecting violations that affect more than the individual, complaining consumer, and, thus, it is contrary to the legislature's stated intent to promote public confidence in the industry.

DFI maintains that the statute grants it broad discretion to thoroughly examine a mortgage broker's business activities when investigating a complaint and that it acted within this range of discretion when it investigated and pursued an enforcement action against Nationscapital. We agree.

DFI's construction of the statute promotes the legislative intent. When the legislature granted DFI broad powers to examine a mortgage broker's business activities "[f]or the purposes of investigating complaints," it did not intend to limit DFI's review to those documents relevant only to specific consumer complaints but authorized the agency to broadly examine the business to the extent *the director* "deems relevant to the inquiry." RCW 19.146.235. The Act defines "investigation" as "an examination undertaken for the purpose of detection of violations of this chapter." RCW 19.146.010(9). Given the Act's public interest orientation, the most reasonable interpretation of the statute is that the legislature intended for DFI to attempt to detect not only past violations affecting an individual complaining consumer when it investigates particular complaints, but also recurrent and ongoing violations likely to have affected, and continuing to affect, other members of the public.

Nationscapital asserts that the statute represents a balancing of interests between "necessary regulation and unnecessary intrusions into the licensee's business." Appellant's Br. at 25. It argues that the legislature intended to prohibit DFI from embarking on a "witch hunt." Appellant's Br. at 25.

The legislature authorized DFI to promulgate administrative rules only after seeking advice from the mortgage brokerage commission. RCW 19.146.225. The mortgage brokerage commission includes five members, at least three of whom must be licensed mortgage brokers. RCW 19.146.280(1), (2). Professional organizations representing mortgage brokers are entitled

to recommend appointees to the commission. RCW 19.146.280(2). The commission advises the director of the needs of the mortgage brokerage profession. RCW 19.146.280(5).

But the legislature's underlying concern in giving mortgage brokers a voice in regulation was not to protect mortgage brokers, but to make regulation more effective and streamlined:

> (2) The legislature further finds it in the public interest to strengthen the regulation, supervision, and examination of business entities furnishing financial services to the people of this state and that this can be accomplished by streamlining and focusing regulation to reduce costs, increase effectiveness, and foster efficiency by eliminating requirements that are not necessary for the protection of the public.
>
> (3) The provisions of chapter 256, Laws of 1994 *should not be construed to limit the ability of the director of financial institutions to* implement prudent regulation, prevent unsafe, unsound, and fraudulent practices, and *undertake necessary enforcement actions to protect the public and promote the public interest.*

RCW 43.320.007 (emphasis added).

Nationscapital correctly notes that the statutory schemes governing investigations of consumer lenders, escrow agents, and check cashers and sellers are broader than that governing mortgage brokers. In each instance, the legislature does not condition the agency's investigative powers on the receipt of a complaint. *See* RCW 31.04.145, RCW 18.44.420, RCW 31.45.100. But Nationscapital overstates the difference.

The sole difference is that, in the case of the other financial services providers, the agency need not await a triggering event before investigating; whereas, following a two-year probation period, DFI may not investigate mortgage brokers absent a consumer complaint. Except for that difference, the legislature confers broad authority on DFI to investigate mortgage brokers using substantially the same language as in the statutes governing the other regulated activities that Nationscapital cites for contrast. Importantly, the Act does not expressly limit DFI to an investigation of only the specific allegations raised in the consumer complaint. Rather, a

more reasonable interpretation is that the receipt of a complaint triggers DFI's broad investigative powers. Once it has notice of potential violations, DFI has broad discretion to determine the scope of the investigation. This interpretation comports with the legislative intent analyzed above.

Contrary to Nationscapital's suggestion, in this case DFI did not seize on a consumer complaint as a pretext to launch an otherwise prohibited wide-ranging and unnecessarily intrusive investigation. Rather, the scope of the investigation was commensurate with the extent and gravity of Nationscapital's suspected violations. Before its investigation, DFI received seven consumer complaints, all alleging similar misconduct by Nationscapital. Although DFI closed the first five of those complaints without taking action, together they suggested a pattern of misconduct. Nationscapital takes an overly technical view of the law that would bar DFI from considering past complaints merely because DFI previously declined to pursue an enforcement action. DFI could properly take the prior complaints into account in determining whether, and to what extent, it should investigate Nationscapital in response to subsequent complaints.

In reviewing the Salick complaint, DFI discovered that Nationscapital used a preprinted form that deceptively suggested that a borrower was not responsible for broker fees. Given the probability that a preprinted form would be used in other loans originated by Nationscapital, DFI reasonably could have considered records for all loans originated in Washington as "relevant to the inquiry" into the Salick complaint. DFI need not ignore violations affecting other consumers merely because they did not initiate a complaint. Thus, DFI's initial demand for production of records did not exceed the scope of its investigative authority.

Moreover, the troubling responses that Willis gave to DFI's initial inquiries at Nationscapital's Bellevue office in June 1997, further justified a broad investigation into Nationscapital's business practices. Willis told DFI investigators that none of Nationscapital's loan documents was kept in-state, as required by law. RCW 19.146.060(3). Willis revealed that unlicensed brokers solicited and processed most, if not all, loans, also contrary to state law. RCW 19.146.200(1).

Willis said he did not know if Nationscapital had a trust account to handle client funds, a further violation of state law. RCW 19.146.050. Willis gave DFI investigators copies of sales manuals that evidenced deceptive conduct by Nationscapital employees when dealing with Washington borrowers, contrary to state law. RCW 19.146.0201(1), (2), (3), (6), and (7). And Willis admitted that the Salick loan transaction typified the loans originated in Washington. In sum, DFI acted within the scope of its statutory authority when it broadened its investigation to take account of the information it learned during its initial inquiries.

RESTITUTION

Nationscapital further contends that DFI erred when it ordered $712,586.13 restitution to 120 borrowers. Nationscapital challenges the restitution order on the grounds that: (1) DFI waived restitution, (2) it improperly relied on hearsay, (3) substantial evidence does not support the order, (4) the order lacks adequate findings and conclusions, and (5) the order is based on an erroneous interpretation of the disclosure requirements.

The Act prohibits mortgage brokers from collecting any broker fees without adequate disclosure. RCW 19.146.030(4). A mortgage broker must provide an initial written disclosure of all fees and costs within three days of receiving a loan application. RCW 19.146.030(1). A mortgage broker may not collect fees in excess of those initially disclosed unless the broker

provides a written explanation of the fee increase at least three days before closing. RCW 19.146.030(4). DFI may order restitution to borrowers harmed by violations of this rule. RCW 19.146.220(2)(d)(ii).

DFI reviewed 371 loan files and sought restitution for 122 borrowers. Nationscapital did not provide a written explanation for fee increases for any of the loans. Thus, DFI could have prevented Nationscapital from collecting broker's fees in any instance where fees increased. Instead, where Nationscapital disclosed a fee increase at least three days before closing, DFI did not order restitution despite the lack of a written explanation for the increase.

Where Nationscapital provided an initial disclosure of fees but did not timely disclose a fee increase, DFI ordered restitution amounting to the difference between the initial disclosure and the fee increase ("low overcharge"). AR at 433. DFI prevented Nationscapital from collecting *any* broker fees in only those cases where Nationscapital failed to make any disclosure before closing ("high overcharge"). AR at 433.

In explaining DFI's position on restitution, Chuck Cross testified:

> I want to point out that not in a single transaction or not in any of these transactions that we reviewed here did Nations ever give an explanation in writing, as required, of the increase in these charges. And the department's been very lenient on that and hasn't considered that. If we were to take that into consideration, we would find every instance, regardless of redisclosure, where Nations increased its fees, that they were not in compliance and the lowest amounts should be refunded. So we've taken a substantially lenient position in favor of Nations during this analysis.

Report of Proceedings (RP) at 632-33.

At the hearing, DFI submitted two binders of documents in support of its restitution request. The binders include a summary of DFI's analysis and calculations, examples of how

DFI calculated restitution, a list of 122 borrowers and the amount of restitution sought for each, and supporting documentation on each borrower's loan transaction.

For each borrower, DFI presented a one-page spreadsheet detailing the fees disclosed and those actually collected, the date of disclosure (when known), the amount of restitution sought, and the reason for the restitution order. The spreadsheet includes a heading: "The following factors control this analysis." Ex. 66. The factors include: "No GFE [Good Faith Estimate] found in loan file; No signed/dated GFE in loan file; Borrower indicates no receipt of GFE; Signed GFE dated as of closing; signed GFE at least 3 days before closing, no redisclosure; Redisclosed GFE signed at date of closing or less than 3 days before closing." Ex. 66. DFI checked one or more of the factors for each borrower to indicate the reason (and thus the relevant formula) for restitution in each case. DFI sought $717,586.13 total restitution.

Nationscapital argued that, in some cases, it satisfied the redisclosure requirements by providing a revised GFE by the lender and/or a statement titled, Itemization of Amount Financed. The ALJ rejected the argument because neither form satisfied the statutory requirement of a written explanation for the increase in broker's fees.

The ALJ ordered restitution in the amount DFI sought, less $5,058.94 related to the Prater complaint, which settled before the initial order. The reviewing officer affirmed the restitution order.

Waiver

Nationscapital first contends that DFI waived its right to penalize Nationscapital for its failure to provide a written explanation for fee increases. It asserts that, in litigating the restitution issue, it relied on Cross's testimony that DFI would overlook Nationscapital's failure to provide a written explanation. Thus, at the hearing, Nationscapital argued that the lender's

GFE and other documents satisfied the statutory disclosure requirements even though the documents did not provide a written explanation of fee increases.

A waiver is an intentional and voluntary relinquishment of a known right. *Pub. Util. Dist. No. 1 v. Wash. Pub. Power Supply Sys.*, 104 Wn.2d 353, 365, 705 P.2d 1195, 713 P.2d 1109 (1985). Waiver can be inferred only from conduct inconsistent with any intention other than such relinquishment. *Pub. Util. Dist.*, 104 Wn.2d at 365.

The record does not support an inference that DFI waived its right to hold Nationscapital responsible for failing to provide a written explanation of fee increases. From the statement of charges, through the prehearing briefing, testimony and evidence submitted at the hearing, and posthearing briefing, DFI consistently maintained that Nationscapital violated the law and owed restitution for failing to comply with the written disclosure requirements of RCW 19.146.030. In seeking restitution, DFI overlooked the failure to provide a written explanation of fee increases only in those cases where Nationscapital disclosed the fee increase at least three days before closing. But where Nationscapital failed to timely disclose the fee increase, DFI consistently held it responsible for the lack of written explanation.

At the hearing, Nationscapital argued that the lender's GFE and an Itemization of Amount Financed documents satisfied those requirements. But DFI vigorously contested that assertion on the ground that the documents did not provide the required explanation for increases in broker's fees. And DFI's documentary support for the restitution order clearly expresses DFI's position that Nationscapital owes restitution in those cases where it failed to provide a written disclosure of fee increases at least three days before closing. Nationscapital's suggestion that DFI's change in position during the litigation caught it by surprise lacks credibility.

Consumer Questionnaire

Nationscapital further claims that the restitution order is invalid to the extent DFI relied on the results of a consumer questionnaire as substantive evidence of Nationscapital's disclosure violations. Nationscapital asserts the questionnaire contains inadmissible hearsay and otherwise is unreliable.

Several months into the investigation, DFI sent a questionnaire to nearly 400 consumers asking about their experiences with Nationscapital. DFI asked a series of questions to help determine the extent and scope of suspected violations. In particular, DFI wanted to know whether, and to what extent, Nationscapital applied the techniques described in the telemarketing manual and document signer manual in its dealings with Washington consumers. A total of 137 consumers responded. DFI offered the questionnaires, together with a summary of consumer responses, into evidence.

Nationscapital objected, arguing that the questionnaires were unreliable because they informed consumers that DFI suspected Nationscapital of violations and alerted consumers to the possibility of financial recovery for reported violations. Nationscapital also argued that DFI failed to establish an adequate foundation for the questionnaires' reliability.

DFI responded that it did not offer the questionnaires as substantive evidence. DFI said it intended to provide independent proof for each of the alleged violations "[t]o the extent the department's requesting restitution for any individual consumer, the department is not relying on results of the survey for that purpose." RP at 319.

The ALJ overruled Nationscapital's objection, ruling that its concerns went to the weight and credibility of the evidence rather than the evidence's admissibility.

DFI included the consumer questionnaire as supporting documentation for more than a third of the borrowers for whom it sought restitution. DFI used the questionnaire as evidence that the borrower did not receive a GFE. But DFI also presented independent evidence to support its restitution order. In each instance, the loan file either did not contain a signed GFE or the borrowers signed the GFE the same day as closing.

Nationscapital recognizes that hearsay may be admissible in administrative proceedings,[4] but it argues that "reasonably prudent persons would not rely on biased, non-scientific surveys to contradict contrary documentary evidence." Appellant's Br. at 38. The contrary documentary evidence that Nationscapital refers to are unsigned disclosure documents in the loan files. In instances where the consumer indicated on the questionnaire that he or she did not receive a GFE, but the loan file contained an unsigned and/or undated GFE, the ALJ believed the consumer. Contrary to Nationscapital's position, no reason exists to believe that the unsigned documents in the loan file should carry more weight than the consumers' responses.

Even without the questionnaires, DFI presented sufficient proof that Nationscapital failed to satisfy the disclosure requirements. The ALJ correctly ruled that Nationscapital's objections went to the weight and credibility of the questionnaires, not their admissibility. The ALJ could properly consider them, together with the other documentation DFI presented in determining whether Nationscapital satisfied the disclosure requirements.

[4] *See* RCW 34.05.461(4); *Nisqually Delta Ass'n v. City of DuPont*, 103 Wn.2d 720, 733, 696 P.2d 1222 (1985) ("Relevant hearsay evidence is admissible in administrative hearings.").

Hearsay / RCW 34.05.461(4)

Nationscapital further objects to using the consumer questionnaire on the ground that its use unduly abridged Nationscapital's ability to confront witnesses and rebut evidence, in violation of RCW 34.05.461(4), which provides in part:

> Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the presiding officer shall not base a finding exclusively on such inadmissible evidence unless the presiding officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order.

Nationscapital's argument lacks merit. By the rule's plain terms, whether a party's opportunity to confront witnesses has been unduly abridged becomes an issue only when the presiding officer relies "exclusively" on evidence that would be inadmissible in a civil trial. Here, the ALJ did not exclusively rely on the consumer questionnaire in ordering restitution. Rather, the questionnaire results were but one part of the documentary evidence presented to demonstrate the disclosure violations. In fact, the restitution order would stand even absent the survey results because of Nationscapital's failure to provide an adequate written explanation of the fee increases and the absence of signed, dated disclosure documents in the loan files. We hold that the ALJ did not violate RCW 34.05.461(4) by considering the results of the consumer questionnaires.

Adequacy of Findings and Conclusions

Nationscapital next argues that the findings and conclusions do not support the restitution order, contrary to RCW 34.05.461(3), which provides in relevant part:

> Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction . . . . Any findings

> based substantially on credibility of evidence or demeanor of witnesses shall be so identified. Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings.

In evaluating whether findings and conclusions satisfy the statute, "[a]dequacy, not eloquence, is the test." *US West Commc'ns, Inc. v. Wash. Utils. & Transp. Comm'n*, 86 Wn. App. 719, 731, 937 P.2d 1326 (1997) ("the statute does not require that findings and conclusions contain an extensive analysis").

The ALJ entered several findings related to the restitution order and underlying disclosure violations. The ALJ (1) found that many borrowers failed to receive any disclosures at all; (2) summarized the testimony of numerous consumers who stated they received inaccurate or misleading disclosures; (3) found that Nationscapital never provided a written explanation for fee increases; (4) found that neither the lender's GFE nor the Itemization of Amount Financed document satisfied the disclosure requirements because the documents failed to explain the fee increases; (5) explained DFI's methodology for calculating restitution; and (6) found that Chisick had the ultimate authority on fees charged to consumers.

The ALJ entered six conclusions of law on restitution. The ALJ explained why it rejected Nationscapital's arguments: DFI lacked authority to order restitution; the lender's GFE and Itemization of Amount Financed statements satisfy the disclosure requirements; no redisclosure is required so long as there is no overall increase in the total closing costs; and Chisick had no responsibility for setting fees in Washington.

The ALJ agreed with DFI that "Nations overcharged Washington borrowers and violated RCW 19.146.030(4) as set forth in Exhibit 66." AR at 657 (conclusion of law 42). The ALJ concluded that

> [t]he evidence established that Nations did not meet the fee disclosure requirements of this statute and is liable for restitution in the amount of $717,586.13 as set out in Exhibit 66 [minus the amount of the Prater complaint]. Thus, Nations will be ordered to pay restitution to the remaining 120 injured borrowers in the amount of $712,527.19.

AR at 668 (conclusion of law 44).

Nationscapital argues that the ALJ's failure to enter separate findings related to each borrower make the findings and conclusions inadequate. In its view, the ALJ should have explained why, in each particular instance, the ALJ agreed with DFI's evidence and reasoning and why he rejected Nationscapital's. Nationscapital's argument lacks merit.

The statute does not compel an "extensive analysis," let alone the exhaustive one that Nationscapital demands. *See US West*, 86 Wn. App. at 731. Nationscapital repeatedly asserted that it satisfied disclosure requirements by providing a lender's GFE, Itemization of Amount Financed and/or unsigned or undated disclosure documents. The ALJ reasonably summarized his reasons for rejecting Nationscapital's arguments.

Nationscapital refers to the loan transactions of five borrowers as typical of the ALJ's inadequate findings and conclusions. Nationscapital identifies these borrowers by their surnames.

Harwick. DFI requested restitution for Barbara Harwick based on Nationscapital's failure to disclose an increase in broker's fees at least three days before closing. In support, DFI presented Harwick's loan documents and noted the absence of a signed and dated GFE in the loan file. To rebut DFI's claim, Nationscapital presented a disclosure statement with a typed date of August 8, 1995, but signed by Harwick on the closing date, August 12, 1995. On appeal, Nationscapital asserts the ALJ erred in ordering restitution because the evidence shows timely disclosure of the fee increase.

Livingston. DFI requested restitution for Richard and Sheri Bruner-Livingston based on Nationscapital's failure to disclose an increase in broker's fees at least three days before closing. In support, DFI presented the Livingstons' loan documents and noted the absence of a signed and dated GFE in the loan file. To rebut DFI's claim, Nationscapital presented a disclosure statement with a typed date of June 22, 1995, but signed by the Livingstons on the closing date, July 3, 1995.

Clogston. DFI requested full restitution for Jeannette Clogston based on Nationscapital's failure to give any disclosure before closing. In support, DFI presented disclosure documents signed on the closing date. In rebuttal, Nationscapital offered unsigned disclosure documents.

McGlone. DFI requested full restitution for Ronald and Sherry McGlone based on Nationscapital's failure to give any disclosure before closing. In rebuttal, Nationscapital presented disclosure documents with a typed date of August 8, but signed on the closing date, August 12, 1995. Contrary to Nationscapital's assertion, the documents do not show that "Nations Federal Expressed the revised disclosure to the borrower on August 8, and that the borrower received it on August 9." Appellant's Br. at 41.

Ihrig. DFI requested full restitution for Robert Ihrig and Susan Antrim-Ihrig based on Nationscapital's failure to give any disclosure before closing. In support, DFI presented disclosure documents signed on the closing date. Additionally, DFI submitted a multi-page complaint the Ihrigs filed, in which they state that they failed in repeated attempts to obtain clear, accurate information on their loan terms and conditions. In rebuttal, Nationscapital offered a disclosure document with a typewritten date of August 17, 1995, but signed and dated by the Ihrigs on the closing date.

Nationscapital complains that the restitution order is inadequate because the ALJ failed to explain why he considered DFI's evidence and reasoning more persuasive in each of the above instances. There are two possible basis for the ALJ's ruling. The ALJ ruled that Nationscapital violated the disclosure requirements by failing to give a written explanation for the fee increase. This provides a sufficient bases for the restitution order, regardless of whether the ALJ accepted Nationscapital's contrary evidence on the disclosure timing. The ALJ also could have reasonably rejected the evidence Nationscapital presented because the documents were either unsigned or undated, or there was a discrepancy between the typewritten date and the signature date. The ALJ need not have extensively and exhaustively detailed each instance in which it found DFI's documentary evidence more credible than Nationscapital's in order to satisfy the statutory requirements for findings and conclusions.

We hold that the ALJ's findings and conclusions adequately support the restitution order.

Interpretation of Disclosure Requirements

Nationscapital argues that it satisfied the disclosure requirements when it redisclosed fee increases through either an Itemization of Amount Financed document or a lender's GFE.

The statute requires brokers to provide "a clear written explanation of the fee *and* the reason for charging a fee exceeding that which was previously disclosed." RCW 19.146.030(4) (emphasis added). In its briefing, Nationscapital quotes the first part of that sentence and omits the latter.

We agree with DFI, the ALJ, and the reviewing officer that neither the lender's GFE nor the Itemization of Amount Financed satisfies the statutory requirements. Most obviously, neither document explains the reason for a fee increase. Further, unlike a revised broker's GFE, neither form provides a breakdown of the type of fee charged to consumers. In contrast, the form DFI

favored permits a consumer to easily compare initial with redisclosed fees and to discern fee increases that inure to the broker's benefit.

The ALJ did not err in concluding that the Itemization of Amount Financed and/or lender's GFE fails to satisfy the statutory disclosure requirements.

APPOINTMENT OF REVIEWING OFFICER

Nationscapital contends that DFI denied it a fair hearing by permitting a biased agency head, either Bley or Thomson, to appoint the reviewing officer. In its view, the APA permits only an unbiased official to appoint a substitute reviewing officer. Alternately, it argues that either the appearance of fairness doctrine or constitutional due process compels the appointment of a reviewing officer by a neutral third party. Nationscapital further contends that DFI erred by refusing discovery on the issue of the reviewing officer's bias.

Interpretation of APA provisions on Appointment of Reviewing Officer

Under the APA, anyone serving as either a presiding or reviewing officer in an adjudicative proceeding "is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is disqualified." RCW 34.05.425(3), .464(3). A person who has served as an investigator, prosecutor, or advocate may not serve as a presiding officer in the same proceeding. RCW 34.05.458(1). But the mere participation in a preliminary determination of probable cause does not provide a ground for disqualification. RCW 34.05-.458(2). When a person is disqualified from serving as a presiding or reviewing officer, "the substitute *must* be appointed by the appropriate appointing authority." RCW 34.05.425(7) (emphasis added). An agency head is the appointing authority for a reviewing officer. RCW 34.05.464.

Thomson did not merely participate in the determination of probable cause, but was a lead investigator who had a role in "all major decisions" pertaining to the investigation. RP at 4542. Thus, he was statutorily disqualified from serving as the reviewing officer.

Under the APA, when an agency head is disqualified from serving as reviewing officer, he or she may appoint a substitute. *Jackstadt v. Wash. State Patrol*, 96 Wn. App. 501, 508, 976 P.2d 190 (1999), *review denied*, 1999 Wash. LEXIS 806. *Jackstadt* involved a Washington State Patrol (WSP) chief who had represented a trooper in a disciplinary proceeding when she worked as a lawyer for the Troopers Association. The statute governing WSP disciplinary proceedings designated her as the reviewing officer in a later proceeding involving the same trooper. She recused herself based on a conflict of interest and appointed her own substitute. The trooper appealed, arguing that the chief lacked statutory authority to delegate her responsibilities as reviewing officer. *Jackstadt*, 96 Wn. App. at 507.

On review, we held that the APA provisions for the disqualification and replacement of a reviewing officer supplement the specific statutory scheme pertaining to WSP disciplinary matters. *Jackstadt*, 96 Wn. App. at 509. We concluded that a WSP chief disqualified from reviewing a disciplinary proceeding because of a conflict of interest may appoint a substitute reviewing officer. *Jackstadt*, 96 Wn. App. at 513.

Nationscapital argues that *Jackstadt* is factually distinguishable. It asks us to limit the holding to situations in which a disqualified official is biased *in favor* of the subject of an agency's enforcement action. We decline Nationscapital's invitation to so narrowly construe our holding in *Jackstadt*.

First, *Jackstadt* is not factually distinguishable as Nationscapital asserts. Nationscapital incorrectly states that "the police chief was viewed as being biased *in favor* of the police officer"

and "the police officer did not want the chief to disqualify herself." Appellant's Br. at 70. It is not clear whether the trooper considered the chief biased in his favor. WSP asked the trooper to either waive the chief's conflict of interest or agree to the appointment of a substitute. *Jackstadt*, 96 Wn. App. at 506-07. He refused, asserting that the chief "could neither act nor decline to act during the process of review; he proposed instead that the parties abandon the trial board's findings in favor of a new arbitration proceeding." *Jackstadt*, 96 Wn. App. at 506. Thus, the trooper apparently objected to the chief's disqualification not because he thought she would favor him, but because he hoped her double bind would thwart the review process altogether. In fact, the chief could as well have been biased against the trooper as a result of her prior involvement in his disciplinary matters.

Even assuming the chief was biased in Jackstadt's favor, Nationscapital asserts an untenable distinction. RCW 34.05.425(3) and .464(3) provide that a reviewing officer is disqualified for any reason "for which a judge is disqualified." The *Jackstadt* court notes that the Code of Judicial Conduct (CJC) governs judges, providing that "'[j]udges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which . . . the judge has a personal bias or prejudice concerning a party." 96 Wn. App. at 509 (quoting Canon 3(D) of the CJC). Under the CJC, disqualification is appropriate regardless of whether the judge's partiality favors or disfavors a party. And as *Jackstadt* illustrates, it may be difficult to discern whether the ground for disqualification cuts against or in favor of a party, setting up an issue for appeal in all cases where a disqualified official appoints a substitute reviewing officer if we were to adopt Nationscaptial's position.

We hold that, under the APA, Thomson was the appropriate authority to appoint his own substitute to serve as reviewing officer.

Appearance of Fairness Doctrine

Nationscapital next argues that if we do not interpret RCW 34.05.425(7) as permitting only unbiased agency heads to appoint a substitute reviewing officer, the statute violates the appearance of fairness doctrine. Nationscapital contends that allowing a disqualified person to select his or her own substitute is akin to permitting "one side in a sports contest to pick the referee." Appellant's Br. at 72. It asserts that a reasonably prudent and disinterested observer would not view a hearing as fair unless a neutral party selected the decision maker.

Generally, under the appearance of fairness doctrine, proceedings before administrative tribunals acting in a quasi-judicial capacity are valid only if "a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing." *Wash. Med. Disciplinary Bd. v. Johnston*, 99 Wn.2d 466, 478, 663 P.2d 457 (1983). The doctrine is intended to avoid the evil of participation in the decision-making process by a person who is personally interested or biased. *City of Hoquiam v. Public Employment Relations Comm'n*, 97 Wn.2d 481, 488, 646 P.2d 129 (1982).

Under the appearance of fairness doctrine, it is not necessary to show that a decision-maker's bias actually affected the outcome, only that it could have. *Buell v. City of Bremerton*, 80 Wn.2d 518, 523, 495 P.2d 1358 (1972). But in the context of administrative proceedings, the appearance of fairness doctrine exists in tension with the presumption that public officials will properly perform their duties. *See Johnston*, 99 Wn.2d at 479.

To overcome the presumption, a party invoking the appearance of fairness doctrine must come forth with evidence of actual or potential bias. *Org. to Preserve Agric. Lands v. Adams County*, 128 Wn.2d 869, 890, 913 P.2d 793 (1996) (evidence that commissioner received 63 phone calls during the prior year from a waste management company insufficient to demonstrate

actual or potential bias because the commissioner had other matters pending with the company unrelated to the adjudicative proceeding); *State v. Post*, 118 Wn.2d 596, 619, 826 P.2d 172, 837 P.2d 599 (1992) (no appearance of unfairness where presentence report was prepared by an allegedly biased person because there was no evidence of the judge's actual or potential bias); *Magula v. Dep't of Labor & Indus.*, 116 Wn. App. 966, 972-73, 69 P.3d 354 (2003) (no appearance of unfairness where six electricians are among the 13 voting members deciding whether electrical work must be performed by electricians rather than general contractors).

The mere combination of investigative and adjudicative functions in the same tribunal does not violate the appearance of fairness doctrine. *Johnston*, 99 Wn.2d at 479-80. In *Johnston*, the Medical Disciplinary Board both investigated allegations of misconduct by a physician and later adjudicated the revocation of his medical license. Our Supreme Court held that "[t]he bare fact that the same administrative adjudicators also are clothed with investigative powers does not mean the case will be decided on an improper basis or that there will arise a prejudgment on the ultimate issues. We must presume the board members acted properly and legally performed their duties until the contrary is shown." *Johnston*, 99 Wn.2d at 479; *see also Sherman v. Moloney*, 106 Wn.2d 873, 884, 725 P.2d 966 (1986) (appearance of fairness not violated where disciplinary trial board included subordinates to an allegedly biased WSP chief).

Nationscapital relies on inapposite cases involving situations in which the decision maker had a personal interest in the matter under consideration. *Chicago, Milwaukee, St. Paul & Pac. R.R. v. Wash. State Human Rights Comm'n*, 87 Wn.2d 802, 557 P.2d 307 (1976) (appearance of unfairness where an appointed member of the hearing tribunal had a pending job application with one of the parties); *Buell*, 80 Wn.2d 518 (appearance of fairness violated where planning commission member had a personal financial stake in a rezone decision); *State ex rel. Beam v.*

Fulwiler, 76 Wn.2d 313, 456 P.2d 322 (1969) (commission could not adjudicate the appeal of a civil service employee where four of the five commission members had engaged in a multi-faceted and "concerted effort" to have him removed from office). Here, there is no evidence that the reviewing officer had a personal interest in the proceedings.

Nationscapital asserts that we should infer bias from the fact that the reviewing officer "just happened to agree with [DFI] on every significant issue and increased the amount of the fine recommended by the ALJ." Appellant's Reply Br. at 29-30. That an adjudicator considered the opponent's evidence and reasoning more persuasive does not sufficiently support an appearance of unfairness claim. *See Swoboda v. Town of La Conner*, 97 Wn. App. 613, 628, 987 P.2d 103 (1999), *review denied*, 140 Wn.2d 1014 (2000). Here, the reviewing officer reviewed each exception Nationscapital raised, rejecting most but agreeing with some. The reviewing officer stated his reasons for rejecting or accepting Nationscapital's arguments. The reviewing officer reasonably determined that the ALJ erred by holding Chisick personally liable for some disclosure violations but not others. The reviewing officer corrected the inconsistency--an error Nationscapital raised--by concluding that Chisick was personally liable for all the disclosure violations. We cannot infer bias merely because the reviewing officer ruled contrary to Nationscapital, where those rulings are fairly supported by the record and the law.

Nationscapital suggests that DFI's pecuniary interest in the decision raises the appearance of unfairness because of the substantial fines DFI sought. The argument lacks merit.

Under Nationscapital's reasoning, DFI could *never* levy fines or penalties, regardless of who served as reviewing officer. Any link between the reviewing officer and DFI's pecuniary interest in fines is too attenuated to support an appearance of fairness claim. *See In re Pers. Restraint of Haynes*, 100 Wn. App. 366, 376-77, 996 P.2d 637 (2000) (no appearance of

unfairness where salaried parole board members have an attenuated pecuniary interest in maintaining an incarcerated population).

Nationscapital likens Thomson's appointing Dellwo to the situation in *Utica Packing Co. v. Block*, 781 F.2d 71 (6th Cir. 1986). In *Utica Packing*, an agency head replaced a reviewing officer who had issued a final decision unfavorable to the agency's position. The substitute reviewing officer had no legal, regulatory, or adjudicatory experience. Under those facts, the court found the risk of unfairness "intolerably high." *Utica Packing*, 781 F.2d at 78. But contrary to Nationscapital's assertion, the principle of that case is not that "[b]iased agency heads cannot choose the final decision maker because it creates an appearance of unfairness." Appellant's Br. at 75. Rather, in the court's words: "There is no guarantee of fairness when the one who appoints a judge has the power to remove the judge before the end of proceedings for rendering a decision which displeases the appointer." *Utica Packing*, 781 F.2d at 78. *Utica Packing* is factually distinguishable from this situation.

Here, Nationscapital fails to establish the bias of either Thomson or the reviewing officer. Thomson's role in the investigation, without more, does not establish bias. Under the APA's separation of functions provision, he may not serve in the dual capacity of investigator and adjudicator. But his statutory disqualification from adjudicating the matter, without more, does not amount to personal interest or bias for purposes of the appearance of fairness doctrine. As already noted, the combination of investigative and adjudicative functions does not violate the appearance of fairness doctrine. *Johnston*, 99 Wn.2d at 478. And we cannot infer prejudgment of issues from an official's determination that probable cause exists to bring an enforcement action because different standards of proof apply in determining whether violations actually occurred. *See Withrow v. Larkin*, 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).

Thomson's role in directing the scope and direction of the investigation does not evidence personal bias or prejudice.

Because Nationscapital does not establish Thomson's bias, let alone the reviewing officer's, its appearance of fairness claim fails.

Denial of Discovery

Nationscapital contends that DFI and Dellwo erred by denying discovery on the issue of why DFI appointed Dellwo. Nationscapital complains that, as a result, it could not support its claim as to the reviewing officer's bias. In its view, discovery was "critically important" to determine the relationship between Bley and/or Thomson and Dellwo and the reasons for Dellwo's selection.

Courts should not probe the mental processes of administrative officials in making a decision. *United States v. Morgan*, 313 U.S. 409, 422, 61 S. Ct. 999, 85 L. Ed. 1429 (1941) (district court erred in permitting opponents of an agency decision to depose the agency head and probe his reasons for issuing certain orders). "Just as a judge cannot be subjected to such a scrutiny, so the integrity of the administrative process must be equally respected." *Morgan*, 313 U.S. at 422 (citation omitted). In the absence of evidence to the contrary, courts should "presume public officers perform their duties properly, legally, and in compliance with controlling statutory provisions." *Ledgering v. State*, 63 Wn.2d 94, 101, 385 P.2d 522 (1963).

An exception exists when the record is insufficient to permit meaningful judicial review of an agency decision. In *Ledgering*, for instance, the Department of Licensing summarily revoked the plaintiff's driver's license. 63 Wn.2d at 101-02. At issue was whether the director failed to exercise his discretionary authority but, instead, impermissibly delegated the decision-making process to subordinates. The court remanded for further factual findings on the question.

Similarly, in *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420, 91 S. Ct. 814, 28 L. Ed. 2d 136 (1971), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99, 105, 97 S. Ct. 980, 51 L. Ed. 2d 192 (1977), the Supreme Court remanded for inquiry into an administrator's reasons for approving a highway project, where the law permitted approval only in the absence of feasible alternatives. The administrative record did not adequately reveal whether the administrator considered such alternatives. The Court held that inquiry into the official's decision-making process was necessary for effective judicial review under the APA to determine whether the official considered the relevant factors in rendering a decision. But the Court held that where administrative findings do set forth the grounds of decision, "there must be a strong showing of bad faith or improper behavior before such inquiry may be made." *Overton Park*, 401 U.S. at 420.

Nationscapital contends that discovery was appropriate in this case because the record does not reveal Thomson's reasons for appointing Dellwo. But unlike in *Ledgering* or *Overton Park*, inquiry into the administrator's decision-making process is not necessary for effective judicial review. Nationscapital does not contend that Thomson failed to exercise his discretion, as in *Ledgering*. Nor does Nationscapital contend that Thomson failed to apply the relevant statutorily prescribed factors, as in *Overton Park*. Thomson's appointment of the reviewing officer was a matter within his discretion. Because Nationscapital advanced no evidence showing that Thomson exercised that discretion contrary to law, DFI and Dellwo did not err in denying discovery.

Nationscapital relies on other inapposite cases to argue that the denial of discovery was improper. *Hummel v. Heckler*, 736 F.2d 91 (3rd Cir. 1984); *Chrobuck v. Snohomish County*, 78

Wn.2d 858, 480 P.2d 489 (1971); *City of Lake Forest Park v. Shorelines Hearings Bd.*, 76 Wn. App. 212, 884 P.2d 614 (1994).

Hummel involved the appeal of a denial of social security benefits. The court permitted the claimant to discover whether the ALJ was subject to a controversial statistical performance review that may have biased his decision. The claimant presented evidence that the agency head discouraged ALJs from granting claims by subjecting them to the performance review. Unlike in *Hummel*, here Nationscapital has not made the required preliminary showing that the reviewing officer was biased.

The factual recitation of *Chrobuck* states that a challenger to a city's rezone decision took the deposition of one of the planning commission members, who went on an all expense paid trip to visit an oil refinery of the rezone applicant. 78 Wn.2d at 866. The court also notes, without analysis, that the planning commission refused a request for further inquiry on the personal entanglements of other commission members in the applicant's affairs. The propriety of discovery was not an issue in the case.

City of Lake Forest Park involved a challenge to a decision of the Shoreline Hearings Board. After alleging that absent voting members relied on defective audiotapes, the challenger obtained an ex parte order granting discovery of the audiotapes. *City of Lake Forest Park*, 76 Wn. App. at 216. The propriety of discovery was not an issue in the case.

Nationscapital presents evidence outside the record that Dellwo lacked qualifications for the position, i.e., a press release announcing his law firm employment. But DFI correctly points out that Dellwo, an attorney, participated in drafting legislation amending the Mortgage Broker Practices Act while serving in the legislature. Contrary to Nationscapital's assertion, Dellwo's

legal training and legislative experience in the regulation of mortgage brokers indicate that he had appropriate qualifications to serve as the reviewing officer.

Because Nationscapital failed to make a threshold showing of either Thomson's and/or Dellwo's bias, DFI did not err by refusing discovery on the issue.

Due Process

Nationscapital asserts that it has a constitutional due process right to the appointment of a reviewing officer by a neutral party.

The procedural due process clause constrains the government's power to deprive individuals of liberty or property interests within the meaning of the fifth and fourteenth amendments to the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). Both the imposition of fines and the revocation of a professional license are subject to the due process clause. *Johnston*, 99 Wn.2d at 474. Due process requires an opportunity to be heard before a neutral adjudicator. *Johnston*, 99 Wn.2d at 475. The principles governing the disqualification of judges apply as well to administrative agencies. *Ritter v. Bd. of Comm'rs of Adams County Pub. Hosp. Dist. No. 1*, 96 Wn.2d 503, 513, 637 P.2d 940 (1981) (no due process violation where a physician testified at a hearing to suspend a doctor's license and then sat on the post-suspension reviewing board). Prejudgment bias, partiality, or personal interest may disqualify an adjudicator. *Johnston*, 99 Wn.2d at 474. But we presume that an adjudicator is impartial, and a party alleging bias must make an affirmative showing that it exists. *Ritter*, 96 Wn.2d at 513.

A mere "predilection" toward a particular result does not violate due process unless it prevents an agency official from deciding a case fairly. *Johnston*, 99 Wn.2d at 475. Nor does the combination of investigatory, prosecutory, and adjudicatory functions violate due process.

Johnston, 99 Wn.2d at 477 (no due process violation where medical disciplinary committee presides over a license suspension hearing evolving from its own investigation) (citing *Withrow*, 421 U.S. at 47). In *Withrow*, the Supreme Court observed that where an adjudicator has a pecuniary interest in the proceeding or has been the subject of personal abuse by the party, then the probability of actual bias is intolerably high; but where the alleged bias results from the combination of investigative and adjudicative powers in an administrative agency, the challenger must overcome the presumption of honesty and integrity in the adjudicator. 421 U.S. at 47.

Nationscapital relies on inapposite cases that involve bias by an adjudicator, not the person who appointed the adjudicator. *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 106 S. Ct. 1580, 89 L. Ed. 2d 823 (1986) (insurance company's due process violated where a supreme court justice affirmed a jury award against the insurer although he had a personal financial stake in a pending class action suit involving the same issues); *New York State Inspection, Sec. & Law Enforcement Employees v. New York State Pub. Employment Relations Bd.*, 629 F. Supp. 33 (N.D.N.Y. 1984) (denying Fed. R. Civ. P. 12(b)(6) motion where the decision maker charged with reviewing a penalty for an illegal strike allegedly had improper ex parte discussions on the merits of the case and made public comments indicative of prejudgment bias).

Here, there is no evidence that Dellwo was biased against Nationscapital. Moreover, Nationscapital does not even establish that Thomson was biased. Thomson's role in investigating and preparing the statement of charges against Nationscapital does not indicate actual bias, under either *Johnston* or *Withrow*, because it does not follow that he would be unwilling to fairly consider any defenses offered during the hearing. Thus, Nationscapital's constitutional due process claim fails.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

JAMIE CHISICK'S PERSONAL LIABILITY

Nationscapital argues that DFI erred in holding Chisick personally liable for restitution, disclosure violations, unlicensed branch activity, and violations of the Equal Credit Opportunity Act, 15 U.S.C § 1691. It contends that, by administrative rule, DFI may only penalize a person who personally violated the act, not a principal or officer with supervisory responsibility. Alternately, it contends that DFI erroneously applied the law and/or substantial evidence does not support a finding that Chisick participated in or approved Nationscapital's violations.

The director may "[i]mpose fines on the licensee, employee or loan originator of the licensee, or other person subject to [the Act]" for violating the Act's disclosure requirements, violating the equal credit opportunity act, and/or engaging in unlicensed branch activity, among other violations. RCW 19.146.220(2)(c), (i). The director may also order any such person to pay restitution to an injured borrower. RCW 19.146.220(2)(d)(ii).

WAC 208-660-165

DFI adopted the following administrative rule relating to fines and penalties for violations of the Act:

> Each mortgage broker and each of its principals, designated brokers, officers, employees, independent contractors, and agents shall comply with the applicable provisions of the Mortgage Broker Practices Act. Each 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. Each day's continuance of the violation is a separate and distinct offense. In addition, the director in his or her discretion may by order assess other penalties for a violation of the Mortgage Broker Practices Act.

WAC 208-660-165.

Nationscapital argues that the rule permits DFI to impose fines only on those who commit a direct violation, not a principal or officer. Administrative agencies are bound by their own administrative rules. *Ritter*, 96 Wn.2d at 507. But the rule at issue does not limit the director's discretion as Nationscapital contends.

Nationscapital ignores the rule's first sentence and suggests a narrow interpretation of the term "violator." Such a narrow focus is inconsistent with DFI's intent to hold not only a mortgage broker but also "each of its principals, designated brokers, officers, employees, independent contractors, and agents" responsible for compliance with the Act. WAC 208-660-165. Although the rule limits the amount of fine that may be levied to $100 per day, per offense, it does not limit the range of persons subject to fines. Thus, we reject Nationscapital's interpretation of the rule as unreasonably narrow.

Restitution and Fines for Disclosure Violations

In holding Chisick personally liable for restitution and fines, the ALJ rejected Chisick's argument that he had no personal knowledge of Nationscapital's violations, finding that the evidence established that the deceptive practices used were part of "a Nations-wide scheme to defraud and mislead Washington borrowers." AR 658 (conclusion of law 15). In particular, the ALJ found that Willis and Johnson followed the scripts of the document signer manual and other instructional materials that Chisick personally prepared or approved.

Nationscapital argues that DFI erred by holding Chisick personally responsible for restitution and fines because he was not directly involved in the day-to-day activities of brokering loans to Washington consumers. It contends that he was a "big-picture" man whereas

Willis "ran the show" in Washington. RP at 3864. In Nationscapital's view, DFI cannot hold Chisick personally responsible for restitution and fines absent evidence of his personal participation in each particular violation.

Nationscapital's position is contrary to the "responsible corporate officer" doctrine, followed in Washington. A corporate officer who either participates in wrongful conduct or approves of it is personally liable for penalties. *State v. Ralph Williams' N. W. Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 322, 553 P.2d 423 (1976) (California-based owner/manager of car dealership personally liable for fines and restitution because of his role in formulating and supervising deceptive sales practices used with Washington consumers). An officer is liable to the same extent whether he personally participated in the wrongful conduct or merely approved of it. *Johnson v. Harrigan-Peach Land Dev. Co.*, 79 Wn.2d 745, 753, 489 P.2d 923 (1971) (holding corporate officers liable for fraudulent misrepresentations made by their employees given their "close control, management, and direction" over a land development company and its sales program). This rule recognizes that "'the only way in which a corporation can act is through the individuals who act on its behalf.'" *Dep't of Ecology v. Lundgren*, 94 Wn. App. 236, 243, 971 P.2d 948 (quoting *United States v. Dotterweich*, 320 U.S. 277, 281, 64 S. Ct. 134, 88 L. Ed. 48 (1943)), *review denied*, 138 Wn.2d 1005 (1999). In order to hold a corporate officer personally liable for a corporation's wrongful conduct, the government need only show that the officer had the responsibility and authority either to prevent a violation in the first instance or to promptly correct it, but failed to do so. *Lundgren*, 94 Wn. App. at 244 (quoting *United States v. Park*, 421 U.S. 658, 673-74, 95 S. Ct. 1903, 44 L. Ed. 2d 489 (1975)).

Thus, DFI did not have to prove Chisick's personal participation in each disclosure violation in order to hold him liable for restitution and fines. The following facts provide

sufficient evidence in support of the decision. Chisick served as company president and oversaw its operations. He hired, trained, and supervised Willis and other company employees. He prepared the telemarketing and document signer manuals that Nationscapital's employees used to mislead Washington borrowers. Numerous consumers personally complained to him about deceptive practices and misrepresentations Willis and other company agents made. And DFI's later investigation revealed that Nationscapital failed to provide adequate disclosures in each instance. This evidence sufficiently supports an inference that Chisick personally knew and approved of the disclosure violations as part of Nationscapital's pattern and practice of deceiving Washington consumers. DFI did not err in assessing fines against Chisick personally.

Unlicensed Branch Activity

Nationscapital argues that DFI erred by holding Chisick personally liable for fines related to unlicensed branch activity during the period February 19, 1995, through January 31, 1998. It contends that insufficient evidence supports the fine because DFI failed to prove that Nationscapital conducted business on each of the 978 days for which it assessed fines.

The reviewing officer rejected Nationscapital's argument, ruling that "[t]o require such a showing would make the State's burden of proof so onerous as to vitiate the statute's deterrent purpose by rendering it nearly impossible to demonstrate a continuing violation." AR at 782. We agree with the reviewing officer.

DFI presented evidence showing that Nationscapital began originating loans from outside Washington as early as February 19, 1995, and that Nationscapital continued to do so until it stopped doing business in Washington on January 31, 1998. The evidence consists of loan documents for specific consumer loans originated during that period. DFI need not have presented direct evidence that Nationscapital conducted business on each day of the period in

question. The evidence presented supports an inference that Nationscapital carried on unlicensed branch activity during the period in question.

Nationscapital also argues that insufficient evidence establishes that Chisick was personally aware of, or approved, the unlicensed branch activity. This argument fails for the same reasons discussed above with reference to Chisick's personal liability for restitution and disclosure violations. By Chisick's own admissions, he knew that Nationscapital solicited and processed loans from unlicensed, out-of-state locations and he failed to take any steps to stop it. As president, Chisick had the responsibility and authority to prevent and/or correct the violations but failed to do so. DFI did not err in assessing the fine.

Equal Opportunity Credit Act

Nationscapital argues that DFI erred in holding Chisick personally responsible for violating the equal opportunity credit act by using a form that impermissibly collected confidential information from loan applicants. DFI found the form in most of the loan files. Nationscapital routinely used the document in soliciting loans from Washington consumers. Nationscapital contends that substantial evidence does not support the fine because there is no evidence that Chisick personally knew about or approved the form's use. As discussed above, the responsible corporate officer doctrine applies. As president, Chisick had the responsibility and authority to prevent and/or correct the violations but failed to do so. Again, DFI did not err in assessing the fines against Chisick.

FIVE-YEAR BAN ON MICHAEL BUFF

Nationscapital contends that DFI erred in banning Buff from participating in the mortgage broker business for five years. It asserts that the decision lacks substantial evidence and adequate reasoning, as RCW 34.05.461(3) requires.

Buff began working for Nationscapital in July 1995. From April 1996 on, he served as vice-president of operations for Nationscapital, working out of its California headquarters.[5] He was responsible for compliance with state regulations, and he was the only person at the corporation handling compliance matters.

Contrary to Nationscapital's claim, DFI's initial and final orders provide findings and reasons supporting the conclusion that Buff should be prohibited from the mortgage broker business for five years. The ALJ refers to Buff in 12 findings of fact.

The ALJ found that Buff was Nationscapital's vice-president of operations, working out of the California headquarters. When DFI challenged Nationscapital to explain why it did not maintain loan records in the Washington office, as required by statute, Buff said Nationscapital had DFI's permission to keep the records in California, but he produced no evidence that DFI gave permission.

In finding of fact 13, the ALJ found that "Nations Telemarketing Manual and Nations Document Signer Manual were compiled primarily by Jamie Chisick and Michael Buff." AR at 607. The finding references Exhibit 144, Nationscapital's sworn response to DFI's first set of interrogatories. In interrogatory 189, DFI asked: "Identify the source and [sic] of the Nations Telemarketing Manual and the Nations Document Signer Manual and all person[s] having knowledge of the source of these manuals." Ex. 144 at 48. In response, Nationscapital stated, "Michael Buff and Jamie Chisick were primarily involved, utilizing a variety of sources,

[5] In June 1997, in response to DFI's inquiry into the Prater complaint, Buff wrote a letter to DFI stating that Nationscapital hired him as its compliance officer shortly after the Prater loan in order to ensure Nationscapital complied with state regulations. The Prater loan closed in June 1995. At the hearing, Buff said that statement was a "mistake" and that he only became the compliance officer after the Salick and Prater complaints, in April to June 1997. RP at 4652, 6305. He asserted that he was the "new guy" as of that date. RP at 4655.

including industry materials, their prior experience, the experience of their employees and their own innovation." Ex. 144 at 48. Buff signed the interrogatories, certifying that "he is Vice President [sic] of Nationscapital Mortgage Corporation; that in that capacity he has read the foregoing Responses to First Set of Interrogatories and Request for Production of Documents thereto, knows the contents thereof, and believes the same to be true." Ex. 144 at 53.

Buff acknowledged that even when a lender provides a revised GFE, Nationscapital must independently provide such a disclosure when fees are higher than those initially disclosed, inuring to the broker's benefit.

The ALJ declined to hold Buff personally responsible for the violation of maintaining records out of state, concluding that the evidence did not prove that he personally knew that Nationscapital lacked permission to do so.

DFI charged Buff with making false statements or willfully failing to disclose information DFI requested during its investigation, in violation of RCW 19.146.0201(8). The ALJ concluded that DFI failed to prove the allegation.

The ALJ excerpted several portions of the manuals that instruct on how to deceive and mislead consumers about loan terms and conditions. The ALJ found that the document signer manual was used in Washington based on testimony by borrowers that reflected the methods set forth in the manual.

The ALJ concluded that "[g]rounds for sanctions exist for Michael Buff [and others]. Pursuant to RCW 19.146.220(2)(e), Michael Buff [and others] will be prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under Chapter 19.146 RCW, as an officer, principal, employee, or loan originator, for a period of five (5) years." AR at 674 (conclusion of law 62).

The findings and conclusions satisfy the statutory requirements and support DFI's decision to ban Buff from the mortgage broker business for a five-year period. In particular, Buff's involvement in preparing the telemarketing manual and the document signer manual that were used to deceive Washington consumers provides substantial evidence in support of the decision. Also, as Nationscapital's compliance officer, Buff was responsible for ensuring that it complied with all relevant state regulations. Although during the hearing Buff tried to minimize his involvement, claiming that he only played a significant role in Nationscapital after most of the alleged violations occurred, the ALJ could reasonably conclude to the contrary, in view of Buff's own contrary statements to DFI as well as Chisick's testimony on Buff's role.

DFI did not err in banning Buff from participating in the mortgage broker business for five years.

SUBSTANTIAL EVIDENCE

Nationscapital further contends that substantial evidence does not support 51 of the hearing examiner's 114 findings of fact. We address each in turn.

Nationscapital challenges finding of fact 6, contending that no substantial evidence shows that GAMC or Nationscapital misled DFI about the nature of the change in Nationscapital. But the ALJ did not find that Nationscapital misled DFI in that regard. Rather, finding 6 points to various parts of the record where Nationscapital told DFI that it changed its name from GAMC to Nationscapital and transferred ownership and requested a revised license under the new name. The challenge lacks merit.

Nationscapital challenges finding 7, contending there is no evidence that Riverview Escrow Company, Inc., an escrow service owned by Chisick and not licensed to operate in Washington, actually performed escrow services in Washington. But the record contains

evidence that Riverview was the escrow service for loans that Nationscapital originated in Washington. And testimony by Cross supports the ALJ's finding that in March 1997, DFI learned that Nationscapital was using Riverview to provide escrow services in Washington. The ALJ correctly entered these facts.

Nationscapital challenges finding 13, asserting there is no evidence that the "handbooks" Willis gave to Cross at the June 24, 1997 visit are the manuals approved for use by Nationscapital, that Buff had any part in preparing them, or that they were ever used in Washington. Willis gave Cross a document signer manual and a telemarketing manual. In a letter to Cross, Buff stated: "The only official manuals approved and maintained by Nationscapital are a Document Signer Handbook and a Telemarketer Handbook." Ex. 26 at 2. Testimony by Willis supports the ALJ's finding that either Buff or Krause gave him the manuals he delivered to Cross and that Chisick and Williams instructed him on their use. By Buff's own admission, he and Chisick personally compiled the manuals. Testimony of borrowers supports an inference that the manuals were used in Washington. Thus, substantial evidence supports the finding.

Nationscapital challenges finding 16, asserting that no evidence supports finding that any manuals were used in Washington. Finding 16 merely excerpts portions of the document signer manual. The record supports the finding.

Nationscapital challenges finding 17, asserting that the evidence does not support finding that the manuals' sales techniques violate the law. The ALJ found that the manuals contain instructions and methods to mislead borrowers and avoid answering their direct questions. In particular, the ALJ found that the manuals instructed the document signer to lead a borrower to believe that the amount financed was the same as the loan amount and to falsely tell them that

Nationscapital bargained for special discounts by submitting loan applications in "investor lots." AR 610 (finding of fact 17). The Act prohibits mortgage brokers from defrauding or misleading borrowers and Nationscapital's argument fails.

Nationscapital challenges findings 18 and 19, asserting no evidence shows that Chisick or Kraus trained Willis or Johnson to use the manuals. Nationscapital's organization chart shows that Kraus supervised Johnson, Nationscapital's field representative in Washington, and that Chisick supervised Kraus. The ALJ also found that Susan Strang, a Washington office employee, used the telemarketing manual. Willis testified that he thought Strang "may have" used the manual, but he was not sure. RP at 1323. Substantial evidence does not support that portion of the ALJ's finding 18 that Strang actually used the manual. But substantial evidence in the form of borrower testimony supports the finding that the telemarketer manual was used to solicit Washington consumers from outside of the state, regardless of whether Strang herself used the manual.

Nationscapital challenges finding 20, asserting that neither Chisick nor Buff was aware of Willis's misrepresentations. In finding 20, the ALJ describes how borrowers were misled to believe that their adjustable rate mortgage (ARM) would convert to a fixed rate loan at the end of one year, if certain conditions were met. The finding is based on a letter printed on Nationscapital stationery, signed by Chisick, and provided to Washington borrowers. Nationscapital complains that no evidence specifically ties Chisick to individual borrowers. To the contrary, substantial evidence supports the ALJ's finding, including the document signer manual and Willis's testimony.

Nationscapital challenges finding 22, in which the ALJ found that Chisick was personally aware of consumer complaints as early as 1995. Chisick testified that, before the 1997 Salick

and Prater complaints, he was unaware of any complaints by Washington borrowers. The ALJ believed the contrary testimony of several borrowers that they had complained directly to Chisick before then. Asserting that "subprime borrowers tend to complain," Nationscapital argues that Chisick had no reason to believe there was a systemic problem. Appellant's Br. at 88. Substantial evidence supports the ALJ's finding that Chisick was aware of complaints by Washington borrowers.

Nationscapital challenges finding 23, in which the ALJ stated that DFI seeks a $64,300 fine against Nationscapital and a $64,300 penalty against Chisick for fraud and unfair and deceptive practices in violation of RCW 19.146.0201(1),(2), and (3), calculating at the rate of $100 per day times 643 separate violations. The finding accurately stated the relief DFI sought in its statement of charges.

Nationscapital challenges finding 24, in which the ALJ stated that DFI seeks a $29,300 fine against Nationscapital and against Chisick personally for making false or deceptive statements or representations in violation of RCW 19.146.0201(7), calculated at the rate of $100 for each of 293 separate violations. The fines relate to misrepresentations by Nationscapital, which led borrowers to believe that they would receive a fixed rate loan, either originally or at the end of a year, when in fact they received an ARM that did not convert to a fixed rate loan. Nationscapital contends that nothing shows that Chisick was personally aware of or approved any representation made to a particular borrower. Substantial evidence in the record supports the ALJ's finding, in the form of borrower testimony and evidence that Chisick personally prepared the manuals and authorized their use.

Nationscapital challenges finding 25, which detailed DFI's initial unsuccessful attempts to review Nationscapital's business records. Upon review, the reviewing officer amended the

finding to note that Nationscapital initially objected to the production of records because of concerns regarding confidentiality and that Nationscapital sought and obtained a protection order from the court. Nationscapital fails to acknowledge the reviewing officer's revision.

Nationscapital challenges finding 31, in which the ALJ accurately states that DFI entered a temporary cease and desist order in August 1997 and the basis for that order. AR at 613. Nationscapital contends the finding erroneously omits the fact that the order "was an abuse of [DFI's] power which was not authorized by statute and violated Nations' constitutional and statutory rights." Appellant's Br. at 90. Nationscapital successfully sought a stay of the order, followed by a more narrowly tailored order. However, the ALJ did not err in declining to adopt Nationscapital's rhetorically charged characterization of the facts.

Nationscapital challenges finding 43, in which the ALJ found that Nationscapital's practice of maintaining corporate records out of state hindered DFI's investigation and that Nationscapital initially failed to produce three months of documents. AR at 616. Nationscapital complains that DFI's refusal to agree to a protective order delayed DFI's review far longer than any delay caused by keeping the records in California. Substantial evidence supports the ALJ's finding. Had Nationscapital properly maintained the files in Washington, DFI could have begun reviewing them onsite on June 24, 1997, when it initiated the investigation.

Nationscapital challenges finding 45, asserting that the ALJ incorrectly refers to "missing files" sent from California to Washington. AR at 616. The ALJ accurately summarizes a letter by Nationscapital's attorney to DFI stating that Buff will be forwarding files that Nationscapital omitted from the initial production of documents.

Nationscapital challenges finding 47, in which the ALJ accurately states that DFI ordered nine Nationscapital's employees to appear and give testimony and that all nine failed to do so.

Nationscapital contends the finding is incomplete and misleading because it does not reveal Nationscapital's principled opposition to the directive. The finding is an accurate statement the record supports.

Nationscapital challenges finding 55, asserting that no evidence shows that Chisick supervised sales manager Darin Williams or that it conducted its business from out of state every day from May 30, 1995, on. Nationscapital contends that no work occurred on weekends, holidays, or other special days when the business was closed, such as on the owner's wedding day. In the finding, the ALJ states that Nationscapital received a license effective May 30, 1995, but that Nationscapital solicited Washington consumers from its California offices, maintained files in California, and processed loans through its Portland office. Williams supervised the loan officers and Chisick supervised Williams. Chisick did not instruct Williams to discontinue solicitations from out-of-state locations, even after DFI notified him that the practice violated Washington law. Substantial evidence supports the ALJ's finding, including Nationscapital's organization chart, record testimony, and copies of loan documents demonstrating its continued unlicensed activity from out of state. Further, in finding 56, the ALJ notes Nationscapital's contention that the unlicensed activity did not occur every day.

Nationscapital challenges finding 68, in which the ALJ finds that Chisick owns both Nationscapital and Riverview Escrow Company and that Nationscapital used Riverview Escrow on loans that Nationscapital originated in Washington. Nationscapital contends, without citation to the record, that while "Riverview Escrow company provided some services in each transaction, there was a Washington licensed escrow company engaged for every transaction." Appellant's Br. at 93. The challenge lacks merit.

Nationscapital challenges finding 81, in which the ALJ describes Stanley Moffett's loan transaction with Nationscapital. Moffett testified that Nationscapital, and Chisick personally, assured him he would receive $50,000 out of his refinance, that the ARM would automatically convert to a fixed rate after one year, that taxes and insurance were included in the disclosed monthly payment, and that the broker's fee would be paid by the lender, none of which was true. RP at 2148-53, 2157, 2165-66, 2178-80. Nationscapital claims Moffett's testimony is "incredible" because no reasonable person would have believed that he could receive a no-cost loan, he admitted to spending an hour to sign the closing documents, and he knew that his payment could go up. Appellant's Br. at 99. We do not review the ALJ's credibility determinations. *Affordable Cabs*, 124 Wn. App. at 368. Moffett's testimony provides substantial evidence in support of the finding.

Nationscapital challenges finding 85 in which the ALJ describes Sharon Shoop's loan transaction with Nationscapital. AR at 632. Shoop testified that Nationscapital assured her that she would obtain a fixed rate loan, with about $11,000 out of the refinance, with no prepayment penalty and that her broker's fees would be about $5,000. Instead, she received an ARM, and $1,000 cash, was charged over $10,000 in broker's fees, and incurred an $11,000 prepayment penalty. RP at 2340-43, 2355. Her husband called Chisick to protest. RP at 2354. Shoop's testimony provides substantial evidence in support of the finding.

Nationscapital challenges finding 86 in which the ALJ describes Joe Todd's loan transaction with Nationscapital. AR at 633. Todd's testimony provides substantial evidence in support of the finding. RP at 2426.

Nationscapital challenges finding 93 in which the ALJ describes Phyllis Beall's loan transaction with Nationscapital. AR at 639. Beall's testimony provides substantial evidence in support of the finding. RP at 2846.

Nationscapital challenges finding 97 in which the ALJ describes Judson Fork's loan transaction with Nationscapital. AR at 644. Fork's testimony provides substantial evidence in support of the finding. RP at 3247.

Nationscapital challenges finding 98 in which the ALJ describes Robert Sutton's loan transaction with Nationscapital. AR at 645. Sutton's testimony provides substantial evidence in support of the finding. RP at 3347.

Nationscapital challenges finding 99 in which the ALJ describes Gloria Post's loan transaction with Nationscapital. AR at 645. Post's testimony supports the finding. RP at 3400.

Nationscapital challenges findings 70-101, in which the ALJ describes various borrowers' experiences with Nationscapital. AR at 622-647. Nationscapital specifically discusses only some of those findings in its briefing. In each case, the borrower's testimony provides substantial evidence in support of the ALJ's finding. RP at 1191 (John Salick), RP at 1377 (Janet Irish), RP at 1438 (Orval Goede), RP at 1567 (Jerry Morris), RP at 1589 (William Hines, II), RP at 1644 (Kim Sinner), RP at 1907 (Lois Talebi). Nationscapital generally challenges findings related to other borrowers' testimony, asserting that, in each case, the borrowers signed multiple disclosures that accurately revealed the loan costs and terms. In each case, the borrowers' testimony supports the ALJ's finding. RP at 1993 (Kenneth George), RP at 2039 (Gerald Slater), RP at 2084 (Joseph Dobbins), RP at 2208 (Keith Mullins), RP at 2230 (Wesley Germann), RP at 2271 (Joan Thompson), RP at 2473 (Rick Feser), RP at 2516 (Robin Hipol), RP at 2579 (Heidi Monroe), RP at 2613 (Michelle Miller), RP at 2690 (Shirley Payne),

RP at 2790 (Howard Mansfield), RP at 2910 (Kenneth Peterson), RP at 2971 (Barry Marques), RP at 3048 (Susan Stockbridge), RP at 3457 (Jerry Stokes), RP at 3508 (Robert Dorr).

Finally, Nationscapital challenges finding 102, stating that no evidence shows that Nationscapital used an estimated cost analysis form in an effort to deceive borrowers but, rather, used it to educate them on the advantage of paying more than the required monthly payment. Finding 102 does not relate to the estimated cost analysis form. But finding 103 does. Substantial evidence supports the ALJ's finding that Nationscapital used an "Estimated Cost Analysis"/"Monster" form to convince borrowers to go through with a loan by misleading them into believing that they could save large sums of money. AR 648 (finding of fact 103). The form was deceptive because its cost-savings calculations related to fixed rate loans, not ARMs, and 90 percent of the borrowers received ARMs.

We hold that Nationscapital has failed to meet its burden of demonstrating that substantial evidence does not support the challenged findings of fact.

Affirmed.

Houghton, J.

We concur:

Quinn-Brintnall, C.J.

Hunt, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

NATIONSCAPTIAL MORTGAGE CORP., JAMIE CHISICK; MICHAEL BUFF; KEVIN KRAUS and DARIN WILLIAMS,
Appellants,

v.

STATE OF WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS and SCOTT JOHNSON,
Respondent.

No. 32851-8-II

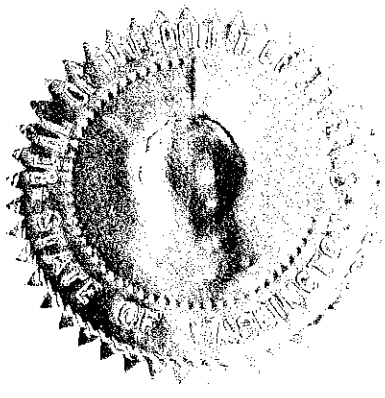
MANDATE

Thurston County Cause No.
03-2-00353-8

The State of Washington to: The Superior Court of the State of Washington in and for Thurston County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on June 20, 2006 became the decision terminating review of this court of the above entitled case on July 21, 2006. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion. Costs have been awarded in the following amount:

Judgment Creditor, State of Washington Department of Financial Institutions, $228.34
Judgment Debtors, Nationscapital Mortgage, Jamie Chisick, Michael Buff,
Kevin Kraus and Darren Williams, $228.34



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 8th day of August, 2006.

Clerk of the Court of Appeals,
State of Washington, Div. II

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

In The Matter Of Determining Whether There Has Been A Violation Of The Mortgage Act By: NATIONSCAPITAL MORTGAGE CORP., JAMIE CHISICK, INDIVIDUALLY AND AS PRESIDENT AND OWNER, BRAD CHISICK, INDIVIDUALLY AND AS OWNER, STEVEN WILLIS, INDIVIDUALLY AND AS DESIGNATED BROKER, SCOTT JOHNSON, INDIVIDUALLY AND AS LOAN ORIGINATOR, MICHAEL BUFF, INDIVIDUALLY AND AS VICE PRESIDENT AND DIRECTOR, KEVIN KRAUS, INDIVIDUALLY AND AS TELESALES MANAGER, AND DARREN WILLIAMS, INDIVIDUALLY AND AS SALES MANAGER Respondents	No. 97-083-C01 AMENDED STATEMENT OF CHARGES AND NOTICE OF INTENTION TO ENTER AN ORDER

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I. INDEX

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II. STATEMENT OF CHARGES

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions ("Director") is responsible for the enforcement, administration and interpretation of chapter 19.146 RCW, the Mortgage Broker Practices Act ("Act")[1]. After having conducted an investigation, and based upon the facts available as of May 11, 1998, the Director institutes this proceeding and finds as follows:

III. BACKGROUND

A. LICENSING HISTORY

1. Nationscapital Mortgage Corp. ("Nations") is a mortgage broker licensed pursuant to the Act. Nations' license was issued by the Director on an interim basis on May 30, 1995, and converted to permanent status on June 30, 1995.

2. Nations is authorized to hold itself out as a mortgage broker from 800 Bellevue Way North East, Suite 400, Number 448, Bellevue, Washington 98004. The Bellevue location is the only licensed location of Nations, and the only location from which Nations is authorized to hold itself out as a mortgage broker, or otherwise conduct the business of a mortgage broker in Washington. Nations has filed and maintained a surety bond for this location as required pursuant to RCW 19.146.205(4)(a).

[1] The Act was amended April 21, 1997, effective July 21, 1997. Substantive changes were made in Disclosures (RCW 19.146.030), Accounting Requirements (RCW 19.146.060), Investigation Powers (RCW 19.146.235), Claims Against The Bond (RCW 19.146.240), and Branch Offices (RCW 19.146.265). Where appropriate, the impact of these changes will be noted. Codification changes as a result of the amendment will be noted where clarification is necessary.

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3. On September 29, 1997, Nations made application with the Department for branch offices pursuant to the Act at 10260 S.W. Greenberg Road, Portland, Oregon 97223, and 1045 W. Katella Avenue, Suite 200, Orange, California 92867. The California location of Nations is listed with the Department as the corporate headquarters for Nations. Neither location has been issued a license under the Act by the Director.

4. In September 1996, Nations made application with the Department for consumer loan licenses under chapter 31.04 RCW, the Consumer Loan Act, for its Bellevue and California locations. The approval of Nations' consumer loan license applications is pending and will be dealt with as a separate administrative matter by the Director.[2]

5. Jamie Chisick is registered with the Department as an owner, director and president of Nations. Jamie Chisick is domiciled in California and accepts mail at the California location of Nations. Jamie Chisick is known to have been the president and owner of Nations prior to its date of licensing. Jamie Chisick is also known by the Department to be a former employee of First Alliance Mortgage Co. ("FAMCO").[3] Jamie Chisick is also registered by the Department as the former president of GAMC, Inc. ("GAMC").[4]

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[2] Acceptance or denial of Nations' consumer loan license applications has been delayed by incomplete application packages and the initiation of the investigation culminating in this order.

[3] FAMCO is a consumer loan company licensed by the Department pursuant to chapter 31.04 RCW the Consumer Loan Act. FAMCO is owned and operated by Brian Chisick, father of Jamie and Brad Chisick. Brian Chisick is the former owner of GAMC, a mortgage broker operated by Jamie Chisick and formerly licensed by the Department pursuant to the Act (see note 4).

[4] GAMC was a mortgage broker licensed by the Department pursuant to the Act from November 14, 1994 through June 30, 1995, however, the Department was notified that GAMC ceased existence and became Nations on March 1, 1995. Therefore, the effective period of licensing for GAMC was November 14, 1994 through February 28, 1995. GAMC was owned 100% by Brian Chisick (see note 3) until all of the stock in GAMC was

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6. Brad Chisick is registered with the Department as a current owner and past director of Nations. Brad Chisick is known by the Department to be the brother of Jamie Chisick and a current owner and officer of Coast Security Mortgage, Inc., a mortgage broker licensed to conduct business in Washington under the Act. Brad Chisick is also known by the Department to be a former employee of FAMCO. Brad Chisick owns 20% of Nations making him a "principal" under WAC 208-660-010.

7. Steven Willis ("Willis") is registered with the Department as the designated broker of Nations for all Washington business. Willis is known to have been the designated broker for Nations in Washington since May 30, 1995. Willis is also known by the Department to be a former employee of FAMCO and a former manager of GAMC.

8. Scott Johnson ("Johnson") is identified in Nations' license application as a "Field Rep," however, Johnson meets the definition of "loan originator" pursuant to RCW 19.146.010(10), and is considered such by the Department in this statement of charges. Johnson works for the licensed Bellevue location of Nations.

9. Michael Buff ("Buff") is identified with the Department as the vice president of operations for Nations at its California headquarters. Buff is also listed as a director of Nations. Buff is domiciled in California and accepts mail at the California location of Nations. Buff is known by the Department to be a former employee of FAMCO. Buff held himself out to the

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transferred to Jamie Chisick and the company became known as Nations. Brian Chisick was chairman of the board and secretary of GAMC.

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Department as the person in control of Nations' Washington records and the primary point of contact and representative for Nations during the Department's investigation.

10. Kevin Kraus ("Kraus") is identified with the Department as the telesales manager for Nations at is California headquarters.

11. Darren Williams ("Williams") is identified with the Department as the sales manager for Nations at its California headquarters. Williams is believed by the Department to be a former employee of FAMCO.

B. CHRONOLOGY OF EVENTS AND CORRESPONDENCE PRECEDING THIS ORDER

1. On February 21 and March 8, 1995, the Department was notified in writing by Benjamin Medina ("Medina"), chief financial officer of GAMC and Nations, that GAMC would change its name to Nations effective March 1, 1995. The letter also stated that, "The president of the company, Jamie Chisick will be the principal owner." The correspondence also contained an amended endorsement changing GAMC's surety bond to Nations, as well as a Washington Certificate of Status for Nations from the Washington Secretary of State.

The letter and prior telephone correspondence from Medina further informed the Department that this change was a name change only, requiring a revised license reflecting such. No address or personnel changes were made by Medina or any other officer of GAMC. Believing GAMC to be the same entity as Nations, the Department allowed Nations to operate under the licensed name of GAMC during the process of a name change to Nations. Due to a change in designated brokers following Medina's notification, the change of name on the license was not made until May 30, 1995.

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2. In March 1997, the Department became aware that Nations was utilizing the services of a California escrow company known as Riverview Escrow Co., Inc. ("Riverview"). Riverview is believed by the Department to be a wholly owned company of Jamie Chisick. Riverview does not hold a license to operate as an escrow company in Washington pursuant to chapter 18.44 RCW, the Escrow Agent Registration Act,[5] and has never been issued such a license by the Director of Licensing or Financial Institutions.

On or about this time (March 1997) the Department became aware of actions filed by the States of Oregon and Arizona against Riverview for unlicensed business as an escrow agent. Concerned with this apparent unlicensed activity with Washington consumers, the Department began inquiring of Riverview's status with Jamie Chisick.

3. By letter dated March 18, 1997, Jamie Chisick informed the Department that Riverview was controlled by himself and licensed by the State of California. Jamie Chisick informed the Department that Riverview's business practices were such that Riverview was not required to hold a license issued by the Director.[6]

Jamie Chisick further informed the Department in this letter that, "Riverview's handling of non-escrow services often results in reduced closing costs to Nationscapital's clients." The

[5] The Director is responsible for the administration and enforcement of chapter 18.44 RCW.

[6] Riverview is currently under investigation by the Department for unlicensed business with Washington consumers.

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Department has found this statement to be untrue and has determined that fees charged to Nations' consumers by Riverview result in an approximate $350 increase in costs to borrowers.[7]

4. In April 1997, John and Carol Salick ("Salick") filed a complaint with the Department against Nations. The complaint contained allegations of a serious nature. The complaint is discussed under section IV.J. of this order.

5. In June 1997, Nevada Prater ("Prater") filed a complaint with the Department against Nations. The complaint contained allegations of a serious nature. The complaint is discussed under section IV.J. of this order.

6. On June 9, 1997, by letter, Paul Battaglia ("Battaglia")[8] attorney for Nations addressed the Department's review of Nations' application for a consumer loan application. Battaglia requested that the Department, ". . . give the application the immediate attention it deserves."[9]

7. On June 24, 1997, the Department began an investigation of Nations based on the following:

a. Nations use of Riverview;

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[7] A review of pricing schedules provided by licensed Washington escrow companies shows that on average the fee for a refinance transaction of up to $100,000 is less than $400.00. On average, escrow costs to consumers of Nations are $750.00 on a comparable transaction.

[8] At the time of this statement of charges, Nations employs four attorneys working for two firms from three locations. Paul Battaglia and Douglas Smart represent the firm of SmithSmart in Seattle. Steven Tubbs represents the firm of Schwabe Williamson & Wyatt in Vancouver, WA. Gary Roberts represents Schwabe Williamson & Wyatt in Portland, OR. Throughout this statement of charges the Department has attempted to clarify which attorney is responsible for which issue. Where the identification of specific attorneys does not provide clarification, or when the Department has responded to multiple attorneys simultaneously, the order refers to Nations' attorneys generically.

[9] The Department's records show that Nations' initial application for a consumer loan license was incomplete and remained incomplete until mid-1997. During this time the Department received serious complaints filed against Nations as a mortgage broker, along with adverse references from other states in regards to Riverview.

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b. Consumer allegations of abusive loan origination and closing practices;

c. Nations' application for a consumer loan license and the Director's duty to determine financial responsibility, experience, character, and general fitness as an applicant such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently prior to issuing a consumer loan license.[10]

8. The Department's investigation of Nations (discussed in detail later in this statement of charges) began with an attempt to review records on-site at Nations' Bellevue location pursuant to the authority granted under RCW 19.146.235 and Demand for Production of Records No. 97-083-S01, served on Willis June 24, 1997 (Exhibits A.1 through A.3). No records were available for the Department's review at the Bellevue location on June 24, 1997. Ensuing from this point was a protracted series of correspondences, demands, subpoenas, negotiations and orders filed administratively and in Superior Court with the intent of obtaining (or preventing) access to records as is authorized by the Act.

9. Nations claimed that in 1995 the Department had granted permission to Nations to maintain its books and records in the State of California. The Department informed Nations that it had not given permission for Nations or any other mortgage broker to maintain its books and records at any location other than its licensed location.

On June 25, 1997, the Department's Supervising Analyst, Chuck Cross ("Cross") spoke with Buff by telephone concerning the lack of access to records at the Bellevue office. On that

[10] The Department considers this investigation under the Consumer Loan Act to be a matter separate from this statement of charges. It is identified here to establish investigation cause only.

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same day, Buff sent a facsimile to the Department of a letter purportedly written by Jamie Chisick to the Department on April 7, 1995, requesting that the Department allow Nations to keep its records in California. The Department has no record of receiving this letter, nor any record of response to the request. Despite requests by the Department, Nations has provided no evidence of delivery of this letter to the Department and has provided no evidence of any response from the Department. Further, the rules permitting the Department to allow out of state records retention were not promulgated until June 21, 1995. Had the Department exercised its authority pursuant to WAC 208-660-140, subsequent to June 21, 1995, Nations and the Director would have been required to execute a written agreement. No such agreement has been executed.

10. Between the dates of June 24, 1997, and August 4, 1997, the Department made telephone contact with Nations and its attorneys ten times concerning the availability of records under the Department's two demands. At no time during this period were the records made available to the Department.

11. On June 26, 1997, the Department received notification from the Washington Department of Licensing ("DOL") that an investigation of Willis and Nations was in process concerning violations of chapter 42.44 RCW, Notaries Public. DOL informed the Department that it had experienced difficulty in its investigation of Nations and Willis and requested any assistance the Department may be able to provide in obtaining records. This information heightened the Department's concern of consumer harm by Nations, however, as of this date the Department has provided no records to DOL in its investigation.

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12. On July 9, 1997, Douglas Smart ("Smart"), attorney for Nations, wrote to the Department to register concern with the Department over its visit to Nations' Bellevue location. In this letter Smart stated that the Department had appeared unannounced, removed original documents from the office, and took testimony of Willis under oath without providing Nations' attorneys prior notice of its intent to do so. Smart further challenged the Department's investigative authority under the Act, and stated, ". . . that Nationscapital fully intends to comply with the Demand for Production in the Nationscapital investigation and the Subpoena Duces Tecum in the Riverview investigation, subject to your response to the concerns set forth below."

The primary concern stated by Smart in this letter was that the Department refrain from complying with any request made pursuant to chapter 42.17 RCW, the Public Disclosure Act, for information obtained from Nations during its investigation. Accompanying this letter was a formal Objection to the Department's demand.

13. In response to Smart's July 9th letter, the Department wrote to Nations' attorneys that it's investigation would continue within the authority of the Mortgage Broker Practices Act, the Escrow Agent Registration Act and the Administrative Procedure Act.

14. On July 24, 1997, the Department entered and served Demand for Production of Records No. 97-083-S02 (Exhibits A.4 through A.6), reiterating its request for records demanded under 97-083-S01.

15. On August 4, 1997, Cross contacted Nations' attorneys by telephone concerning the Department's demands for production of records. Cross was informed by Smart that Nations'

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records remained in California. Cross also spoke with Buff on this date who registered concern that the Department might release its investigative findings and records to other parties.

16. On August 6, 1997, failing to receive production under the June 24th or July 24th demands, the Department, pursuant to the authority under RCW 19.146.235, entered and served Subpoena 97-083-S03 (Exhibits A.7 through A.10).

17. On August 6, 1997, Smart wrote to the Department addressing concerns over the Department's procedures in obtaining access to Nations' records. This letter confirmed that Nations' records remained in California. Despite the Department's ten previous telephonic contacts requesting access to records, Smart's letter in regards to access to documents stated, " . . . it is not unreasonable for Nationscapital to expect the State to cooperate in arranging the dates and times of production. Please simply call us to make the necessary arrangements." Smart's letter went on to state, "Referring to your most recent Document Request dated July 24, 1997, please be advised that with the exception of the public advertisements requested in Document Request No. 1(F), Nationscapital's position is that all of the requested documents are private, confidential and proprietary business records . . . Accordingly, before these sensitive documents are produced to the Department by Nationscapital, we are reiterating our previous request of July 9 for an express assurance that the requested documents and information contained therein will not be disclosed by the Department to third parties without giving Nationscapital prior notice and opportunity for a hearing before a court of competent jurisdiction."

18. On August 13, 1997, the Department sent its resolution of the Salick complaint to Nations requiring a response to its allegations not later than August 27, 1997.

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19. On August 15, 1997, the day Nations was required to comply with the Department's subpoena, Nations attorneys filed a formal objection to the subpoena with the Department. On this same date, Nations' attorneys filed a Motion for Temporary Restraining Order against the Department in Thurston County Superior Court. The motion requested a Temporary Restraining Order ("TRO") enjoining the Department from disclosing or releasing Nations' confidential and proprietary records, files, and documents to the public. Nations asserted that their records contained "trade secrets, proprietary sales and marketing manuals and invaluable customer lists."

20. On August 18, 1997, this TRO was granted by the court restraining the Department from ". . . disclosing or releasing, pursuant to a request under the Public Records Act, Chapter 42.17 RCW, any other statute, or otherwise, any of the Petitioner's records, files and documents, or the information contained therein, acquired during the course of its investigation of Petitioner to any person or entity requesting the same." This order was granted with an expiration date of September 15, 1997.

21. On August 21, 1997, the Department wrote to Nations' attorneys requesting compliance with the August 6th subpoena, asserting that a TRO had been entered resolving Nations' concerns with protection of the investigation records, and there should be no further delay in production.

22. On August 25, 1997, Battaglia wrote to the Department acknowledging that issues of records protection had been satisfied, but that the records had still not been transferred to Washington and therefore could not be reviewed by the Department until at least September 3, 1997.

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23. The Department responded to Nations' attorneys on August 26, 1997. This letter recounted the history to date of the Department's notification to Nations that records, regardless of issues of access and protection, must be kept within Washington. The letter also recounted the history of attempts by the Department to gain access to the records. The letter reminded Nations that there was no reason for Nations to have maintained its records outside of the state in violation of RCW 19.146.060.

24. On August 27, 1997, Smart wrote to the Department stating that records would be available for review on September 3, 1997. This letter also contained a statement to the Department in regard to the Salick complaint. This statement acknowledged that Salick had been overcharged by $8,805, and that the Truth in Lending Disclosure Statement had been misleading to the borrower.

25. On August 29, 1997, the Department entered Temporary Order to Cease and Desist No. 97-083-O01 ("TCD"), against Nations. The order was entered based upon findings by the Department of unlicensed business in Washington, failure to maintain an adequate bond, employment of a scheme, device, or artifice to defraud or mislead borrowers, failing to make disclosures as required, making false or deceptive statements or representations in regard to rates, points, or other financing terms or conditions, engaging in bait and switch practices, making false statements in connection with an examination of Nations' business, failing to maintain a trust account as required by the statute and rules, failing to maintain books and records readily available as required by statute and failing to provide the Department with access to these records.

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Based on these findings, the Director determined that the public was likely to be substantially injured by any delay in entering an order.

26. On September 2, 1997, the Department set forth its findings in the Prater complaint in the form of the Department's Resolution Letter. This letter required a response to the allegations contained within the letter by September 18, 1997. Although this matter is discussed elsewhere in this statement of charges, the Department has never received a response to the allegations of violation.[11]

27. On September 5, 1997, Nations filed a motion for another TRO[12] in Thurston County Superior Court with the intent of staying the Department's TCD.

28. On September 15, 1997, an Order Granting Nations' Motion for Preliminary Injunction (concerning the August 18th TRO) was granted in Superior Court. The order enjoined the Department from releasing records to third parties pursuant to chapter 42.17 RCW, without ten days prior notice and a reasonable opportunity to object to any such disclosure. However, the order allowed the Department to voluntarily make disclosure of the records and findings to another government investigative agency without seeking prior court approval.

29. On September 16, 1997, the Superior Court granted Nations' motion for a second TRO in a Temporary Order Staying Agency Action ("Stay"). The order was granted primarily due to the court's findings that the Director " . . . does not have authority under RCW 19.146.227 to order that Petitioner immediately cease doing business or to take other affirmative acts as

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[11] As noted elsewhere in this section, Nations has indicated on several occasions that it does not intend to reply specifically to the violations cited.

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directed in the Temporary Order to Cease and Desist." The court did, however, affirm that "RCW 19.146.227 does authorize the Department to issue a temporary cease and desist order directing a licensee to cease and desist from conducting business in a manner that is injurious to the public or violates any provision of chapter 19.146 RCW."

The court granted the Stay pursuant to RCW 34.05.550(3), subject to Nations' compliance with several terms and conditions. The Stay ordered Nations to:

a. Comply with the law and is specifically restrained from:

i. Making false promises or misleading statements in regards to loan or brokerage fees, interest rates and costs, contrary to the requirements of state disclosure in federal truth in lending disclosure statements;

ii. Falsely notarizing documents in violation of 19.146.0201(1);

iii. Failing to make timely disclosure of lending information regarding loan or brokerage fees, interest rates, and costs mandated by state disclosure and federal truth in lending disclosure statements; and

b. Nations is required to keep and maintain its business records, subject to the current and future orders of this Court, accessible to the Department for its review and investigation pursuant to RCW 19.146.060 and the rules adopted thereunder; and

c. Nations shall promptly file with the Department a Certificate of Authorization regarding any trust accounts used in connection with its business in Washington, pursuant to RCW 19.146.050 and the rules adopted thereunder.

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[12] This TRO was filed and litigated by Steven Tubbs for Nations.

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30. On September 17, 1997, the Department again appeared at Nations' Bellevue office to investigate the company's books and records. Buff was provided with a written list of investigation questions pertaining to Nations' records. This document notified Buff that the Department would be assessing investigation fees of $45 per hour for each man hour expended on the investigation. To avoid any confusion in the Department's request, a further notification was provided that stated, "When used, the word 'all' refers to any items fitting the description used, for all periods of time in which Nationscapital Mortgage Corp. has been licensed under its current name or its prior name of GAMC." On September 22, 1997, Buff replied for Nations. The list of questions and Nations reply to each are as follows:

a. Q. Are all loan files available for the Department's review?

R. To the best of Nations' knowledge after a diligent search of its records and files, all Nations loan files have been produced for the Department's review, except for the most recent fundings which Nations will produce promptly. GAMC loan files have not been produced.

b. Q. Are the loan files complete? In particular, are all documents that were available to Nations that are related to the loan transaction contained within the loan files? Have any documents that were originally in the files, been subsequently removed from the files?

R. To the best of Nations' knowledge, the loan files are complete.

c. Q. Are all trust account records available for the Department's review?

R. All Nations trust account records have been or will be produced for the Department's review. Nations is presently compiling the additional trust account records requested in Mr. [Crosses'] September 18, 1997 correspondence (i.e., bank statements,

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reconcilements to the bank statements, a check register recounting all deposits, disbursements and adjustments at the time the transactions are made, and canceled checks and invoices supporting disbursements made from the trust account). These records include bank statements from February 1997 to date, during which time period there was no trust account activity. Trust account records for GAMC have not been produced.

d. Q. Are all general account records relating to Nations' Washington business available for the Department's review?

R. Nations' general accounting records have not yet been produced (This response goes on to explain that Nations' general accounting records are kept at the corporate level as aggregate records and cannot be easily separated for review).

e. Q. Are copies of all advertisements used to solicit Washington business available for the Department's review?

R. Nations does not advertise in Washington.

f. Q. Are employee file records including agreements, copies of W2s or 1099s, etc. available for the Department's review?

R. To the best of Nations' knowledge after a diligent search of its records and files, all Nations' employee file records have been produced.

g. Q. Are all agreements and contracts between Nations and any other entities including lenders available for the Department's review?

R. To the best of Nations' knowledge after a diligent search of its records and files, all agreements and contracts between Nations and other entities have been produced.

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h. Q. Are all lender rate sheets available for the Department's review?

R. All lender rate sheets have been or will be produced for the Department's review. Additional lender rate sheets requested by the Department will be produced promptly. Rancho Vista Mortgage, one of the particular lenders identified by the Department, is now known as Americredit and that lender rate sheet has already been produced.

i. Q. Are all sales manuals, employee instruction manuals, manager handbooks, etc. available for the Department's review?

R. All Nations' manuals have been produced.

j. Q. A list of Washington consumers solicited by Nations or any individual or company contracted to solicit for Nations.

R. Nations will produce this list promptly.

k. Q. A list of all borrowers for whom a loan was originated in Washington.

R. To the best of Nations' knowledge after a diligent search of its records and files, this has already been produced.

l. Q. Details of any disputes settled with consumers, complete with copies of settlement agreements and amounts paid.

R. To the best of Nations' knowledge after a diligent search of its records and files, all settlements with Nations customers have been produced.

Nations' response further states, "With regard to production of GAMC records, those records were not the subject of any demand for production of records or subpoena issued by the Department, and have not been produced. Contrary to the Department's assertion that GAMC is

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simply a prior name of Nations, that entity was an entirely separate corporation with entirely different ownership. GAMC's files are not maintained by Nationscapital."

31. On September 18, 1997, the Department identified records not produced by Nations and memorialized these in a letter to Buff and Battaglia. The missing items included:

a. All trust account records for September 1994 through May 1995. To date, records have not been produced for this period of time. For the period in which records were provided (June 1995 through January 1997), missing from the records were bank statements, reconcilements to the bank statements, a check register recounting all deposits, disbursement and adjustments at the time the transaction was made, and canceled checks and invoices supporting disbursements made from the trust account.

b. Any files for loans originated prior to June 1995.

c. All general accounting records.

d. Lender rate sheets. Only six lender rate sheets had been provided to the Department. Lender rate sheets are generally faxed to the mortgage broker on a daily basis by every lender to whom the mortgage broker submits loans. Hundreds of such sheets should have been available for the Department's review. Lender rate sheets are an important investigative document because they show the actual rates available to a mortgage broker versus the rates given to consumers as the "best available" rates.

32. On September 25, 1997, Buff notified the Department in writing that the Department would be unable to continue its records review from October 1st through October 13th, 1997. The

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interruption in the investigation was apparently due to personal commitments of all of Nations' officers and employees.

On this same date, the Department entered Demand for Production of Records No. 97-083-S04 (Exhibits A.11 through A.14), reiterating its previous demands and subpoena and clarifying once and for all that the Department considered GAMC to be the predecessor to Nations and the licensed entities to be one and the same (this matter is discussed in greater detail paragraph IV.K.).

33. On September 29, 1997, the Department notified Nations that a complete halt of its investigation was not acceptable. The correspondence offered Nations four alternatives to the impasse. All of these alternatives were rejected by Nations and the Department was prevented from conducting its investigation and records review for 13 days.

34. On September 30, 1997, Steven Tubbs ("Tubbs"), attorney for Nations, wrote to Blado and explained Nations' position in regards to the company known as GAMC. The letter stated, "GAMC was a corporation. For better or worse, Nationscapital, a different corporation, took over GAMC's offices in Bellevue, and retained some, but not all, of GAMC's employees. From an accounting perspective, which is most relevant here, there was a 'clean break'. What was GAMC's remained GAMC's; and what was Nationscapital's stayed Nationscapital's."

35. The Department's on-site investigation of Nations' records was completed on November 4, 1997. Nations' continues to maintain all of its current and recently closed files in California despite the Superior Court Stay ordering them to comply with record retention requirements under Washington law. Nations' policy (as stated to Cross by Buff) was to not

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transfer the files to Washington until the transaction was complete. Due to this policy the Department had been unable to review certain August 1997 files, and no September, October or November 1997, files had been made available despite repeated requests.

At the Department's exit from Nations' Bellevue office, written arrangements were made with Nations whereby the Department would be provided records upon request at the Department's offices. In this arrangement, Buff stated, " . . . Nationscapital has already implemented procedures to achieve and insure full compliance . . ."

36. On November 12, 1997, the Department wrote to Nations requesting all files for the months of September and October 1997, all lender rate sheets, and responses to the Salick and Prater resolutions. A similar letter was sent to Tubbs by Blado on November 20, 1997.

37. On November 24, 1997, the Department sent a new complaint filed by Deborah Agena ("Agena"), to Nations for its response.

38. On November 26, 1997, Smart responded to the Department. His letter supported the Department's conclusion that Nations continued to maintain records outside of Washington despite the court ordered Stay. His letter stated, " . . . [Buff] is sending copies of those files to the Bellevue, Washington office . . ."

In regard to the requested rate sheets, Smart stated, "Nationscapital does not maintain outdated lender rate sheets in its files . . ."[13]

[13] As stated under paragraph 31d of this section, rate sheets are an important record used to determine prevailing rates at a given point in time. As such, the Department considers them to be a "record" to be maintained in accordance with the Act.

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39. On December 5 and 8, 1997, the Department received shipments of additional files for the months of September, October, November and part of December.

40. On December 17, 1997, the Department wrote to Nations requesting copies of any files originated subsequent to December 9, 1997. This letter also reiterated the Department's request for a response to the Salick and Prater resolutions which had been due not later than August 27, 1997 and September 18, 1997, respectively.

41. On January 22, 1998, the Department entered and sent Directive to Appear and Give Testimony Under Oath No. 97-083-S05 (Exhibits A.15 through A.17), to nine Nations employees pursuant to RCW 19.146.235. Between the dates of January 23, 1998 and February 23, 1998, Battaglia sent five letters to the Department seeking to modify or control the format of the directive and the examinations under oath. During this same period, the Department sent four rejections of the modification or control attempts to Battaglia. The Nations employees failed to appear as instructed and the Department considers Nations to have refused to comply with its lawfully entered directive.

42. On February 2, 1998, the Department again sent notice of the Agena complaint to Nations requiring a response.

43. On February 9, 1998, Buff wrote and informed the Department that both the Salick and Agena complaints had been settled, and that Nations continued to litigate and negotiate the Prater complaint.

44. On February 11, 1998, the Department received a letter from Battaglia informing the Department that it must limit its regulatory investigation to issues revolving solely around the

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Prater complaint. Battaglia wrote, that since Nations had resolved its issues directly with Salick and Agena and that " . . . Prater must now be the sole focus of the Department's investigation."

45. On February 13, 1998, the Department once again informed Nations that its responses were not satisfactory in that they did not address the Department's concerns of violations committed. Subsequently, the Department received a copy of a settlement agreement between Salick and Nations. However, the agreement did not address the violations cited by the Department and no other response was given. The Department also received a copy of a settlement agreement between Agena and Nations. This agreement did not address the violations cited, however, a follow-up letter from Buff did address the violations cited.

On this same date, the Department informed Battaglia, "Prater is one of eight complaints filed with the Department against Nations which triggered an investigation into violations of chapter 19.146 RCW, the Mortgage Broker Practices Act. That investigation began formally on June 24, 1997, and continues to date."

IV. INVESTIGATION FINDINGS

A. MAINTENANCE OF BOOKS AND RECORDS AND DUTIES OF PERSON SUBJECT TO EXAMINATION OR INVESTIGATION

Section Summary: *The findings in this section expose Nations' intentional violations of the Act's record keeping requirements and Nations' requirement to make its business and records accessible to the Department for examination. By failing to maintain its records as required and by withholding, abstracting, removing, mutilating, destroying or secreting its books, records or*

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other information, Nations interfered with the Department's ability to expediently determine the magnitude and severity of the violations alleged in this order.

1. The Department's investigation began with an on-site visit to the Bellevue office of Nations. Pursuant to RCW 19.146.235, Nations and Willis were presented with a request for records including:

a. All loan files.

b. Trust account records.

c. General account records.

d. Copies of advertisements soliciting Washington business.

e. Employee records.

f. Agreements and contracts between Nations and other entities including lenders.

g. All lender rate sheets.

h. All sales manuals, employee instruction manuals, manager handbooks and other similar materials.

2. Nations and Willis were also presented with Demand for Production of Records No. 97-083-S01, as a formal request for the items identified in 1 above.

3. Willis responded to the Department's request for records by stating that no records had been maintained in Nations' Bellevue office since he had taken his position in May 1995, and that all records were, and had always been, maintained at the California office.

4. Willis was asked to explain the solicitation methods used by Nations with Washington consumers. Willis responded that all solicitation of consumers takes place by employees located

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in California. Once the California employee has obtained specific information concerning the Washington consumer, Willis or one of his staff is sent to the consumer's home to obtain signatures on certain loan file documents. These documents are then forwarded to Nations in California by Willis or a staff member of the Bellevue office. Willis stated that from this point forward the Bellevue office has little or no contact with the consumer until it is time for the loan to close. Shortly before the closing date the Bellevue office receives a package of closing documents from Riverview. Willis or one of his staff returns to the consumer's residence, obtains signatures on the closing documents, and then forwards the documents to California. Willis stated that the Bellevue office has no further knowledge of what transpires in the transaction after the documents are sent to California.

5. Throughout July and August 1997, the Department renewed its requests for access to Nations' books and records as is recounted in section I.B.13. through 25. of this order. These requests were formalized by Demand for Production of Records No. 97-083-S02, entered on July 24, 1997, and Subpoena No. 97-083-S03, entered on August 6, 1997. Nations failed to provide access to records pursuant to either of these directives, instead claiming that the Department i) did not hold the authority to makes such requests (July 9, 1997 letter from Smart to the Department), ii) that such records required protection as a trade secret (August 18, 1997 TRO), or iii) that Nations simply was not in possession of the requested records (September 30, 1997 letter from Tubbs to Blado).

6. Based upon the Department's investigative findings and Nations' continued failure to provide access to its books and records, the Director entered TCD No. 97-083-O01, on August 29,

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1997. Nations responded to the TCD by filing suit for a Temporary Restraining Order in Superior Court. Judge Daniel J. Berschauer granted an order staying the TCD on September 16, 1997, subject to the following conditions:

a. "Nations shall comply with the law . . . ;" and

b. "Nations is required to keep and maintain its business records, subject to the current and future orders of this Court, accessible to the Department for its review and investigation pursuant to RCW 19.146.060 and the rules adopted thereunder."

7. On September 17, 1997, the Department again visited the Bellevue office of Nations with the intention of reviewing all corporate books and records related to Nations' Washington business. Although the Department was presented with a large number of records, the Department's investigators determined that the following records had not been made available:

a. The majority of trust account records.

b. Lender rate sheets.

c. All general accounting records.

d. Any records prior to June 1995 (the Department had determined that Nations had originated loans in Washington under the names Nations and GAMC prior to the issuance of its license).

e. Records relating to active (pending closure) loans or loans originated in the month of September 1997.

8. The Department continued to demand access to all of Nations' records. On September 25, 1997, the Department served Nations with Demand for Production of Records No. 97-083-

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S04, repeating and clarifying its prior requests for information pursuant to Demands No. 97-083-S01 and S02 and Subpoena No. 97-083-S03. On October 28, 1997, the Department was provided with access to Nations' general accounting records and some loan files relating to the months of August and September 1997. To date, however, Nations has not complied fully with Demand No. 97-083-S04.

9. On November 26 and December 1, 1997, Nations informed the Department that it was forwarding files for the months of September and October to its Bellevue office. Such statement confirmed for the Department that Nations had not been maintaining records in compliance with the Act despite Judge Berschauer's order of September 16, 1997 (the Stay).

10. On December 8, 1997, Nations delivered 25 loan files to the Department that had been originated in September, October and November 1997. On January 16, 1998, Nations delivered an additional 30 loan files to the Department for its review. On February 27, 1998, Nations delivered an additional 26 loan files to the Department for its review.

11. On February 26, 1998, Cross was contacted by Battaglia who informed him that Nations had failed to maintain copies of complaint correspondence delivered to Nations by the Department between July 1995 and October 1996. In this conversation, Cross informed Battaglia that one of the Department's issues with Nations concerned records retention. Cross asked Battaglia to write to the Department stating that Nations no longer had possession of the complaint correspondence. Battaglia assured Cross that he would forward such a statement, however, the Department never received it.

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12. During its review of Nations' trust account, the Department identified several instances where Nations' received funds from consumers, but no loan file existed. These instances are listed by borrower and approximate transaction date:

[redacted]	June 16, 1995
[redacted]	June 30, 1995
[redacted]	July 27, 1995
[redacted]	August 1, 1995
[redacted]	August 10, 1995
[redacted]	August 24, 1995
[redacted]	September 1, 1995
[redacted]	October 3, 1995
[redacted]	October 5, 1995
[redacted]	October 26, 1995
[redacted]	October 30, 1995
[redacted]	November 28, 1995
[redacted]	January 23, 1996
[redacted]	January 29, 1996
[redacted]	March 4, 1996
[redacted]	March 12, 1996
[redacted]	March 20, 1996
[redacted]	April 4, 1996

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[redacted]	May 3, 1996
[redacted]	June 12, 1996
[redacted]	June 17, 1996
[redacted]	June 19, 1996
[redacted]	June 24, 1996
[redacted]	July 17, 1996
[redacted]	June 3, 1996
[redacted]	July 31, 1996
[redacted]	July 31, 1996
[redacted]	August 2, 1996
[redacted]	July 27, 1996
[redacted]	August 22, 1996
[redacted]	August 27, 1996
[redacted]	August 27, 1996
[redacted]	September 16, 1996
[redacted]	September 27, 1996

13. During the first day of the September 17, 1997, onsite investigation Willis informed the Department's investigators that his supervisors had obviously "cleaned" or removed specific documents from most of the files. The Department performed a physical review of every file (over 500 files) provided by Nations. It was apparent to the Department that many items that

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should be in the file were not in the file. Chronically absent from almost all files were the following:

a. Conversation logs.

b. Estimated Cost Analysis worksheets.

The Department identified conversation logs in enough files from 1995 through 1997, to be convinced that these documents were intended to be a part of the file records. Such records are important because of their contemporaneous recording of events and conversations between the borrower and Nations. The import of the logs to the Department's investigators is evident in a loan originated for [redacted] on October 9, 1995. On October 12, 1995, the log reads: "Per Steve borrower is going to cancel . . . wants a complete breakdown of fees . . . called borrower and left a message on his recorder to call me. Steve said if he starts asking about fees cancel loan." On November 10, 1995, the log reads: "[redacted] not a happy man . . . wants to know the terms and loan amount before anything else." On December 4th the log shows that [redacted] took his loan to another lender.

14. Estimated Cost Analysis worksheets (see section IV.H. of this order) are documents used by Nations to convince the borrower to accept the loan product offered. In its review of over 500 files, the Department was able to locate less than ten Estimated Cost Analysis worksheets. However, a Document Signer Checklist found in dozens of files identifies that the Estimated Cost Analysis is intended to be in the file. Further, item number 21 in Nations' Document Signer instructions for maintaining the order of the file lists "Monster Form (Estimated Cost Analysis)" as a required file form.

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Finally, 60 consumers have reported in writing to the Department that they received an Estimated Cost Analysis from Nations, and 12 of those consumers actually delivered copies of the document to the Department.

15. In regard to the apparent missing file items, the Department's investigators were surprised to find that in nearly every file, bits of stripped away documents remained beneath the binder clips. In many instances, the investigators could shake the files and collect a large quantity of paper bits that fell free. A container of such document pieces has been maintained as evidence of file stripping.

16. Identified in this section are repeated instances of Nations maintaining records in California, or failing to maintain records at all. Such instances are clear evidence to the Department of a pattern or practice by Nations of removing, withholding and secreting its records, and violating the records maintenance section of the statute and the rules. The Department supports its findings through:

a. The Department's two onsite investigations in Bellevue;

b. Statements by Willis under oath;

c. Statements made by Buff, Battaglia and Smart to the Department; and

d. Written statements by Buff, Battaglia, Smart and Tubbs.

Although Nations may claim that it believed it held the Department's authorization to maintain books and records in California from April 1995 to June 24, 1997, the Department has made it clear in several writings to Nations and its attorneys subsequent to this period that no such

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authorization was ever made and that all records were to be immediately returned to Washington. Nations still did not return its Washington records to Washington.

On September 16, 1997, the Superior Court Stay ordered Nations to comply immediately with the records maintenance section of the statute. The Department holds letters showing that as late as December 1997, Nations had not complied with the Stay by returning and maintaining all of its Washington records in Washington. The Department has reason to believe that to date, Nations does not maintain all of its Washington records in Washington.

17. Identified in this section are repeated instances of Nations failing to comply with the Department's investigation authority. Such instances are clear evidence of a pattern or practice by Nations of failing to voluntarily comply with the investigation powers authorized under the Act and intentionally withholding records or other information or otherwise failing to comply with the Director's authority. The Department supports its findings through:

a. The Department's two onsite investigations in Bellevue;

b. Statements by Willis under oath;

d. Statements made by Buff, Battaglia and Smart to the Department;

e. Written statements by Buff, Battaglia, and Smart; and

f. Nations failure to comply with three directives and a subpoena.

While Nations has claimed that it feared disclosure of its records by the Department, such fears are not grounds for violating the statute. In any event, by August 18, 1997, a protective order by the court requiring the Department to inform Nations prior to disclosure of any documents was in place and Nations still had not made its records available to the Department.

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On September 15, 1997, the Superior Court Stay further ordered Nations to comply with the Director's authority, however, Nations did not and as late as March 1998, the Department was awaiting delivery of records previously requested.

Adding further weight to the Department's claims that Nations has failed to comply with its investigative authority is the discussion of Directive to Appear and Give Testimony Under Oath No. 97-083-S05. Pursuant to the Department's investigative authority, the Director "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 investigation." The Department directed nine Nations employees to attend and be examined under oath. Nations protested the Department's authority in several letters only agreeing that certain employees would attend and the remainder (five employees) could only be examined by telephone and all of the examined individuals would only respond to questions concerning the Prater complaint. In a February 11, 1998, letter from Battaglia, Nations' position is clear: ". . . it is important that we agree prior to the start of those depositions that the questions are going to be limited to the Department's investigation of the Prater complaint."

The Department considers Nations' response to be a continued attempt to control the process of the Department's investigation and usurp the statutory authority given the Director. The Department rejected Nations' terms of appearance and considers Nations' failure to appear as directed as a failure to comply.

18. Identified in this section are items that have apparently been removed from Nations' loan files prior to the Department's opportunity to review those files. The Department considers

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the removal of a substantial number of documents from the files as clear evidence of a pattern or practice by Nations of withholding, abstracting, removing, mutilating, destroying or secreting records, or otherwise failing to comply with the Director's investigative authority. The Department supports its findings through:

a. Statements to the investigators by Designated Broker Willis who is the responsible individual for these files;

b. File checklists and instruction manuals showing that the items are to be contained within the files; and

c. The Department's physical review of the files.

B. CONSUMER QUESTIONNAIRE

Section Summary: *The Department mailed 371 questionnaires to consumers in January and February 1998. The questionnaires asked the consumers simple questions in regard to their transaction entered with Nations with the intent of ascertaining the extent of consumer harm perpetrated by Nations. The Department received 137 written responses (37%) including many consumers who provided additional writings and documentation of harm they had suffered from Nations. This section provides support to the Department's allegations that consumers have suffered actual harm at the hands of Nations and its owners and employees. While the Department is able to clearly document violations and establish Nations' intent to commit violations, the responses by consumers confirm the Department's belief that Nations' violations carried actual harm.*

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1. The Department determined during its investigation that it would be beneficial to obtain consumer input supporting the violations found. The reason for the Department's decision was based upon the following:

a. The Department believed that much of the information contained within the loan files maintained by Nations was false or misleading, and pertinent information was missing. The Department's intent was to obtain independent support of i) the truth concerning dates of events and the actual occurrence of events; ii) the location and manner in which loans were originated by Nations; and iii) the existence of documents that were absent from the files during the Department's investigation.

b. The Department's review of the Nations' Telemarketing and Document Signer Manuals revealed alarming sales practices that, if actually practiced upon consumers, would result in serious consumer harm. Asking consumers their experience with Nations was the best way to ascertain whether Nations had employed the sales tactics written in the manuals.

2. A copy of the questionnaire sent to consumers is attached as Exhibits B.1 through B.2.

3. The Department mailed 371 questionnaires to consumers in January and February 1998. The Department received 137 written responses (37%) including many consumers who provided additional writings and documentation of harm they had suffered from Nations. A summary of some of the pertinent results from the questionnaire are given as follows:

a. 53 consumers reported that they had conducted business with Nations from an out of state location.

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b. 120 consumers reported that they had desired only a fixed rate mortgage (note that 66% of these consumers ended up with an adjustable rate mortgage).

c. 85 consumers reported that they had been attracted to Nations based on the promise of a low rate, low cost or low payment loan.

d. 108 consumers reported that they had met with a Nations representative in their home on one or more occasions to complete the application and/or closing papers. Note that nearly 100% of Nations' loan applications falsely state that the borrower completed the application by mail. The Department believes that Nations marks the application as received by mail in an attempt to confuse the triggering point for required disclosures.

e. 46 consumers reported that they had not received a Good Faith Estimate Disclosure within the state or federally required time frames.

f. 48 consumers reported that they had not received a Truth in Lending Disclosure statement within the state or federally required time frames.

g. 46 consumers reported that they were surprised[14] by the loan costs.

h. 27 consumers reported that they were surprised at the rate on their loan.

i. 20 consumers reported that they were surprised to receive an adjustable rate mortgage.

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[14] The term "surprised" was used by the Department in its questionnaire for simplicity and clarification by a greater number of consumers. While not all consumers readily understand the term "bait and switch," the Department felt that all consumers would be readily able to identify events that came as a "surprise" to them. The actual question posed to consumers was, "Were there any surprises concerning the cost, rate or terms of your loan (please explain)?"

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j. 54 consumers reported that they were surprised by some other element of the transaction.

k. 72 consumers reported that they were told by Nations that they could change their adjustable rate mortgage to a fixed rate mortgage.

l. 34 consumers reported that they were not given ample time to read their closing papers before signing them.

m. 51 consumers reported that their questions about the loan were not answered.

n. 82 consumers reported that the terms of the loan were not what they had expected.

o. 70 consumers reported that their loan had a prepayment penalty and 51 of those consumers reported that they were unaware that the penalty existed before they signed the closing papers.

p. 85 consumers reported that their loan did not turn out as they had expected or were promised.

4. The Department has not relied exclusively on any of the consumer responses in making its findings. However, the Department has used the consumer responses to conduct more in-depth investigation, identify false statements or missing items and to support its conclusions after reviewing the documentary evidence.

5. The responses do, however, present the Department with greater cause for concern that consumer abuse exists at Nations, than the Department previously realized.

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C. SALES MANUALS USED FOR DECEPTIVE PURPOSES

Section Summary: *Nations uses sales manuals to instruct employees in the art of misrepresentation, deception, bait and switch practices and fraud against consumers. The manuals are the source document for what the Department believes is a scheme, device or artifice designed to mislead borrowers and convince them to accept loan products they would likely refuse if provided honest, forthright and clearly understood disclosures and explanations. These manuals demonstrate a systematic effort to train Nations employees in an integrated and highly effective scheme of deceiving and confusing consumers by, among other things, avoiding answering easy and relevant questions. To understand the manuals and their use by Nations' employees is to understand Nations' harmful sales practices upon consumers.*

1. Manuals identified as NATIONSCAPITAL MORTGAGE CORPORATION TELEMARKETING MANUAL ("Telemarketing Manual") and NATIONSCAPITAL MORTGAGE CORPORATION DOCUMENT SIGNER MANUAL ("Doc Signer Manual") were obtained by the Department's investigators from Willis on June 24, 1997. Willis identified these manuals as sales tools provided by Nations to its employees. The manuals are a guide to marketing techniques for Nations employees. The second page to both manuals entitled[15] HOW TO USE THIS MANUAL states, "You should study and re-study all information [in the manual] which directly affects your sales day. Many great sales people have started tremendous earnings careers just by learning the same information found here in this manual. By learning the track

[15] Sections quoted from the manuals are placed within quotation marks. Underlines, bold and capitals are as they appear in the manual. For readability, typographical errors are sometimes corrected.

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inside and out, and by learning as much information as possible about selling, you are off on a career path which will reward you in too many ways to count."

Another page in the Telemarketing Manual, identified as INTRODUCTION: Why we need the Track . . . states, "This is the Sales Track we run on at NMC. Your successful job performance is based on how well you are able to understand and present this Sales Track. It is used as a roadmap to help you along the way. You as a Customer Service Rep will be tremendously successful at NMC if you:

A) Give an enthusiastic Track presentation.

B) Have the ability to use and handle objections.

C) Build rapport and trust with the customers to get the true purpose of the loan.

We take this very seriously. You must combine your proven sales skills with an enthusiastic Track presentation."

The manuals are an accurate representation of how sales presentations actually occur on a day by day basis, and such written directions to Nations employees supports the Department's belief that much, if not all, of Nations' sales techniques, practices and teachings are contained within the Telemarketing Manual and the Doc Signer Manual themselves. This determination is based upon an extensive review of the manuals, an extensive review of the file records in loans originated by Nations and interviews with consumers subjected to the practices outlined in the manuals.

2. In order for the Department to fully comprehend the sales practices employed by Nations, it was necessary for the Department to analyze the manuals in conjunction with:

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i). an extensive document review of 371 consumer mortgage transactions originated by Nations;

ii). interviews with current and former employees of Nations, FAMCO and Coast Security Mortgage, Inc.[16];

iii). interviews with consumers apparently harmed by the sales practices outlined in the manuals; and

iv). consumer responses to the Department's questionnaire.

The Department found that the practices outlined, directed or taught in these manuals constitute in part, a scheme, device or artifice to defraud or mislead borrowers, as well as, bait and switch practices to be executed upon Washington borrowers.

3. This section of the statement of charges analyzes specific pages of instructions contained within the Telemarketing Manual:

a. The common asked questions and the Responses . . . contains example questions and scenarios with the scripted response the Nations employee is to provide. Some of these questions and suggested responses follow:[17]

1. Q. "What's my rate?"

A. "Depends on what you qualify for . . . What rate do you want?" In preparation for this reasonable question by a consumer, Nations employees are instructed to

[16] These three companies are controlled by members of the Chisick family and employ versions of the FAMCO Track Manual when soliciting, originating and closing mortgage loans with Washington consumers.

[17] Direct quotes from the scripts are identified as such by quotation marks. Where the "Q" and "A" format of question and answer is used, Q will be the consumer and A will be the Nations employee.

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provide a non-answer to the consumer by asking a question of the consumer in turn. The question, "What rate do you want?" leads the consumer to believe that they have control over the rate obtained. According to many of the consumers interviewed, their question of "What's my rate?" was never answered, and they ultimately had no control over the rate given.

2. Q. "Why can't I get a quote over the phone?"

A. "You want real #'s don't you?"

3. Q. "My rate is low! Why should I refinance?"

A. "What is your effective rate on total debt?" This answer, formed again as a question, leads the borrower to think that the "effective rate on total debt" is a common calculation that is important in determining what rate they should have, or that there is some complex and technical analysis to be performed on their debt position.

4. Q. "Assuming everything is ok, what's my rate?"

A. "Depends on the market, shouldn't we start now?" Again, the borrower simply wants to know what mortgage rate is being offered by Nations, but does not receive an answer to this most basic financing question.

5. Q. "FAMCO? Click!"

A. "Try again 24 hours later." Although not readily apparent, this scenario addresses situations where the borrower has already had a sales experience with FAMCO. The Department has found that many of Nations marketing leads are obtained from failed FAMCO attempts.

6. Q. "What are costs?"

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A. "Nothing to find out your options." Here the borrower simply wants to know how much in fees and other costs they will incur by closing a mortgage originated by Nations. As with questions about rate, the borrower is apparently never to be provided with a direct or honest answer to the question of "cost." One of the main complaints registered with the Department by consumers is that they either had no idea of the cost ultimately incurred or they had been mislead about what the costs would actually be.

7. Q. "What will be my payment?"

A. "The one you choose!" Again, a non-answer to a direct and important question. Several consumers have reported to the Department that their payment was greater than they could ultimately afford. Unsolicited by the Department's questionnaire were 26 responses from consumers that they had been deceived into believing that their monthly payment would include taxes and insurance.

8. Q. "I want something in writing before I give the paperwork."

A. "You'll get required forms." The Department's investigation shows that in 643 loans originated by Nations from May 30, 1995 to present, the borrowers did not get the required forms.

b. COST/POINTS. This page provides the Nations employee with scripted answers when the borrower wishes to know what the cost of the loan and loan points will be. As can be seen, the borrower does not receive an answer to the question:

1. "Actually (name) cost varies from program to program in fact (back to track)."

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2. "That's one of the major benefits of working with a direct lender. There's no middle man broker expense." Not only is the borrower's question unanswered here, but the Nations employee lies about Nations' role in the transaction. Nations, as a mortgage broker, is clearly the "middle man" brokering the loan to an actual lender. Many consumers informed the Department that they believed Nations was the lender on their loan, when Nations clearly was not.

3. "Sounds like what your saying is that you want the most cost effective program you qualify for, is that right? Okay great, the good news is here at NMC we fund our loans. What this means to you is not only will we be able to provide you with a cost effective program, but it looks like we'll be able to (hot button, 3 benefits) and that's what you want isn't it?" Again, the consumer does not receive an answer to the question about the cost of the loan. Further, only in a few occurrences was the Department able to identify Nations as the lender in the transaction. In these cases, Nations did not fund the loans with its own money, but rather used a line of credit provided by another lender.

c. RATE OBJECTIONS. This page in the Telemarketing Manual provides Nations employees with scripted answers when the consumer is insistent on an answer concerning rate. As can be seen from the script excerpts below, the consumer does not receive an answer to the question:

1. "That's a good question. I'm going to gather some basic information and have an underwriter look at this."

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2. "Actually name , everything is a little different for the different programs as wells as your overall qualifications."

3. "What types of rates were you looking for?"

4. "At this point we have many different programs available and it's really going to be based on what you're trying to accomplish." The Department's analysis shows that approximately 79% of all loans closed by Nations are 30 year adjustable rate mortgages of similar program characteristics.[18]

5. "Now name , being a mortgage lender as well as a broker, we work on a much more professional and ethical level."

d. IDEAS FROM THE FIELD. Customer won't go along with our procedure. What are your rates? Costs, Etc. . . As with the previous pages discussed above, this page provides the Nations employee with a scripted response to situations where the consumer is not satisfied with the previous diversionary answers. Some excerpts from this page are:

1. "Obviously the reason you want these facts is so you can make an intelligent decision, right? Well I need these facts, too, so I can give you accurate information, OK?" The employee is then instructed to ". . . go right into the worksheet." It is important to note here, that the borrower is unlikely to receive accurate information after this point. This determination is based upon an extensive review of the manuals, an extensive review of the loan file documents, and interviews of consumers subjected to Nations' sales techniques.

[18] This statistic is based on a random sample of over 200 loans originated and closed by Nations.

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2. "There is no cost to find out what you qualify for! (Say with enthusiasm)."

3. Q. "I want 8 ½ rate."

A. "Of course you want the best rate possible. Intelligent people always do." Or, "Would you rather have a 30 year loan at 5%, or a 5 year loan at 30%?" Neither of these loans are available through Nations.

4. Q. "I don't want to go through with this 'crap.' Just tell me your program."

A. "Mr. Jones, if I offered you a 5% loan for 30 years or a 30% loan for 5 years, which would you choose?" The script instructs, "They'll always choose the 5% loan." To which the employee is to say, "Did you know that both loans cost you the same amount of money?"

e. ACCENTUATE BENEFITS (POSITIVES). This page highlights the benefits a consumer can expect when conducting a loan transaction with Nations. One of the highlights presented on this page is "No surprises." However, the Department received 147 responses that showed consumers were "surprised" to find that the costs, rate or program originally sold to them was not what they ultimately received.

f. Basic Rules. This page attempts to teach the Nations employee how to "paint a word picture" for the consumer. Important in the instructions here is the command in bold "**Scare them if necessary!!!**"

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g. The Telemarketing Manual contains 17 pages under a section entitled Handling Objections. Some of the instructions to the Nations employee in this section are:

1. "If your customer changes objections under pressure, he or she reveals hollow excuses – not real objections." Implied here is that the consumer will be pressured when objections to Nations' offer are raised.

2. "Remember, if there were no objections, salespeople wouldn't be needed. Remember you are a professional representative of NATIONSCAPITAL – YOU ARE NEEDED TO HANDLE OBJECTIONS."

3. "BECAUSE THE _____ WON'T EVEN BE AN ISSUE, THAT'S HOW COMPETITIVE WE ARE."

4. "WE ARE THE LENDER AND WHAT THIS MEANS TO YOU IS THERE ARE NO MIDDLE MAN BROKER FEES. THERE ARE NORMAL COSTS SUCH AS PROCESSING, TITLE, AND ESCROW THAT ARE STANDARD FOR THE INDUSTRY BUT THOSE ARE MINIMAL . . ." This statement is obviously meant to deceive the borrower. Nations is seldom the lender and in every transaction the Department noted substantial "middle man broker fees" charged by Nations.[19] In addition, the Department has reason to believe that the processing fee ($695.00) and escrow ($750.00) charged by Nations (or Riverview) are much higher than the industry norm in Washington.

[19] The Department analyzed over 200 loan files and determined that on an average loan amount of $109,000, Nations averaged 8% in fees or almost $9,000.

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5. In responding to questions about the amount of payment the Nations employee is instructed to respond, "THE PAYMENT REALLY DEPENDS ON THE TERM OF THE LOAN. DID YOU WANT TO GO 15 OR 30 YEARS? GREAT, I'LL MAKE A NOTE OF THAT . . . CHANGE SUBJECT!" Again, an easy answer is avoided and it is clear from this script that Nations has no intention of providing the borrower with any meaningful answer to their question. Additionally, the Department found no fifteen year loans made by Nations to Washington consumers.

6. "SO WHAT YOU'RE SAYING IS YOU WANT TO BE ASSURED YOU GET THE VERY BEST RATE YOU QUALIFY FOR ON THE MARKET TODAY, RIGHT?"

7. "AS I SEE IT, THE ONLY DECISION YOU WILL HAVE TO MAKE WHEN WE'RE THROUGH HERE IS JUST DECIDING WHICH LOAN BEST SUITS YOUR NEEDS." Many consumers have reported to the Department that they had no choice in the final loan product given to them by Nations.

8. This section instructs Nations employees in THE SMOOTHY CLOSE. The manual tells the employee that this technique is "TO BE USED IF THE CUSTOMER ASKS FOR THE RATE AFTER THE APPOINTMENT HAS BEEN SET, OR IF THEY ASK WHAT THE COST IS." In such situations the employee is to say, "AGAIN IT DEPENDS ON WHAT YOU QUALIFY FOR, BUT WHAT I CAN TELL YOU IS OUR LOANS ARE FULLY AMORTIZED, AND WE CAN GO ANYWHERE [FROM] SIX MONTHS TO THIRTY YEARS, AND YOU DO WANT FLEXIBILITY, DON'T YOU?" This answer provides nothing

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but confusion for the borrower. With a few exceptions, mortgage loans always "fully amortize." The rest of the statement is ambiguous and leads the borrower to believe that somehow a Nations loan provides them with flexibility. If the borrower presses the employee for the information and asks if they could at least provide a range of rates or cost, the Nations employee is to respond, "ALL OF OUR LOANS ARE VERY COMPETITIVE AND WE'RE NOT TALKING ABOUT SOME FINANCE COMPANY RATE LIKE 14% OR 15%. I CAN TELL YOU RIGHT NOW WE WOULDN'T WASTE OUR TIME AND MONEY GOING THROUGH THIS PROCESS IF WE DIDN'T THINK WE COULD WRITE YOU A GOOD LOAN. . . THE ONLY DECISION YOU ARE GOING TO HAVE TO MAKE IS WHETHER OR NOT YOU ARE READY TO TAKE THE LOAN BECAUSE THE RATE WON'T EVEN BE AN ISSUE." An easy answer is again avoided. 59 consumers reported to the Department that low rate was an issue. The Department also received 161 reportings that the terms of their loan were not what they expected or were promised.

h. Perhaps the most telling direction to the Nations employee in using the Telemarketing Manual is "it's not WHAT you SAY IT'S HOW YOU SAY WHAT YOU SAY!"

4. This section of the statement of charges analyzes specific pages of instructions contained within the Doc Signer Manual:

a. PRE GAME[20]. This page contains the initial instructions to the employee in arranging the loan closing papers for signing at the borrower's residence. The instructions repeatedly remind the employee that there is a system for best presenting the closing papers to the

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borrower to avoid objections: "**YOU MUST USE THIS STACKING ORDER.**" The Pre Game appears to be a crucial step in convincing wary or reluctant borrowers to accept the loan being offered by Nations. The instructions state "The stacking order will help you organize objections and maintain control of the conversation. Do not stray from this order!!!" Apparently by doing so, easy answers are again avoided.

The Department's questionnaire response shows that 34 consumers felt that they were not provided adequate opportunity to read the closing documents at the time of signing. 51 consumers reported that their questions about the loan at signing were not answered, and 87 reported that the closing process was confusing and/or uncomfortable.

It is apparent to the Department that the techniques developed through the Doc Signer Manual and used by the Nations employees is designed to create or enhance the borrower's confusion at closing to avoid the obvious objections the borrower might otherwise have raised.

b. Typed 1003. Several pages in the instructions are devoted to convincing the borrowers to sign the typed application form at closing. In a section identified as Objections the manual provides the following scenario and script to follow with borrowers reluctant to accept a rate higher than that previously promised by Nations:

Borrower: "I told my loan officer that I wouldn't go over seven percent. This says here eight percent? I don't want an eight percent loan."

Doc Signer: "I think we may have a small difference here probably due to (STATE HARM) those late payments on your Mervyn's, the loan officers are generally more

[20] "Pre Game" is a term apparently coined by Nations.

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interested in the total benefits of the loan, they're not just interested in the rate. Because the bottom line here is we all want to save dollars, isn't that right?"

Borrower: "I guess so, but I don't want eight percent."

Doc Signer: "I understand how you feel. Many of the borrowers I help have felt the same way. But once I go over the total benefits of their loan with them and once they see how many actual dollars they are saving, they have found that it was well worth going over all the papers before deciding, now that sounds fair, doesn't it?"

Borrower: "I am getting my ten thousand dollars, right?"

Doc Signer: "Is that what your loan officer told you were getting?"

Borrower: "Oh yes, ten thousand, that's why I'm doing the loan."

Doc Signer: "Well, if that's what your loan officer has arranged I'm sure that's what it is. You'll need to call him/her to verify that if you want."

"FINAL SOLUTION: IF BORROWER HAS NOT BEEN SOLD ON RATE AND PAYMENT, AND YOU CANNOT SELL THE BORROWER ON BENEFITS, CALL THE LOAN OFFICER." An easy answer is again avoided.

It is important to note that the Department has received complaints from borrowers that they never received the amount of cash that they had been promised in the transaction, because the expected cash back had been absorbed by fees to Nations. At signing of closing papers, there should be no doubt as to the exact amount of loan the borrower is committing to, and the exact amount of costs to be incurred or cash to be received. The doc signers not only have this

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information within the closing papers at signing, they have a duty to inform the borrower of the details they are committing to.

13. ESCROW PAPERS. This page of instructions refers to some of the escrow papers to be signed in the package of closing documents. Here the manual provides a scenario where the borrower is concerned about the amount of loan they appear to be committing themselves to. The key to these instructions is the Nations employee's ability to steer the borrower away from the actual loan amount they will be obligated to repay:

Borrower: "Now, what's this Seventy five thousand dollars right here on this paper?"

Doc Signer: "Oh, well the Escrow Company is just showing you the amount there but that isn't your amount financed and I'm going to show you these figures and go over all the amounts in a few seconds . . ."

Borrower: "Is that the amount of my loan?"

Doc Signer: "Make no mistake about it this is not the amount financed. Let me explain to you." However, the doc signer does not proceed to provide an explanation and consumers have informed the Department that they believed the amount financed to be the loan amount.[21] The Doc Signer Manual goes on to instruct the employee as follows: "THE IDEA IS TO PASS BY THE FIRST OBJECTION CONCERNING THE DIFFERENCE BETWEEN THE LOAN AMOUNT AND THE AMOUNT FINANCED."

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[21] The amount financed is determined by subtracting the prepaid finance charge from the principal amount of the loan shown on the contractual obligation. The bulk of the prepaid finance charge is comprised of fees to the mortgage broker; in this case, Nations. When the borrower is led to believe that the amount financed is the same

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These instructions to the loan officer provide further direction when the borrower presses about the apparent loan amount:

Borrower: "Well there's that number of 74 thousand again, and it says loan amount. Is this my loan amount?"

Doc Signer: "I will explain this in a few seconds when I get to the full disclosure and have all the numbers in front of us but I'll tell you what, I'm not going to leave here if you don't understand something. We have all the time in the world. I just want to have all the facts in front of us so you can understand everything completely. Because the Federal Government isn't clearing up anything for anyone, they seem to always make things so complicated, I'd like to make sure everything is clear to you. Now, that sounds fair, doesn't it?"

The Federal Government's intent with these requirements is to see that the borrower is fully informed of the cost of the loan. When the doc signer diverts the borrower's attention away from the actual amount of the loan, they effectively divert the borrower's attention away from the substantial costs accruing to Nations. The strategy is to make it appear as if the federally required disclosures are the point of confusion rather than Nations itself. An easy answer is again avoided.

14. DEED OF TRUST. Contained within this set of instructions is a script concerning how to deal with borrower's who do not want the adjustable rate mortgage being sold by Nations:

Borrower: "I don't want an adjustable, I only want a fixed rate."

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as the loan amount, they are unaware that they are obligating themselves to a greater amount of principal (usually several thousand dollars) and the difference is direct compensation to the creditors, including Nations.

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Doc Signer: "Your loan officer is trying to re-establish your credit to allow you to earn a preferred fixed rate. This way we can get you a good rate, save you money now, and also help you earn a good fixed rate after one year, that's what you want, isn't it? (USE REFI LETTER NOW IF YOU HAVE TO)." The refi letter referred to here has been found by the Department in some of the borrower loan files. The document states that Nations will accept a borrower's application for refinancing the property at a certain point in the future, yet makes no assurances to the borrower that a conversion to a fixed can actually take place. The document states, "NATIONSCAPITAL MORTGAGE HEREBY AGREES TO PROCESS AND SUBMIT TO PROSPECTIVE LENDERS YOUR REQUEST FOR A REFINANCE FROM AN ADJUSTABLE LOAN TO A FIXED RATE LOAN WITHIN A 12 MONTH PERIOD . . ."

While the Department finds no violation or fault within the language of this statement itself, the statement also holds no relevant value for a borrower wishing to change their future situation. Any mortgage broker would be willing to "submit to prospective lenders" the consumer's application for a refinance, with or without such reassurance. When coupled with the instructions in the Doc Signer Manual, it is the "delivery" of this letter and spoken assurances that go beyond the written assurance that are the act of deception.

The manual instructs the employee only to use the letter if they have been unsuccessful in convincing the borrower that they can somehow get out of the adjustable rate loan. This refinance letter is contrary to what borrower's say has been told to them at signing by Nations. In fact, 72 borrowers have reported to the Department that they were told that they could change their loan from an adjustable rate to a fixed rate automatically provided they had not been late on payments

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and had not incurred any additional debt on the property. When asked about the letter by the Department, borrowers stated that they had believed that the letter was some form of assurance that they could get out of a loan they did not really want. Several borrowers have reported that after 12 months they attempted to effect the "promised" automatic change to a fixed only to be rebuffed by Nations.

This section of the manual continues:

"If customer continues to object over adjustable rate:"

Borrower: "I just don't want my payments to go up."

Doc Signer: "Well I can certainly understand that. But you do want to eventually earn a fixed rate right?"

Borrower: "Well, yes, that's what I want."

Doc Signer: "Exactly. So to help you earn that fixed rate, your loan officer has set you up with this special adjustable rate product which will allow you to do that, and that's what you want isn't it?" An easy answer is again avoided. The Department has reviewed hundreds of Nations' adjustable rate loan files and is unable to determine how the adjustable rate product "allows" the borrower to "earn" a fixed rate. Further, the Department identified no instances where a borrower was allowed to convert their adjustable rate mortgage to a fixed rate mortgage without a costly refinance.

15. MONSTER DISCLOSURE. The Monster Disclosure is believed by the Department to be one of the primary forms of deception and misrepresentation used by Nations. As such, it is discussed under section IV.H. of this order. The following script is provided as support to the

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Department's allegation that the Doc Signer Manual is part and parcel of the overall practice of deception:

Doc Signer: "I'm noticing that the [Nations] loan officers are concentrating on total dollars as opposed to the rate or incidentals that aren't as important as bottom line dollars. This could be the most important relevant thing to you in all of these papers, because what I'm about to explain are some hard facts about saving money. We all want to save money right?"

Borrower: "Yes who doesn't?"

Doc Signer: "Exactly. Who doesn't? What your loan officer has done is to comply with all of the new Federal regulations which make all of this quite confusing. What the Federal government has done basically, is to say that we are not intelligent enough to know that the reason that the biggest buildings in town are banks is because of the interest people pay them. They make a lot of money by lending you money over a long long period of time. The Federal government has stepped in and said that they want it in writing that people understand that it costs a lot to borrow money. So obviously, we abide by all federal laws and you are going to get the privilege of seeing all these disclosures, like it is not something you already know." An easy answer is again avoided.

The offense here is that Nations has again attempted to sell the borrower on the idea that the government, not Nations, is creating confusion in the loan process. As discussed in sections II.D. and E. of this order, Nations has failed repeatedly to provide borrowers with the federally required disclosures despite the script's claim. The federal disclosures referred to here (apparently the Good Faith Estimate and Truth in Lending Disclosure Statement) are designed not to inform

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the borrower that "it costs a lot to borrow money," but rather how much it will cost the consumer to borrower money from this set of creditors. For a mortgage broker to present this in any other manner is deceptive and a violation of the Act.

16. FEDERAL TRUTH AND LENDING. This page (which actually refers to Truth "in" Lending) has the officer explain that the annual percentage rate ("APR") "is based on a very complicated government formula. It takes into account the amount of cash you get (if any), the cash you have each day, minus the dollars you pay back." The Department's analysts are unable to determine what this explanation means, however, it is not the definition or an explanation of APR. The instructions go on to say, "Now, this formula is supposed to tell you the true cost of the loan, but it's really a contradictory figure. Remember, the longer you keep a loan the lower the 'APR' will be but the more it will cost you (in interest). The shorter the term, the higher the 'APR' will be but you will pay less for that loan (same money on interest)."

Contrary to Nations' claims, the APR only becomes a contradictory representation when presented incorrectly. APRs on a shorter term loan will not be higher than on a longer term loan when the actual or true rates are applied. In mortgage transactions the rate will be lower on a 15 year fixed than on a 30 year fixed. The spread difference usually being in the range of ½%. As an example, a $100,000 loan amount with assumed prepaid finance charges of $5,000, would present the following APRs for the following terms and rates:

15 YEAR FIXED	30 YEAR FIXED
6.75% = 7.58% APR	7.125% = 7.65% APR

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Even when analyzed with a rate spread of 3/8% rather than ½%, the resulting APR is lower for the shorter loan than the longer loan. The APR was developed to provide the consumer with an accurate and useful interpretation of rates and cost, not as a point of confusion as stressed by Nations.

This section adds further misinformation about the APR as follows:

Borrower: "Why is my APR so high?"

Doc Signer: "Well, we're talking about costs for a 30 year loan squeezed into one year (read box). You've see those car commercials where they offer you a very low APR haven't you? Right. Ask that car salesperson what the APR will be if you pay it all in one year!" An easy answer is again avoided.

Again, deception is the key here. Few car loans and no Nations loans are established with a one year maturity. Regardless, the APR is given for the time period of the loan proposed, not some other time period. The point of the APR is to present the true cost of the loan over the life of the loan. The APR certainly does not "squeeze" the loan's cost into a single year unless that is the contractual length of the loan. If it were the contractual length of the loan, the calculation would be based upon a 12 month amortization period rather than a 360 month amortization period.

On June 24, 1997, Cross found under direct questioning, that Willis and Johnson understood very little about the Truth in Lending Disclosure Statement. Based on the Doc Signer Manual it would appear that Nations as a company either has little understanding of the Truth in Lending Act, or intentionally uses its knowledge to confuse the consumer. Regardless, Nations'

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instructions to its loan officers concerning the nature of the Truth in Lending Disclosure Statement are deceptive, misleading and potentially harmful to borrowers.

17. PAYMENT LETTER TO BORROWER. This section of the manual instructs the Nations employee how to deal with prior promises that the borrower's taxes and insurance payments will be included in the monthly payment amount. The obvious incentive here is to show the borrower a payment in which they believe these amounts are included in order to avoid payment shock by the borrower. By leading borrowers to believe that the payment shown includes more than it does, the high payment, which is likely attached to a greater amount of loan than the borrower has been shown, becomes less suspect. 26 borrowers reported to the Department that they had been deceived into believing their taxes and insurance were included in the monthly payment amount. The script reads:

Borrower: "Are my taxes and insurance included in this payment?"

Doc Signer: "O.K. Did you inform your loan officer that you wanted your taxes and insurance taken care of in this?"

Borrower: "Oh yes, I have to take care of those."

Doc Signer: "All right, no problem. You should call your loan officer to discuss this with him, but I know that it is not difficult to set these up at all. As long as your are going to talk to your loan officer about this, why don't you approve this right here."

Borrower: "But are they (taxes and insurance) included in this payment?"

Doc Signer: "Did your Loan Officer tell you they were?"

Borrower: "Yes."

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Doc Signer: "If your Loan Officer told you he/she did them, I'm sure it's going to be taken care of . . ."

Borrower: "But won't my payments go up?"

Doc Signer: "Well, of course they are reassessing taxes all of the time so there might be some slight adjustments. By the way, (Immediately ask a question)."

What is implied here is that the doc signer has no knowledge whether the payment included taxes and insurance. However, the documents presented by the doc signer at closing contain specific information in several locations identifying whether the payment includes anything other than principal and interest. An easy answer is again avoided.

18. NOTARY AND FINAL CYA. This section of instructions refers to the "Final CYA." According to the instructions, the document is an approval by the borrower "that you understand everything and that I've gone through everything." The question is, how is the borrower to know if everything is covered that is required by law to be covered? The burden, by law, is on the mortgage broker to make sure that the borrower has received all of the required disclosures.

The Department found that the vast majority of Nations' loan files contained this Final CYA disclosure, however, none of the files showed that the borrowers had received adequate disclosure as required by both state and federal law.

19. COMMON OBJECTIONS. This section of the Doc Signer Manual focuses on additional objections raised by the borrower and how to control or avoid them. One scenario for borrowers insisting on knowing the points charged in the loan transaction is as follows:

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Borrower: "How much are the points?"

Doc Signer: "The points are a portion of the Total Finance Charge and will be itemized for you when the documents are drawn."

Borrower: "But, I want to know how much they are before I have you draw up the documents."

Doc Signer: "The total amount of the Prepaid Finance Charge amounts to approximately % of the gross amount of the loan. The interest rate on your loan is 13.25% per year. If you break down the costs per year, it amounts to a little over 1 1/3 % per year, and added to your rate it comes to approximately 14 ¼% per year over the life of the loan."

Borrower: "Exactly what are points?"

Doc Signer: "Points are what a bank would charge for a loan. Nationscapital Mortgage Corp. has what's known as a PPFC. . . The good news is that it's already included in the Total Finance Charge." An easy answer is again avoided.

Although the borrower has not received an answer to their question, they have been mislead into thinking that Nations somehow has a feature known as "PPFC" that is not as bad as points on a loan. PPFC stands for prepaid finance charge and is one of the items disclosed by all creditors and mortgage brokers on the Truth in Lending Disclosure Statement. By telling the borrower that there is "good news . . . it's already included in the Total Finance Charge," Nations implies that with their loans there are no additional costs related to loan points.

20. DISCLOSURE OF THE PREPAYMENT PENALTY. Prepayment penalties are discussed as a separate issue of deception under section IV.G. of this order. However, for

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purposes of analyzing the Doc Signer Manual and the impact on borrowers of its use, the following section of the manual is quoted:

"This is how to turn a negative into a definite positive. In referring to the Prepayment Penalty, we present it as follows: As in every real estate loan, Mr. and Mrs. Prospect, there is always a Prepayment Penalty. According to the law, this is 6 months interest on the balance of the loan less 20% of the original amount of the loan." These statements carry two false and intentionally deceptive statements. The first fallacy is that every real estate loan has a prepayment penalty. "Most" real estate loans do not have a prepayment penalty, and many of the loans originated by Nations do not even have a prepayment penalty. The second fallacy is that there is a law dictating the calculation or amount of a prepayment penalty when no such law exists, and in fact, some federal and state regulations and requirements specifically prohibit prepayment penalties.[22] The only accurate reference in this section is to the calculation itself, which is the prepayment calculation shown in the majority of loans originated by Nations.

D. FAILURE TO PROPERLY MAKE REQUIRED DISCLOSURES

Section Summary: *This section focuses on Nations' failure to properly make disclosures as required by the Act. The Department found that Nations was in violation of the disclosure requirements in over 600 loan transactions originated for consumers. This failure to properly make disclosures continued well beyond the Superior Court Stay ordering Nations to make all required disclosures. Such actions are considered intentional and a part of Nations' scheme to mislead consumers.*

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1. The Department has found serious compliance violations by Nations in the content and delivery of disclosures required pursuant to RCW 19.146.030 and RCW 19.146.0201(10)[23]. Such violations are systemic in nature and exhibited by all employees and in every file reviewed by the Department (the Department has performed extensive review of over 371 loan files maintained by Nations and a cursory review for disclosure compliance in approximately 275 additional files).

2. The Department's investigative procedures for determining compliance with disclosure requirements included:

a. Discussions with and testimony from Willis, Johnson and Buff.

b. Correspondence with Willis, Buff, Chisick, Battaglia, Smart and Tubbs.

c. Investigation of consumer complaints filed against Nations.

d. A detailed review and analysis of the Nations Telemarketing and Doc Signer Manuals.

e. A detailed review of all files originated and funded with consumers in Washington and a limited scope review of all canceled files. This review consisted of the following analysis:

i. The content of disclosures given.

ii. The timing of disclosures given based upon documentable support within the loan file.

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[22] See WAC 208-620-130(7), 24 CFR 201.17 and 203.22, and Section 32 of Regulation Z.

[23] Prior to 7/21/97, this section was covered in combination by RCW 19.146.0201(11) and RCW 19.146.030(4). For purposes of investigative findings, the Department refers in this section to the requirements carried under the

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iii. Disclosures clearly not provided to consumers at all.

iv. Disclosures claimed to have been provided that have been determined to not have been provided.

v. Interviews with consumers concerning disclosures received or not received.

vi. Written response from consumers to the Department's questionnaire.

3. Pursuant to the Act a mortgage broker must make specific "state"[24] disclosures. Both the content and timing of the disclosures are clearly mandated within the law. In 1995, the Department drafted model disclosure forms and distributed these to all mortgage brokers including Nations. While the use of the model forms is not a requirement, WAC 208-660-130(1) and (2), requires that any other disclosures be acceptable to the Director.

4. The content of each state disclosure is as follows:

a. RCW 19.146.030(2)(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

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new sections of the statute. For purposes of penalties the Department will refer formally to the citation current at the time the violation occurred.

[24] A delineation is made here between "state" and "federal" disclosures. Both are required under the Act, however, the requirements are separated under the statute and therefore are discussed as separate disclosures here. It must be noted, however, that two of the state disclosures are substantially satisfied by two of the federal disclosures.

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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. For purposes of this order, this disclosure is referred to as the Truth in Lending Disclosure Statement ("TIL Disclosure" or "TIL").

b. RCW 19.146.030(2)(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, shall be deemed to comply with the disclosure requirements of this subsection. For purposes of this order, this disclosure is referred to as the Good Faith Estimate Disclosure ("GFE Disclosure" or "GFE")

c. RCW 19.146.030(2)(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. For purposes of this order, this disclosure is referred to as the Rate Lock Disclosure.

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d. RCW 19.146.030(2)(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. For purposes of this order, this disclosure is referred to as the Third Party Provider Reports Disclosure.

e. RCW 19.146.030(2)(e). Whether and under what conditions any lock-in fees are refundable to the borrower.[25]

f. RCW 19.146.030(2)(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. For purposes of this order, this disclosure is referred to as the Trust Funds Disclosure.

g. RCW 19.146.030(3). If subsequent to the written disclosure being provided under this section, a mortgage broker enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, then no less than three business days thereafter including Saturdays, the mortgage broker shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which shall include a copy of the disclosure made under subsection (2)(c) of this section.

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[25] Prior to 7/21/97, this cite held a requirement that the name of the lender and the relationship between the lender and the mortgage broker be disclosed.

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5. The timing for delivery of all of the state disclosures is covered as follows:

a. Prior to July 21, 1997, the time of delivery for the state disclosures is "Upon receipt of a loan application and before the receipt of any moneys from a borrower." In 1996, the Department rendered an interpretation that in situations where no moneys have been received from a borrower, the state disclosures may be made within three days of receipt of an application.[26] However, where funds have been received from a consumer, the disclosures must be made "before the receipt" of those funds.

b. As of July 21, 1997, the time of delivery for the state disclosures is "Within three business days following receipt of a loan application or any moneys from a borrower."

6. The Act requires that mortgage brokers 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 201.12.

7. For the purposes of its investigation and this order, the Department identifies the following "federal" disclosures of concern required under the laws and regulations listed above:

a. The Truth in Lending ("TIL") Disclosure.

b. The Good Faith Estimate ("GFE") Disclosure.

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[26] Although this interpretation departs from the strict language of the statute, it is consistent with the timing requirements for federal disclosures. This interpretation also puts Nations' disclosure violations in a position more favorable to Nations than a strict interpretation of the statute and therefore is the guidance relied upon in the Department's investigation of loans originated prior to 7/21/97.

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c. The Controlled Business Arrangement ("CBA") or Affiliated Business Arrangement ("AfBA") Disclosure.[27]

8. The Department has found that Nations failed altogether to give the Rate Lock Disclosure form to consumers in at least 643 applications taken for loans covered under the Act between May 30, 1995 and January 1998, or the follow-up disclosures required by RCW 19.146.030(2)(e) and (3).

9. The Department has found that Nations failed to give the Trust Funds Disclosure form to consumers in at least 643 applications taken for loans covered under the Act between May 30, 1995 and January 1998. The Department has identified that only 23 of 77 consumer transactions contained this disclosure subsequent to October 1997.

10. The Department has found that Nations failed to give the Third Party Provider Reports Disclosure for to consumers in at least 643 applications taken for loans covered under the Act between May 30, 1995 and January 1998. The Department has identified that only 23 of 77 consumer transactions contained this disclosure subsequent to October 1997.

E. FAILURE TO PROPERLY MAKE TRUTH IN LENDING AND GOOD FAITH ESTIMATE DISCLOSURES

Section Summary: *Truth in Lending (TIL) and Good Faith Estimate (GFE) disclosures are required to be made to borrowers under both state and federal law. These disclosures are intended to provide the borrower with accurate information from which they can make a*

[27] AfBA (previously CBA) under Regulation X, Real Estate Settlement Procedures Act (12 CFR part 3500.15), is discussed in detail under section IV.F. of this order. A 1997 rule change to Regulation X changed the name of

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determination to continue with the loan offered. Failure to make the required disclosures is harmful to consumers. This section identifies Nations' practice of failing to properly make TIL and GFE disclosures. Although Nations was ordered by the Superior Court Stay to make these disclosures, the violations continued through the end of 1997. The Department believes that an investigation of this issue in 1998 would show that Nations' continues to fail to properly make these disclosures.

1. As discussed previously in this section, the TIL Disclosure and GFE Disclosure are required to be provided to the borrower within specific time periods as detailed under section II.D. of this order. The triggering of the time periods under state law follows receipt of an application or receipt of moneys from a borrower. Nations appears to have intentionally made it difficult to determine the point of receipt of an application in order to confuse the triggering point for disclosure as discussed below.

2. The Department has found that the majority of applications completed by Nations for borrowers have been marked as received by mail whether the application was received by mail or not.

3. In the majority of loan originations with Washington consumers, the Department has determined that Nations contacted the consumer by telephone and obtained certain information to be completed in the Federal National Mortgage Association ("FNMA") application form. Subsequent to this telephone solicitation, a Nations employee meets with the consumer to complete and/or obtain a signature on the FNMA application form. The Department has

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the CBA disclosure to AfBA.

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determined from consumers that in most cases Willis or Johnson were the Nations employees and that the meetings were generally conducted at the consumers' residences. At the point of this meeting, Nations, via its employee, is in receipt of the application from the borrower, and the timing for disclosures has been triggered.

4. Following the meeting with the consumer the Nations employee delivers the application package to Nations' California office. The California office then produces a TIL Disclosure and a GFE Disclosure, however, in many cases the Department has found that the disclosures were not provided to the borrower, but simply placed in the file making it appear to the regulators that the disclosures were provided.

5. A second meeting is held at the consumer's residence (again, usually by Willis or Johnson). During this meeting the Nations employee obtains the borrower's signature on loan closing documents and disclosures that may or may not have been provided to the borrower previously.

6. The Department has found that Nations' pattern or practice is to not provide the borrower with the TIL and GFE Disclosures until the time of signing (generally 30 or more days after the date the disclosures are due). The Department bases this finding on:

a. Statements by Willis and Johnson that they were unfamiliar with the time period required for provision of disclosures.

b. A review of 371 loan files, the majority of which contain no disclosures signed and dated by the borrower within the required time period. The Department found that a

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large percentage, likely constituting a majority of the loan files, contained signatures commensurate with the date of signing of closing papers.

c. An investigation of complaints filed by consumers against Nations.

d. Interviews with consumers claiming that they had either not received disclosures at all, or the disclosures were received well after the required date of provision by Nations.

e. Written responses by consumers to the Department's questionnaire (out of 135 responses from consumers, only 48 stated that they received the TIL Disclosure within three days of application, and only 46 consumers stated that they received the GFE Disclosure within three days of application).

7. The Department's investigation shows that Nations has a pattern or practice of failing to provide consumers with disclosures as required pursuant to RCW 19.146.030 and RCW 19.146.0201(10). Such practice was alleged in the Department's Temporary Order to Cease and Desist. In the September 18, 1997, Superior Court Stay, Nations was specifically restrained from "Failing to make timely disclosure of lending information regarding loan or brokerage fees, interest rates, and costs mandated by state disclosure and federal truth in lending disclosure statements." However, the Department found that, after this date, Nations continued to violate both the state and federal disclosure requirements, and therefore operated in violation of the Superior Court Stay, as well.

8. In support of its findings, the Department offers the following example consumer transactions subsequent to the Stay:

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a. [redacted] The borrowers' loan application was received by Nations on September 30, 1997. On or before October 3, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. Although the file delivered to the Department contained unsigned TIL and GFE disclosures dated October 13, 1997, the [redacted] informed the Department that they did not receive these disclosures until November 25, 1997, in an envelope postmarked November 24, 1997. The [redacted] did not receive an AfBA disclosure or disclosures as required pursuant to RCW 19.146.030(2)(c), (d), (e) and (f).

b. [redacted] The borrower's loan application was received by Nations on October 30, 1997. On or before November 3, 1997, Nations was to have provided to [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. The file delivered to the Department contained no disclosures as required pursuant to RCW 19.146.030(2) or federal law. On December 9, 1997, [redacted] reported to the Department that he had received no disclosures.

c. [redacted]). The borrowers' loan application was received by Nations on November 17, 1997. On or before November 20, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. The file delivered to the Department contained no disclosures as required pursuant to RCW 19.146.030(2) or federal law. On December 9, 1997, the [redacted] reported to the Department that they had received no disclosures.

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d. [redacted] The borrowers' loan application was received by Nations on October 14, 1997. On or before October 17, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2) were provided to the borrower.

e. [redacted] The borrowers' loan application was accepted by Nations on October 24, 1997. On or before October 28, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is evidence in the file that the earliest date a TIL disclosure or GFE disclosure was provided to the borrower was October 31, 1997. There is also evidence in the file that the earliest date an AfBA disclosure was provided to the borrower was December 12, 1997. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2) were provided to the borrower.

f. [redacted]. The borrowers' loan application was accepted by Nations on November 5, 1997. On or before November 8, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2) were provided to the borrower.

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g. [redacted] The borrowers' loan application was accepted by Nations on November 7, 1997. On or before November 13, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is evidence in the file that the earliest date a TIL disclosure or GFE disclosure was provided to the borrower was November 17, 1997. There is no evidence in the file that an AfBA disclosure was provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2) were provided to the borrower.

h. [redacted] The borrowers' loan application was accepted by Nations on November 10, 1997. On or before November 14, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is evidence in the file that the earliest date a TIL disclosure or GFE disclosure was provided to the borrower was November 17, 1997. There is no evidence in the file that an AfBA disclosure was provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2) were provided to the borrower.

i. [redacted] The borrowers' loan application was accepted by Nations on November 12, 1997. On or before November 15, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2) were provided to the borrower.

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j. [redacted] The borrowers' loan application was accepted by Nations on November 20, 1997. On or before November 24, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

k. [redacted] The borrowers' loan application was accepted by Nations on October 15, 1997. On or before October 18, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is evidence in the file that the earliest date a TIL disclosure or GFE disclosure was provided to the borrower was November 4, 1997. There is also evidence in the file that the earliest an AfBA disclosure was provided to the borrower was December 3, 1997. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2) were provided to the borrower.

l. [redacted] The borrowers' loan application was accepted by Nations on November 24, 1997. On or before November 28, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

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m. [redacted] The borrowers' loan application was accepted by Nations on November 25, 1997. On or before November 29, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

n. [redacted] The borrowers' loan application was accepted by Nations on November 26, 1997. On or before December 1, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

o. [redacted]. The borrowers' loan application was accepted by Nations on December 2, 1997. On or before December 5, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

p. [redacted] The borrowers' loan application was accepted by Nations on December 2, 1997. On or before December 5, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA

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disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

q. [redacted] The borrowers' loan application was accepted by Nations on December 4, 1997. On or before December 8, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is evidence in the file that the earliest date a TIL disclosure or GFE disclosure was provided to the borrower was December 11, 1997. There is no evidence in the file that an AfBA disclosure was provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

r. [redacted] The borrowers' loan application was accepted by Nations on December 4, 1997. On or before December 8, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

s. [redacted]. The borrowers' loan application was accepted by Nations on December 9, 1997. On or before December 12, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA

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disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

t. [redacted] The borrowers' loan application was accepted by Nations on December 9, 1997. On or before December 12, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

u. [redacted] The borrowers' loan application was accepted by Nations on December 9, 1997. On or before December 12, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

v. [redacted] The borrowers' loan application was accepted by Nations on December 12, 1997. On or before December 16, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

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w. [redacted] The borrowers' loan application was accepted by Nations on December 15, 1997. On or before December 18, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

x. [redacted] The borrowers' loan application was accepted by Nations on December 15, 1997. On or before December 18, 1997, Nations was to have provided to the [redacted] all disclosures required under RCW 19.146.030(2), including the federal TIL, GFE and AfBA disclosures. There is no evidence in the file that a TIL disclosure, GFE disclosure or AfBA disclosure were provided to the borrower. Additionally, there is no evidence in the file that the disclosures pursuant to RCW 19.146.030(2)(c) or (e) were provided to the borrower.

9. The purpose of the disclosure requirements under both state and federal law are to ensure that the borrower has been provided with specific information pertaining to their transaction well prior to making a commitment to the mortgage broker to accept the loan that is being offered. Nations' practice of delaying or failing altogether to provide borrowers with the statutorily required information is a scheme, artifice or device which the Department believes is used by Nations to defraud or mislead borrowers into committing to loans they might not otherwise be inclined to accept had they received full and timely disclosure.

10. More specifically, when Nations solicits mortgage business from consumers, but fails until the date of signing closing papers, or shortly before the date of signing closing papers, to

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provide the borrower with disclosures, and the borrower does not obtain a loan under the terms they believed they would obtain, Nations has committed a practice of bait and switch.

11. It is important to note that the Department received 139 responses by consumers to the Department's questionnaire stating that they had been surprised by either the costs, rate or terms of the loan they had received from Nations. Further, 82 responding consumers informed the Department that the loan had not turned out as they had expected or were promised. While the Department does not rely solely on the consumer responses to the questionnaire in making its findings of bait and switch practices by Nations, the Department has added the responses to its document inspection to add weight to the finding that Nations has committed bait and switch with Washington consumers.

F. AFFILIATED BUSINESS ARRANGEMENTS AND CONSUMER HARM

Section Summary: *The Department has identified that Nations has relationship with Riverview Escrow Company, Inc. Under federal law, such relationships must be disclosed to consumers in advance of any referral of business to the affiliate, along with the cost to be assessed the consumer. This disclosure further informs the consumer that they are not required to use the services of the affiliate. The intent of the disclosure requirement is to prevent the consumer from suffering harm through the control of this business arrangement. The Department has found that Nations does not properly disclose its affiliated business arrangements, or provide the borrower with advance notice that they are not required to use the affiliate's services. The Department has also found that Nations assesses higher than normal market costs to the consumer for the services of the affiliate. Further, the Department believes that Nations' failure*

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to properly disclose this relationship is part of its scheme to defraud consumers by keeping the consumer's transaction from being scrutinized by an independent escrow company.

1. Pursuant to §3500.15 of Regulation X and section 3(7) of the Real Estate Settlement Procedures Act, 12 USC 2602(7) ("RESPA") an affiliated business arrangement means "an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider."

2. Pursuant to §3500.15(b) of Regulation X, an affiliated business arrangement is not a violation of section 8 of RESPA (12 USC 2607) and of Sec. 3500.14 if the conditions set forth in this section are satisfied:

(1) The person making each referral has provided to each person whose business is referred a written disclosure, in the format of the Affiliated Business Arrangement Disclosure Statement set forth in Appendix D of this part, of the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as section L of the HUD-1 settlement statement). The disclosures

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must be provided on a separate piece of paper no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application, except that:

(i) Where a lender makes the referral to a borrower, the condition contained in paragraph (b)(1) of this section may be satisfied at the time that the good faith estimate or a statement under Sec. 3500.7(d) is provided.

3. As covered in section II.A. of this order, Jamie Chisick is the owner of Riverview, an escrow company known to provide settlement services on loans originated by Nations. By Jamie Chisick's own writings to the Department (letter dated March 18, 1997), an Affiliated Business Arrangement exists between Nations and Riverview.

4. In 371 Nations files where the consumer closed the transaction or which were pending closure, the Department identified that Riverview was listed as the escrow company and was paid a fee on the HUD1 settlement statement as the escrow company. These files constitute all of the transactions that Nations presented to the Department as closed or pending closure for Washington consumers.

5. The Department believes, based on the fact that Nations refers Riverview to all or nearly all of its consumers, that it is aware that such referral will be made before the consumer is solicited. Therefore, Nations is required to make the AfBA or CBA disclosure to consumers upon origination of the loan application or at the very least, at the time of required delivery of the Good Faith Estimate.

6. In all files reviewed, the Department was unable to identify a single occurrence where Nations had made the AfBA or CBA disclosure within the time frame required.

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7. In most cases, the Department determined that the AfBA or CBA disclosure was made subsequent to Riverview preparing escrow instructions and performing other advance work on the borrower's transaction.

8. In most cases, the Department also determined that Nations made the AfBA or CBA disclosure at the time of signing of the loan closing documents; weeks after the required date of disclosure.

9. In some cases, the Department was unable to find the CBA or AfBA disclosure in the borrower's loan file, thus determining that disclosure had never been made.

10. As an example of this failure to properly disclose, the Department provides the following borrower transactions and information:

a. [redacted] Loan application received June 26, 1997. Escrow Order Form from Nations to Riverview dated August 5, 1997. CBA disclosure not provided.

b. [redacted] Loan application received July 13, 1997. Escrow instructions provided by Riverview July 22, 1997. CBA disclosure not provided.

c. [redacted] Loan application received July 24, 1997. Escrow instructions provided by Riverview August 14, 1997. CBA disclosure provided to Castillo October 27, 1997. Date of signing October 27, 1997.

d. [redacted] Loan application received July 31, 1997. Escrow Order Form from Nations to Riverview dated August 19, 1997. CBA disclosure not provided.

e. [redacted] Loan application received August 14, 1997. Escrow Order Form from Nations to Riverview dated August 22, 1997. CBA disclosure not provided.

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f. [redacted] Loan application received August 14, 1997. Escrow Order Form from Nations to Riverview dated August 25, 1997. CBA disclosure not provided.

g. [redacted] Loan application received August 14, 1997. Escrow Order Form from Nations to Riverview dated September 9, 1997. CBA disclosure not provided.

h. [redacted] Loan application received September 25, 1997. Escrow instructions provided by Riverview October 24, 1997. CBA disclosure provided to [redacted] November 20, 1997. Date of signing November 20, 1997.

i. [redacted] Loan application received September 30, 1997. Escrow Order Form from Nations to Riverview dated October 30, 1997. CBA disclosure not provided.

j. [redacted] Loan application received October 8, 1997. Escrow instructions provided by Riverview October 24, 1997. CBA disclosure provided to [redacted] November 20, 1997. Date of signing November 20, 1997.

11. The import of the AfBA disclosure is clear. The borrower is at a distinct disadvantage when required services are under the control of the same entity. Federal regulations have been imposed to provide the borrower with advance warning that:

a. A controlling interest exists;

b. The cost of using the referred service; and

c. The borrower is not required to use the controlled service, and that they may find the same service at lower cost through another provider.

12. The Department has identified in section II.B. of this report that on average, the cost to a borrower of closing with Riverview is approximately $350 higher than closing with a

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Washington licensed escrow agent. When Nations fails to notify the borrower of their rights or fails to make notification within the required time frames, Nations has presented the borrower with the following unbargained for risks:

a. Greater cost to the consumer;

b. The consumer's transaction is being closed by an escrow agent that by virtue of ownership holds Nations' interests above those of the borrower; and

c. The consumer's transaction is closed by an unlicensed, unbonded, unregulated escrow agent in the State of Washington.

13. The Department considers all of the above risks unacceptable and believes that Nations makes referrals to Riverview, without proper notification to the consumer, for the following reasons:

a. Jamie Chisick stands to increase the profitability to his companies at the cost of the consumer; and

b. An unbiased Washington escrow agent is likely to make the borrower aware of many of the violations that have been noted in this order, thereby seriously restricting Nations' ability to deceive and defraud the consumer.

G. PREPAYMENT PENALTY AND CONSUMER HARM

Section Summary: *Prepayment penalties are charges assessed to the consumer when a loan is paid off within a specified period of time (usually five years). The intent of the penalty is for the lender to recoup some of the expected interest income it has lost upon prepayment of the loan. Mortgage brokers, such as Nations, delivering loans with prepayment penalties to lenders*

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derive greater compensation than when loans are delivered without prepayment penalties. In and of itself, the prepayment penalty is not an unlawful charge. However, this section discusses Nations' practice of deceiving consumers about the existence of the prepayment penalty which is a violation of law.

1. The Department has found that approximately 79% of the loans originated and closed by Nations were adjustable rate mortgages ("ARMs"). The Department has further found that all, or nearly all, of these loans contained prepayment penalties to be charged to the borrower by the lender in the event that the loan balance is substantially reduced or refinanced within the first few years of the loan.

2. Although the prepayment penalty language and calculation may vary from loan to loan, the Department has identified the following prepayment penalty clause in the ARM note to be consistent and representative of the penalty incurred by the borrower:

"If within five (5) years from the date of execution of the Security Instrument (as defined below) I make a full prepayment or partial prepayment(s), I will at the same time pay to the Note Holder a prepayment charge. The prepayment charge will be equal to six months' advance interest on the amount of the prepayment that, when added to all other amounts prepaid during the twelve (12) month period immediately preceding the date of the prepayment, exceeds twenty percent (20%) of the original principal amount of this note."

3. The Department does not find that the existence of a prepayment penalty is a violation of law or regulation. However, it is the apparent attempts to hide or misrepresent the prepayment penalty that constitute an act of violation and injurious practice towards consumers.

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4. The Department supports its finding that Nations attempts to hide prepayment penalty information from the borrower by the borrowers' own statements. Twenty-two consumers have informed the Department in writing that they were not aware that they had a prepayment penalty on their loan. Several borrowers informed the Department that Nations had specifically told them they would not have a prepayment penalty on their loan, yet a prepayment penalty existed.

It is also important to note that many consumers were told by Nations that they would be able to convert or refinance out of the ARM loan they received within one year. However, the prepayment penalty that would be applied to many of these loans would make the cost of a refinance prohibitive. Had the borrowers been fully informed that such a prepayment would be incurred in the event they attempted to convert or refinance the ARM, the borrowers would have been less likely to accept the ARM. Several borrowers have supported the Department's belief in this. An example of what some borrower's have written to the Department follows:

a. [redacted] They were unaware that their loan contained a prepayment penalty and stated, "When we have a chance without paying the huge penalty we will go elsewhere."

b. [redacted] They were unaware that their loan contained a prepayment penalty and stated, "We were also told that there would be no prepayment penalties applicable to the loan . . . We now want to refinance to a obtain a lower rate, and our prepayment penalty will be about $7,800."

c. [redacted] They believed that their prepayment penalty had been omitted and stated, "We called Tanya when prepayment penalty was omitted – she said she

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would look into it at home office – many phone calls, nothing. We were told soon after signing that our contract had been sold and that 'we signed contract' and 'too bad.' No flex! No negotiation!"

d. [redacted] He was unaware that his loan contained a prepayment penalty and stated, "When I got our loan refinanced with another company I had to pay a $6,000.00 prepayment penalty. I was under the impression this would not happen if we kept the loan for 12 months."

e. [redacted] They were unaware that their loan contained a prepayment penalty and stated, "We were lead to believe it was going to have a cap on interest and early payoff was okay. We feel we were mislead."

f. [redacted] They were unaware that their loan contained a prepayment penalty. Because their payments were too high on the loan they obtained through Nations, they decided to sell their home. They stated, "This experience has cost us $25,000 . . . $5,200 prepayment penalty which we were not aware of until we sold our home."

5. It can only be assumed by the Department that the benefit of this sales tactic has not been lost on Nations and that the practice of "hiding" the prepayment penalty or diverting the borrower's attention from the prepayment penalty is intentional and routine.

6. The Department supports its finding that Nations misrepresents the prepayment penalty to the borrower by Nations' own instruction manual. As shown in section IV.C.20 of this order, the Doc Signer Manual instructs the Nations employee to lie about the prepayment penalty by

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stating that "every real estate loan" has a prepayment penalty and that the amount of penalty is established "according to the law."

In a section of the Doc Signer Manual identified as COMMON OBJECTIONS, the Nations employee is instructed by script to handle the consumer's concerns of a prepayment penalty as follows:

Borrower: "I told my loan officer I didn't want any prepayment penalty. What is this?"

Doc Signer: "Oh, really? Why didn't you want that?"

Borrower: "Well, I just don't want to have to pay more money to pay off my loan."

Doc Signer: "Oh, well sir, I can assure you that it does not work that way. According to your loan, you are allowed to pay up to 20% of the original loan amount every year for the first five years. **(NOW CALCULATE WHAT 20% more payment would add per month to borrower's payment. Calculate Loan Amount X 80% divided by 12. This shows you the maximum payment allowed per month.)** Then say: Sir, as you can see you can pay up to (State Amount) each month without a penalty. Can you afford to pay this every month?"

Borrower: "Not really."

Doc Signer: "Exactly, so this really isn't an issue. That's the way this works. If you understand this please approve this paper right here."

7. There are two deceptions played on the borrower in the script instructed above:

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a. The borrower's concern of prepayment by paying off the loan, is simply diverted to a discussion of partial payments on the loan. The answer still remains that the borrower will pay six months of interest on the payoff amount of the loan.

b. The prepayment penalty calculation is actually to be based on 20% of the loan amount not 80%. Based on the script, a loan amount of $100,000 would allow the borrower to make up to $6,667 per month in additional payment without a penalty. The true amount, based on the actual calculation of the prepayment penalty carried in the note, is $1,667 per month. This is a misrepresentation of $5,000 per month. In either case, however, the borrower's real concern is whether they will have a penalty if the loan is paid off through refinance or the home sold. The easy answer is avoided by the Nations employee.

8. The script goes on to handle a borrower's more direct objection to the prepayment penalty:

Borrower: "I want to sell my house in two years, I don't want a pre-pay!"

Doc Signer: "That's no problem at all. The pre-payment privilege can be negotiated after the first year. Even better, they might help find financing for the buyer of your home and if they do that they may not want to charge you a pre-pay at all."

Such statements are clearly false and misleading. Nations sells 100% of its loans into the secondary market. The borrower's mortgage loan is likely to have been sold several more times prior to the five year prepayment penalty period. Each new note holder has purchased the loan for a value based on the inclusion of the prepayment penalty. The note holder is neither required,

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nor would they desire, to give up six months' worth of expected interest upon payoff. This is supported by the [redacted] experience cited above.

Further, the statement that the note holder "might help find financing for the buyer" is untrue. There is no certainty that the eventual note holder will even be a financial institution in the business of making loans to consumers. Even if the holder is a maker of real estate loans, it is not certain that the holder will be licensed to conduct business in Washington. Finally, the chance that a prospective purchaser of the home may knowingly transact business with the holder of the note is so remote to make the concept inconceivable.

9. The Department's findings in this section are that Nations routinely hides the existence of a prepayment penalty from consumers, or provides the consumer with misrepresentations about the prepayment penalty, in order to deceive the borrower into accepting a loan that they might otherwise not accept.

10. To understand what might be Nations' and its employees motives in creating such a deception, the Department contacted other mortgage brokers working with lenders similar to those used by Nations that have prepayment penalties on their loans. One such mortgage broker provided the Department with a copy of the Bank of Yorba Linda program guide produced for mortgage brokers in Washington.[28] The guide states that in order to "buydown" or waive the prepayment penalty, .50% must be added to the rate, .25% to the adjustable rate index margin and 1.00% to the cost of the loan. The mortgage broker providing this to the Department stated that it

[28] The Bank of Yorba Linda is a lender routinely used by Nations.

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would generally be the mortgage broker absorbing the 1.00% cost out of their expected earnings in the transaction.

11. The Department has found that in transactions where the borrower has insisted on no prepayment penalty, the Nations loan officer is charged directly for the waiver. Noting this, the incentive for the loan officer to hide the existence of a prepayment penalty is clear.

H. DECEPTION IN THE "ESTIMATED COST ANALYSIS"

Section Summary: *The Estimated Cost Analysis is a disclosure form created by Nations to confuse borrowers about how adjustable rate mortgages work. The analysis claims to provide borrowers with information of the amount of savings they may realize with a Nations originated mortgage. The Estimated Cost Analysis is designed as a tool of deception to convince borrowers to accept a loan they might otherwise not accept had they been provided with accurate information or no Estimated Cost Analysis at all. This section discusses the Estimated Cost Analysis as a scheme, device or artifice to defraud or mislead borrowers.*

1. On September 24, 1997, Willis was shown a copy of a form identified as NATIONSCAPITAL MORTGAGE CORP. Estimated Cost Analysis ("ECA"), received by the Department from Salick. Willis explained that the ECA was to be completed during what Nations' calls the "Monster Disclosure." The apparent intent of the Monster Disclosure and the ECA is to show borrowers the amount of interest cost that can be saved over the life of the loan by paying additional monthly amounts toward principal. The Department believes that Nations' purpose in providing the consumer with the ECA is to reduce the "sticker shock" of the loan being offered.

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2. A copy of the ECA is attached as Exhibit C to this order. The ECA is divided into two sections; top and bottom. The top section is intended to provide the borrower with information concerning the loan they are currently signing. The bottom section, identified as Mortgage Savings Plan, is apparently intended to show the consumer a method for reducing the cost and term to maturity of the loan analyzed in the top section.

3. The top section of the ECA transfers specific information from the Truth in Lending Disclosure Statement into boxes on the ECA. The transferred information is the amount financed, finance charge, total of payments, the initial monthly payment to be incurred in the loan, and the term to maturity. The amount financed, finance charge and total of payments are asterisked on the ECA as "For illustration purposes only."

4. The bottom section (Mortgage Savings Plan), shows the following information:

a. The initial monthly "Payment" to be incurred on the new loan;

b. An "Extra" amount to be applied monthly to reduce the principal;

c. The "New Payment" equal to the Payment plus the Extra;

d. The "Old Total Pay" taken from the total of payments in the top section;

e. The "Shorter Term" to maturity to be achieved by the New Payment;

f. The "New Total Pay" showing the expected amount of total payments over the life of the loan with the New Payment applied; and

g. The "Savings in Finance Charge" which is the difference between the New Total Pay and the Old Total Pay.

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A final area of the Mortgage Savings Plan section is reserved for showing the borrower how much money they could accrue in the bank if they followed the plan. This area, however, is generally not completed by Nations.

5. The Mortgage Savings Plan section of the ECA reflects the New Payment in an amount, that if applied to a fixed rate mortgage, will amortize the principal balance to zero in fifteen years. For example: A $100,000, 30 year fixed rate loan made at an 8% rate of interest would show a $733.76 Payment, with $222 Extra paid toward principal each month, for a New Payment of $955.76, resulting in a Shorter Term of fifteen years.

6. When applied to a fixed rate mortgage, the ECA appears to provide accurate information to the consumer. In other words, the Department found that the Mortgage Savings Plan "works" for a fixed rate mortgage. The reason the Mortgage Savings Plan is accurate for a fixed rate mortgage is that additional principal payments on a fixed rate mortgage are calculated to reduce the principal balance and term to maturity on the loan while leaving the monthly payment amount "fixed."

7. When applied to an adjustable rate mortgage, however, the ECA provides two substantial inaccuracies:

a. The term to maturity does not reduce as described; and

b. The expected Savings in Finance Charge shown on the ECA is vastly overstated.

8. Additional principal payments applied to an adjustable rate mortgage are not calculated to reduce the term to maturity. In other words, the contractual term to maturity in an adjustable

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rate loan calculation does not change. The reason for this is that the amortization calculation holds the term to maturity constant while reducing the principal balance and all things being equal, the monthly payment. This phenomenon is the result of a more complex series of iterations in the calculation on the adjustable rate loan than the fixed rate loan.

The amortization schedule calculation on the adjustable rate mortgage must factor the contractual monthly payment in a given year, based on the remaining principal balance, at the current indexed (adjusted) rate, recast over the remaining term to maturity at each adjustment period. For adjustable rate loans originated by Nations, this calculation would generally occur every six months throughout the 30 year life of the loan.

The amortization schedule for "additional" principal reductions on the adjustable rate mortgage is calculated exactly the same, except that the principal balance will be further reduced by the amount of the extra payments in each period.

9. As discussed in section IV.A.14. of this order, an ECA is to be completed for every borrower. The Department has determined that regardless of the loan program offered to the consumer (fixed or adjustable), the same ECA format and calculations are used with every consumer. When completing the ECA on adjustable rate mortgages, Nations does not apply the true amortization schedule calculation. The result is a grossly inaccurate representation to the borrower.

10. During its investigation, the Department randomly sampled 255 loans originated by Nations to determine what percentage of loans originated by Nations were ARMs. The analysis showed that 201 loans, or 79% of the sample were adjustable rate mortgages. This statistic leads

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the Department to determine that nearly 80% of consumers obtaining loans from Nations have been misinformed.

11. The misinformation provided by Nations is that consumers are able to apply additional amounts to their monthly payments and achieve two substantially positive effects:

a. A mortgage that amortizes to zero in fifteen years; and

b. A significant reduction in cost to be realized through interest savings over the life of the loan.

12. While the Department does acknowledge that interest savings can accrue to a borrower by making additional principal payments on an adjustable rate mortgage, it is deceptive to represent the amount of interest deduction shown on the ECA and it is false to indicate that a fifteen year term to maturity is a likely outcome.

It should be noted that the concept of interest savings is true on any loan, and has no bearing on the cost of the loan or whether the loan is beneficial to the borrower. To sell the loan based on such an analysis is deception.

13. The Department has reanalyzed four consumer transactions to accurately reflect the result of Nations' proposed Extra payments, and compares the accurate calculation with that shown to the consumer on the ECA[29]:

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[29] The Department has referred to the lender's payment stream calculation shown on the Truth in Lending Disclosure Statement in determining the adjustment periods and interest rate at each adjustment period. Note that in using the lender's disclosure to determine the payment periods and interest rate at each adjustment period, the Department has chosen a more conservative (favorable to Nations) analysis than had it used the terms from the Adjustable Rate Note. The reason for the disclosure's more favorable representation is that the Truth in Lending Disclosure Statement allows the payment stream to be reflected as "level" when the adjustments reach the fully indexed rate (index plus margin), rather than continuing to rise to the point of lifetime rate cap. Had the

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a. [redacted] This adjustable rate mortgage shows an initial rate of 8.5%, adjustable every six months with a maximum movement in rate of 1.5% from the previous adjustment period. The initial payment is $934. Nations has recommended on the ECA that [redacted] pay an additional $254 per month in principal for a New Payment of $1,188. The Savings in Finance Charge shown to [redacted] is $223,589. The accurate calculation shows a savings of only $6,330, a misrepresentation to the consumer of $217,259, and a payoff 15 years too early.

b. [redacted]. This adjustable rate mortgage shows an initial rate of 7.19%, adjustable every six months with a maximum movement in rate of 1.5% from the previous adjustment period. The initial payment is $501. Nations has recommended on the ECA that [redacted] pay an additional $172 per month in principal for a New Payment of $673. The Savings in Finance Charge shown to [redacted] is $149,819. The accurate calculation shows a savings of only $4,896, a misrepresentation to the consumer of $144,923, and a payoff 15 years too early.

c. [redacted] This adjustable rate mortgage shows an initial rate of 7.75%, adjustable every six months with a maximum movement in rate of 1% from the previous adjustment period. The initial payment is $716. Nations has recommended on the ECA that [redacted] pay an additional $225 per month in principal for a New Payment of $941. The Savings in Finance Charge shown to [redacted] is $183,080. The accurate calculation shows a savings of only $105,024, a misrepresentation to the consumer of $78,056, and a payoff 15 years too early.

Department performed its analysis based on potential rate increases rather than the lender's disclosure, the results would have shown an even greater degree of misrepresentation by Nations.

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d. [redacted] This adjustable rate mortgage shows an initial rate of 7.75% adjustable every six months, however, the first adjustment period, which does not begin for two years, is fully indexed at the first adjustment. The initial payment is $659. Nations has recommended on the ECA that [redacted] pay an additional $200 per month in principal for a New Payment of $859. The Savings in Finance Charge shown to [redacted] is $163,607. The accurate calculation shows a savings of only $35,616, a misrepresentation to the consumer of $127,991, and a payoff 15 years too early.

14. The use of the ECA by Nations in the Monster Disclosure presentation is the employment of a scheme, artifice or device to defraud or mislead borrowers into accepting an adjustable rate mortgage that they might not otherwise have been willing to accept had they been presented with accurate information. Here, rather than an easy answer being avoided, a complex and misleading answer is given to a question that was not asked.

15. It is important to note that of the 131 consumers responding to the Department's Questionnaire, 88% had sought a fixed rate mortgage when first contacted by Nations. The Department's investigation shows that 83, or 63% of these responding consumers obtained an adjustable rate mortgage. It appears that these consumers and all other consumers presented with an ECA on an adjustable rate mortgage were deceived by Nations.

I. OVERCHARGES

Section Summary: *Subsection (4) of the written disclosures section of the Act clearly establishes that a mortgage broker is prohibited from charging a borrower more in fees than is originally disclosed except in specifically limited situations. The intent is to prevent the*

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mortgage broker from "baiting" the consumer with a set of promised charges, only to "switch" the charges on the consumer at a later point in the transaction. When this bait and switch scenario arises, the mortgage broker has violated the law by "overcharging" the consumer. This section discusses Nations' violation of subsection (4) with the intent of overcharging consumers.

1. Pursuant to RCW 19.146.030(4)[30], 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 [the GFE], 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.

2. The Department found through its investigation that Nations committed 122 violations of RCW 19.146.030(4), by over-charging consumers a total of $735,641.13 in loans that were originated between April 1995 and November 1997. These consumers and the detailed dollar amount of the overcharges are shown in Exhibits D.1 through D.3 of this order.

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[30] Prior to 7/21/97, this section was identified as RCW 19.146.030(5). The language did not change with the amended statute, however.

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3. In making its finding, the Department reviewed the costs shown on the GFE compared to the costs shown on the HUD1 Settlement Statement. In transactions where the Department could verify that the borrowers had received no GFE at least three days prior to the date of closing, the Department found that the amount of overcharge violation was equal to the full dollar amount that inured to the benefit of Nations as shown on the HUD1 Settlement Statement.[31] This dollar amount of overcharge is identified as "High Overcharge" in Exhibit D.

4. A "Low Overcharge" is shown in Exhibit D. for borrowers where the Department was unable to establish that Nations had failed to provide the GFE at least three days prior to closing. In these cases the overcharge shown is equivalent to the difference in fees that inured to the benefit of Nations from the existing GFE to the HUD1 Settlement Statement.

5. In some cases, more than one GFE existed in the borrower's file. In these cases the Department made its finding based on which, if any, GFE best fit the requirements pursuant to RCW 19.146.030(4), and reflected the overcharge as the difference between this GFE and the HUD1 Settlement Statement.

J. EXAMPLES OF SPECIFIC ACTS OF CONSUMER HARM BY NATIONS

1. On August 13, 1997, the Department completed its investigation of the Salick complaint and presented its findings to Nations in a letter of resolution (a copy of this resolution

[31] In such situations the Department relied on the lack of a GFE, no signed GFE, an undated GFE, or the borrowers' own statements that they had not received a GFE as required. Note that it is the Department's belief that the majority of consumers did not receive a GFE until the date of signing closing papers, however, the Department has erred on the side of "substantive" proof in making its findings of failure to disclose as required.

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letter is attached as Exhibit E). This investigation found that Nations had committed the following apparent violations[32]:

a. RCW 19.146.265. Nations had held itself out as a mortgage broker and conducted the business of a mortgage broker with Salick from an unlicensed location in California, specifically 1045 W. Katella Avenue, Suite 200, Orange, California.

b. RCW 19.146.205(3). Nations' surety bond did not provide coverage for the unlicensed California location at the time of the Salick loan.[33]

c. RCW 19.146.030(1). Nations had failed altogether to provide Salick with disclosures as required pursuant to RCW 19.146.030(2)(c), (d) and (f).

d. RCW 19.146.030(1) and (2)(a). Nations had not provided Salick with a Truth in Lending Disclosure until seven days following the taking of Salick's application.

e. RCW 19.146.030(1) and (2)(b). Nations had not provided Salick with a Good Faith Estimate until seven days following the taking of Salick's application.

f. RCW 19.146.030(4). Nations was in violation of the disclosure requirements pursuant to the Truth in Lending Act and the Real Estate Settlement Procedures Act.

g. RCW 19.146.0201(1), (2), (3) and (7). Nations had provided Salick with a Truth in Lending disclosure that clearly led Salick to believe that he was not responsible for

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[32] Violations cited from statute in effect prior to 7/21/97.

[33] On September 10, 1997, Nations changed its bonding coverage to provide protection to consumers for loans originated from all of its locations.

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$8,805.00 in brokers fees that Salick was charged at closing. The Department's determination was that such deception constituted bait and switch practices by Nations.

h. RCW 19.146.0201(8). Nations made various false statements to the Department in regard to the Salick investigation.

2. The Department's resolution letter requested that Nations make restitution to Salick in the amount of $13,005.00. In February 1998, Nations complied with this request and made restitution to Salick in the amount requested.

3. The Department has identified four additional consumers that received TIL Disclosures provided by Nations that would clearly lead the consumers to believe that they were not responsible for broker fees in the transaction. Like the Salick transaction, these borrowers received a TIL Disclosure that stated "These are FEES NOT paid by the Borrower." However, each of these borrowers did indeed pay Nations the very amount of broker fees that they were disclosed they would not have to pay.

4. The borrowers and broker fees referred to are:

a. [redacted] $7,305.00

b. [redacted] $5,205.00

c. [redacted] $8,305.00

d. [redacted] $6,678.00

5. In response to the Department's allegations in the Salick resolution, Smart wrote on August 27, 1997, "Without discussing the substance of your letter's allegations at length, I would like to make one point. Specifically, you do correctly [no emphasis added] point out in your letter

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that there is a discrepancy on page 2 of the Salick's April 7, 1997 final TIL disclosure – a discrepancy which this firm overlooked both in our review of the Disclosure Statement last month and in our letter to Alicia Haus of your Department dated July 31, 1997. As you point out, although the Prepaid Finance Charge itemization expressly disclosed the loan origination fee of $8,805 to be paid to Nationscapital as broker, another box below it lists the $8,805 fee under the heading 'These are FEES NOT paid by the Borrower.' This discrepancy will indeed cause Nationscapital to re-evaluate whether and in what amount restitution is due the Salicks."

As stated, Nations subsequently refunded over $13,000 to the Salicks. The Department believes that, since the same disclosure was provided to the borrowers identified in 4. above, and for any other borrowers who received this deceptive information on their TIL Disclosure statement, that Nations' response and position would be the same as in the Salick transaction.

6. On September 2, 1997, the Department completed its investigation of the Prater complaint and presented its findings to Nations in a letter of resolution (a copy of this resolution letter is attached as Exhibit F). This investigation found that Nations had committed the following apparent violations[34]:

a. RCW 19.146.265. Nations had held itself out as a mortgage broker and conducted the business of a mortgage broker with Prater from an unlicensed location in California, specifically 2922 E. Chapman Avenue, #202, Orange, California.

b. RCW 19.146.205(3). Nations' surety bond did not provide coverage for the unlicensed California location.

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c. RCW 19.146.030(1). Nations had failed altogether to provide Prater with disclosures as required pursuant to RCW 19.146.030(2)(c), (d) and (f).

d. RCW 19.146.030(4). Nations was in violation of the disclosure requirements pursuant to the Truth in Lending Act and the Real Estate Settlement Procedures Act.

e. RCW 19.146.030(5). Nations charged fees inuring to its benefit which exceeded those previously disclosed, without redisclosing as required by this section.

f. RCW 19.146.0201(1), (2), (3) and (7). The Department determined that Nations' practices in the Prater transaction were misleading, misrepresentative and constituted acts of deception.

7. The Department requested that Nations pay restitution to Prater in the amount of $14,183.13. Nations to date has failed to provide any substantive response to the allegations raised by the Department in the Prater complaint and the complaint remains outstanding.[35]

K. UNLICENSED CONDUCT OF BUSINESS

1. On June 24, 1997, Willis explained under oath that all of Nations solicitation and telemarketing efforts with Washington consumers take place in California. Willis stated that representatives of the Bellevue office meet with the consumer following the initial telephone interview by a representative in California. Willis further stated that the files are transferred to California for processing and closing. It is apparent to the Department that representatives from the Bellevue office generally meet with the Washington consumer on two occasions:

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[34] Violations cited from statute in effect prior to 7/21/97.

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a. To obtain signatures on initial forms and to pick up certain paperwork; and

b. To obtain signatures on the closing documents.

2. During the on-site investigation of records, Willis stated that the majority of loans originated by Nations in the south western area of Washington were handled through the Portland office.

3. The Department sampled several loan files during its investigation and found that the following loan originators had held themselves out as Nations representatives able to conduct business with Washington consumers:

a. Marie Nino. Nino is shown as the "loan officer" in files for [redacted] (October 1997), [redacted] (August 1997) and [redacted] (September 1997). Nino is shown in Nations' licensing file as a "Loan Originator" assigned to the California location. Nino is supervised by Kraus, Telesales Manager.

b. Joe Nardo. Nardo is shown as the "loan officer" in files for [redacted] (August 1997), [redacted] (November 1997), [redacted] (December 1997), [redacted] (November 1997). Nardo is shown in the Nations' licensing file as a "TSR" assigned to the California location. Nardo is supervised by Kraus, Telesales Manager.

c. Jennifer McDonald. McDonald is shown as the "loan officer" in files for [redacted] (August 1997), [redacted] (November 1997) and [redacted] (July 1997). McDonald is shown in

[35] Nations has argued that due to the filing of a suit by Prater, any substantive response to the Department would be inappropriate.

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the Nations' licensing files as a "Loan Originator" assigned to the California location. McDonald's supervisor is Kraus, Telesales Manager.

d. Chantel Harris. Harris is shown as the "loan officer" in files for [redacted] (July 1997) and [redacted] (October 1997). Harris is shown in the Nations' licensing file as a "Loan Originator" assigned to the California location. Harris' supervisor is Kraus, Telesales Manager.

e. Gina Bailey. Bailey is shown as the "loan officer" in files for [redacted] (November 1997), [redacted] (November 1997), [redacted] (September 1997) and [redacted] (October 1997). Bailey is shown in the Nations' licensing file as a "TSR" assigned to the California location. Bailey's supervisor is Kraus, Telesales Manager.

f. Bill Becker. Becker is shown as the "loan officer" in files for [redacted] (August 1997), [redacted] (December 1997) and [redacted] (August 1997). Becker is shown in the Nations' licensing file as a "Loan Originator" assigned to the California location. Becker's supervisor is Kraus, Telesales Manager.

g. Gilbert Mariscal. Mariscal is shown as the "telephone interviewer" on the FNMA 1003 applications for [redacted] (July 1997) and [redacted] (August 1997). Mariscal is shown as the "loan officer" in the file for [redacted] (August 1997). Mariscal is shown in the Nations' licensing file as a "Loan Officer" assigned to the California location. Mariscal's supervisor is Williams, Sales Manager.

h. Tara Barus. Barus is shown as the "interviewer" in files for [redacted] (September 1997) and [redacted] (October 1997). Barus is also shown as the "loan officer contact" in files for [redacted] (August 1997) and [redacted] (September 1997). Barus is shown in the Nations' licensing

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file as a "Loan Officer" assigned to the California location. Barus' supervisor is Williams, Sales Manager.

i. Jeremy Foti. Foti is shown as the "interviewer" in files for [redacted] (October 1997) and [redacted] (September 1997). Foti is shown in the Nations licensing file as a "Loan Officer" assigned to the California location. Foti's supervisor is Williams, Sales Manager.

4. The above loans are a representative sample of loan files randomly chosen by the Department for the purposes of determining the extent of unlicensed activity by Nations. These files show a pattern of Nations holding itself out as able to conduct the business of a mortgage broker from the California location. The Department also presents the following example of borrowers that are believed to have been met at their homes by one or more representatives assigned to the Portland location:

a. [redacted] on or about July 9, 1997, Camas, WA.

b. [redacted] on or about November 20, 1997, Vancouver, WA.

c. [redacted] on or about October 2, 1997, Vancouver, WA.

d. [redacted] on or about November 17, 1997, Vancouver, WA.

e. [redacted] on or about September 18, 1997, Vancouver, WA.

f. [redacted] on or about December 7, 1997, Vancouver, WA.

5. All of the unlicensed conduct of business identified in sections 3. through 4. above are considered significant events by the Department for the following reasons:

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a. Each act of unlicensed conduct occurred subsequent to the June 24, 1997, visit by the Department to the Bellevue office. In this visit, Willis was provided with information that this type of business conduct constituted unlicensed activity by Nations.

b. Each act of unlicensed conduct occurred subsequent to several correspondences between Nations and Nations' attorneys addressing the issue of unlicensed conduct.

c. The majority of the acts of unlicensed conduct occurred subsequent to the Department's TCD alleging unlicensed conduct by Nations.

d. The majority of the Acts of unlicensed conduct occurred subsequent to the Superior Court Stay ordering Nations to comply with the Act.

6. This blatant conduct of unlicensed practice of business following multiple regulatory warnings and a court order is deemed by the Department to be overt and intentional violations of the Act and the Director's authority to administer the Act.

7. The Department has further identified the following consumer transactions originated by Nations prior to its date of license issue in Washington:

a. [redacted] February 19, 1995

b. [redacted] March 2, 1995

c. [redacted] March 29, 1995

d. [redacted] April 1, 1995

e. [redacted] April 10, 1995

f. [redacted] April 20, 1995

g. [redacted] April 22, 1995

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h. [redacted]	April 22, 1995
i. [redacted]	April 29, 1995
j. [redacted]	April 30, 1995
k. [redacted]	May 3, 1995
l. [redacted]	May 17, 1995
m. Prater	May 20, 1995
n. [redacted]	May 23, 1995

8. It is clear to the Department from the findings in this section that Nations has been conducting business with Washington consumers from unlicensed locations continuously from February 19, 1995, through at least December 1997, regardless of regulatory warnings to cease such unlicensed conduct of business.

L. TRUST ACCOUNT VIOLATIONS

1. On September 18, 1994, Chisick, as president of GAMC, provided the Department with a Certificate of Compliance and Authorization to Examine Trust Accounts for trust account number 300-067-808, maintained at First Interstate Bank of WA, N.A. Although this account was established for GAMC, the Department was led to believe by Medina that the account was to be continued for the use of Nations and the Department was not informed of the establishment of any other trust account by Nations.

2. On June 24, 1997, Willis was asked about the Nations trust account to be maintained in accordance with RCW 19.146.050 and WAC 208-660-08010 through 08035 (Part D Trust Accounts and Accounting Requirements). Willis was unable to provide any information as to the

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existence or whereabouts of the Nations trust account. Willis stated that all trust account matters were handled in California and that when funds were received from consumers for payment of third-party services, he would forward those funds to California with no knowledge of how they were subsequently deposited, maintained or disbursed.

3. On June 25, 1997, the Department contacted First Interstate Bank of WA, N.A. to inquire about the maintenance of trust account number 300-067-808. A bank representative informed the Department that First Interstate Bank of WA, N.A. had been purchased and no information existed for that trust account number.

4. On August 29 1997, based upon Willis' statements and the information obtained by the Department concerning account number 300-067-808, the Director entered the TCD citing violations of RCW 19.146.050. In Nations' Superior Court contest of the TCD it provided the Department with information that First Interstate Bank of WA, N.A. had been acquired by Wells Fargo Bank and that account number 300-067-808 had been replaced by account number 00300068375.

5. On September 17, 1998, the Department was provided with a limited amount of Nations trust account records. More records arrived at a later point in the investigation. As discussed in section IV.A. of this order, it was and is clear to the Department that Nations' trust account records were and are maintained in California.

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6. The trust account records provided to the Department covered the period of June 1995 through August 1997. Although Nations is known to have conducted business in Washington prior to June 1995[36] no records were made available for those business periods.

7. The trust account records provided to the Department included:

a. Monthly reconciliations of the bank statement to Nations' trust account records;

b. Monthly bank statements;

c. Client ledger sheets;

d. Trial balances; and

e. Copies of deposit and disbursement records.

8. The Department's analysis of each month's reconciling records is provided as follows:

a. June 1995. Apparent violations itemized:

Service charges on account	$ 9.57
Disbursement in excess	375.00
Excess balance	10.75
Total dollar amount of violations	$395.32

b. July 1995. Apparent violations itemized:

Service charges on account	$ 9.57
Excess balance	86.85
Total dollar amount of violations	$115.00

c. August 1995. Apparent violations itemized:

[36] See findings of unlicensed business conduct section III.K.7.

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Service charges on account	$ 74.89
Excess balance	56.96
Total dollar amount of violations	$131.85

d. September 1995. Apparent violations itemized:

Service charges on account	$ 53.08
Excess balance	55.60
Total dollar amount of violations	$108.68

e. October 1995. Apparent violations itemized:

Service charges on account	$ 44.69
Excess balance	54.74
Total dollar amount of violations	$99.43

f. November 1995. Apparent violations itemized:

Service charges on account	$ 56.92
Disbursement in excess	350.00
Excess balance	52.49
Total dollar amount of violations	$459.41

g. December 1995. Apparent violations itemized:

Service charges on account	$ 18.75
Excess balance	96.25
Total dollar amount of violations	$115.00

h. January 1996. Apparent violations itemized:

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Service charges on account	$ 19.36
Excess balance	91.89
Total dollar amount of violations	$111.25

i. February 1996. Apparent violations itemized:

Service charges on account	$ 24.08
Excess balance	143.76
Total dollar amount of violations	$167.84

j. March 1996. Apparent violations itemized:

Service charges on account	$ 16.84
2 incorrect deposits	575.00
Excess balance	126.92
Total dollar amount of violations	$718.76

k. April 1996. Apparent violations itemized:

Service charges on account	$ 45.74
Excess balance	122.06
Total dollar amount of violations	$167.80

m. May 1996. Apparent violations itemized:

Service charges on account	$ 28.66
Excess balance	121.48
Total dollar amount of violations	$150.14

n. June 1996. Apparent violations itemized:

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Service charges on account	$ 21.48
Unreconciled difference	1,125.00
Excess balance	100.00
Total dollar amount of violations	$1,246.48

o. July 1996. Apparent violations itemized:

Service charges on account	$ 65.39
Unreconciled difference	25.00
Excess balance	34.61
Total dollar amount of violations	$ 125.00

p. August 1996. Apparent violations itemized:

Service charges on account	$ 50.01
Incorrect deposit s/b CA	275.00
Unreconciled difference	184.04
Excess balance	68.64
Total dollar amount of violations	$ 577.69

q. September 1996. Apparent violations itemized:

Service charges on account	$ 78.90
Unrecorded deposit	375.00
Excess balance	67.16
Total dollar amount of violations	$ 521.06

r. October 1996. Apparent violations itemized:

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Service charges on account	$ 53.11
Unrecorded deposit	150.00
Unreconciled difference	125.00
Excess balance	14.05
Total dollar amount of violations	$ 342.16

s. November 1996. Apparent violations itemized:

Service charges on account	$ 68.16
Overdraft	204.11
Total dollar amount of violations	$ 272.27

t. December 1996. Apparent violations itemized:

Service charges on account	$ 9.42
Excess balance	90.58
Total dollar amount of violations	$ 100.00

u. January 1997. Apparent violations itemized:

Service charges on account	$ 11.57
Excess balance	79.01
Total dollar amount of violations	$ 90.58

v. February 1997. Apparent violations itemized:

Service charges on account	$ 9.45
Excess balance	69.56
Total dollar amount of violations	$ 79.01

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w. March 1997. Apparent violations itemized:

Service charges on account	$ 10.74
Excess balance	58.82
Total dollar amount of violations	$ 69.56

x. April 1997. Apparent violations itemized:

Service charges on account	$ 10.75
Excess balance	48.07
Total dollar amount of violations	$ 58.82

y. May 1997. Apparent violations itemized:

Service charges on account	$ 10.80
Excess balance	37.27
Total dollar amount of violations	$ 48.07

z. June 1997. Apparent violations itemized:

Service charges on account	$ 10.83
Excess balance	26.44
Total dollar amount of violations	$ 37.27

aa. July 1997. Apparent violations itemized:

Service charges on account	$ 10.87
Excess balance	15.57
Total dollar amount of violations	$ 26.44

bb. August 1997. Apparent violations itemized:

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Service charges on account	$ 10.92
Excess balance	89.08
Total dollar amount of violations	$ 100.00

9. The Department analyzed the date of receipt of trust funds received by Nations from consumers compared to the actual date of deposit by Nations. The Department found that several deposit slips were recorded by Nations as deposited sooner than the deposits actually occurred. The following are apparent violations for failure to deposit trust funds as required by RCW 19.146.050:[37]

[redacted]	$375.00	5 days to deposit
[redacted]	$375.00	6 days to deposit
[redacted]	$375.00	6 days to deposit
[redacted]	$375.00	4 days to deposit
[redacted]	$375.00	8 days to deposit
[redacted]	$375.00	12 days to deposit
[redacted]	$375.00	4 days to deposit
[redacted]	$200.00	4 days to deposit
[redacted]	$350.00	4 days to deposit
[redacted]	$375.00	7 days to deposit
[redacted]	$375.00	4 days to deposit
[redacted]	$375.00	4 days to deposit

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[redacted]	$325.00	4 days to deposit
[redacted]	$375.00	5 days to deposit
[redacted]	$375.00	3 days to deposit
[redacted]	$375.00	6 days to deposit
[redacted]	$375.00	6 days to deposit
[redacted]	$375.00	4 days to deposit
[redacted]	$375.00	3 days to deposit
[redacted]	$375.00	7 days to deposit
[redacted]	$375.00	7 days to deposit
[redacted]	$375.00	6 days to deposit
[redacted]	$375.00	3 days to deposit
[redacted]	$375.00	3 days to deposit
[redacted]	$375.00	8 days to deposit
[redacted]	$375.00	4 days to deposit
[redacted]	$375.00	8 days to deposit
[redacted]	$300.00	3 days to deposit
[redacted]	$375.00	3 days to deposit
[redacted]	$375.00	4 days to deposit
[redacted]	$375.00	5 days to deposit
[redacted]	$375.00	3 days to deposit

[37] All of these deposit violations occurred prior to the trust accounting amendments effective 7/21/97.

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[redacted]	$375.00	5 days to deposit
[redacted]	$375.00	4 days to deposit
[redacted]	$375.00	4 days to deposit
[redacted]	$225.00	4 days to deposit
[redacted]	$375.00	5 days to deposit
[redacted]	$375.00	3 days to deposit
[redacted]	$375.00	8 days to deposit
[redacted]	$375.00	5 days to deposit
[redacted]	$375.00	5 days to deposit
[redacted]	$375.00	3 days to deposit
[redacted]	$375.00	6 days to deposit
[redacted]	$375.00	5 days to deposit
[redacted]	$375.00	8 days to deposit
[redacted]	$375.00	8 days to deposit
[redacted]	$375.00	8 days to deposit
[redacted]	$375.00	3 days to deposit
[redacted]	$375.00	4 days to deposit
[redacted]	$375.00	9 days to deposit
[redacted]	$375.00	7 days to deposit
[redacted]	$375.00	6 days to deposit
[redacted]	$375.00	8 days to deposit

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[redacted]	$375.00	9 days to deposit
[redacted]	$375.00	9 days to deposit
[redacted]	$375.00	7 days to deposit
[redacted]	$375.00	6 days to deposit
[redacted]	$375.00	5 days to deposit
[redacted]	$375.00	4 days to deposit
[redacted]	$375.00	8 days to deposit
[redacted]	$375.00	8 days to deposit
[redacted]	$375.00	8 days to deposit
[redacted]	$350.00	8 days to deposit
[redacted]	$375.00	11 days to deposit
[redacted]	$375.00	7 days to deposit
[redacted]	$375.00	8 days to deposit
[redacted]	$375.00	5 days to deposit
[redacted]	$375.00	7 days to deposit

10. The Department found that a deposit of $250.00 was made to the trust account by Willis on September 25, 1996.

11. The Department found that Nations had received trust funds through closing that were not deposited into Nations' trust account. On at least 26 occasions these funds were collected by Nations through checks that also contained the fees earned by Nations on the transaction. The entire amount of these checks, including the trust funds, are believed by the Department to have

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been deposited into Nations' general operating account, effectively commingling trust funds with general operating funds. The Department was unable to determine whether these funds were for bona fide services rendered, or whether Nations retained these funds as revenue rather than forwarding the amounts to third-party providers. A listing of the borrowers, dates the funds were received by Nations and what the funds were identified for is as follows:

[redacted]	02/09/96	$225.00 appraisal
[redacted]	05/21/96	$ 75.00 tax service
		$ 27.50 flood certificate
[redacted]	03/28/96	$375.00 appraisal
[redacted]	05/14/96	$ 75.00 tax service
		$ 27.50 flood certificate
[redacted]	06/18/96	$ 75.00 tax service
		$ 27.50 flood certificate
[redacted]	08/14/97	$ 72.00 tax service
		$ 27.50 flood certificate
[redacted]	08/06/97	$ 72.00 tax service
		$ 27.50 flood certificate
[redacted]	04/01/97	$ 75.00 tax service
		$ 27.50 flood certificate
[redacted]	04/01/97	$ 75.00 tax service
		$ 27.50 flood certificate

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[redacted]	06/09/97	$ 72.00 tax service
		$ 27.50 flood certificate
[redacted]	09/02/97	$ 72.00 tax service
		$ 27.50 flood certificate
[redacted]	05/01/97	$ 72.00 tax service
		$ 27.50 flood certificate
[redacted]	04/25/97	$ 72.00 tax service
		$ 27.50 flood certificate
[redacted]	06/03/97	$ 72.00 tax service
		$ 27.50 flood certificate
[redacted]	07/02/97	$ 72.00 tax service
		$ 27.50 flood certificate
[redacted]	07/23/97	$ 72.00 tax service
		$ 27.50 flood certificate
[redacted]	07/02/97	$ 72.00 tax service
		$ 27.50 flood certificate
[redacted]	06/03/97	$ 72.00 tax service
		$ 27.50 flood certificate
[redacted]	08/08/97	$ 72.00 tax service
		$ 27.50 flood certificate
[redacted]	08/29/97	$375.00 appraisal

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		$ 60.00 credit report
[redacted]	01/08/97	$ 75.00 tax service
		$ 27.50 flood certificate
		$ 40.00 courier
[redacted]	12/03/97	$ 72.00 tax service
		$ 27.50 flood certificate
[redacted]	06/03/97	$ 72.00 tax service
		$ 27.50 flood certificate
[redacted]	03/10/97	$ 75.00 tax service
		$ 27.50 flood certificate
[redacted]	10/30/97	$ 72.00 tax service
		$ 27.50 flood certificate
[redacted]	10/27/97	$ 72.00 tax service
		$ 27.50 flood certificate

12. The numerous trust account violations noted in this section constitute a pattern of clear and willful violations of RCW 19.146.050 and the rules to this section.

M. VIOLATIONS OF THE EQUAL CREDIT OPPORTUNITY ACT AND REGULATION B

1. The Department has identified numerous occurrences of Nations requesting information from borrowers disallowed under Regulation B, Equal Credit Opportunity (12 CFR Part 202). Specifically, §202.5(d) states, "If an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms

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married, unmarried, and separated. A creditor may explain that the category unmarried includes single, divorced, and widowed persons."

2. Nations uses a pre-application screening form identified as a CONFIDENTIAL INFORMATION STATEMENT. A section in this statement is identified as FORMER MARRIAGE(S). This section requests information as to whether the former spouse is "deceased" or "divorced." It further asks the date of decease or divorce and the location of the decease or divorce.

3. The CONFIDENTIAL INFORMATION STATEMENT was found in a majority of the Nations loan files. A violation of Regulation B occurs when Nations asks the question of the borrower, not when the borrower provides the answer. Therefore, every situation in which Nations asks a borrower their marital status in the form of "deceased" or "divorced" is an apparent violation of ECOA. However, the Department provides the following example of borrowers who provided Nations with answers to these sections:

[redacted]	10/21/96	divorced
[redacted]	6/26/97	divorced
[redacted]	7/9/97	divorced
[redacted]	8/9/97	divorced
[redacted]	9/18/97	divorced
[redacted]	9/25/97	divorced
[redacted]	9/30/97	divorced
[redacted]	11/14/97	divorced

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N. The Department's investigation began on June 24, 1997, and continues to date.

V. GROUNDS FOR ENTRY OF ORDER

A. As stated previously in this statement of charges, the Act was amended, effect July 21, 1997. Where necessary and applicable, the cited sections are delineated by effective date corresponding to the apparent violation(s). Citation changes in which the code number was changed, but the language of the statute was left intact, are not delineated. These sections will be cited by their current codification.

B. Definitions by statute. Pursuant to RCW 19.146.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

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

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

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

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(10) "Loan originator" means 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 mortgage broker, in the performance of any act specified in subsection (12) of this section.

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

(12) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or (b) 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.

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

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

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C. Definitions by Rule. Pursuant to WAC 208-660-010, as used in this chapter, the following definitions apply, unless the context otherwise requires:

(1) "Advertising material" means any form of sales or promotional materials to be used in connection with the mortgage broker business.

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

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

(8) "Branch office certificate" means a branch office license issued by the director to engage in the mortgage broker business as the branch office indicated in the certificate, pursuant to RCW 19.146.265.

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

(13) A person "controls" an entity if the person, directly or indirectly through one or more intermediaries, alone or in concert with others, owns, controls, or holds the power to vote twenty-five percent or more of the outstanding stock or voting power of the controlled entity.

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

(18) "Employee" means any natural person who:

(a) Has an employment relationship, acknowledged by both the employee and the mortgage broker; and

(b) Is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

(21) A person "holds oneself out" by advertising or otherwise informing the public that the person engages in any of the activities indicated, including without limit through the use of business cards, stationery, brochures, rate lists or other promotional items.

(22) "Independent contractor" or "person who independently contracts" means any person that:

(a) Expressly or impliedly contracts to perform mortgage broker activities for a licensee;

(b) With respect to its manner or means of performing the activities, is not subject to the licensee's right of control; and

(c) Is not treated as an employee by the licensee for purposes of compliance with federal income tax laws.

(23) "License" means a license issued by the director to engage in the mortgage broker business.

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(24) "Licensee" or "licensed mortgage broker" means:

(a) A mortgage broker licensed by the director; and

(b) Any person required to be licensed pursuant to RCW 19.146.200 and 19.146.020.

(25) "Loan originator" means a natural person:

(a) Who is a mortgage broker employee who performs any mortgage broker activities; or

(b) Who is retained as an independent contractor by a mortgage broker, or represents a mortgage broker, in the performance of any mortgage broker activities.

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

(28) "Mortgage broker" means any person that for compensation or gain, or in the expectation of compensation or gain:

(a) Makes a residential mortgage loan or assists a person in obtaining a residential mortgage loan; or

(b) Holds himself or herself out as being able to do so.

(30) "Out-of-state applicant or licensee" means an applicant for a license or licensee that does not maintain a physical office within this state.

(31) "Person" means a natural person, corporation, company, partnership, or association.

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(32) "Prepaid escrowed costs of ownership," as used in RCW 19.146.030(5), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the security property.

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

(35) "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act, 12 U.S.C. Sections 2601 et seq., and Regulation X, 24 C.F.R. Sections 3500 et seq.

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

(39) "Third-party provider" means any third party, other than a mortgage broker or lender, that provides goods or services to the mortgage broker in connection with the preparation of a borrower's loan and includes, but is not limited to, credit reporting agencies, title insurance companies, appraisers, structural and pest inspectors, or escrow companies. However, "third-party provider" does include a third-party lender, to the extent it provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

(40) "Transfer" means a sale, transfer, assignment, or other disposition, whether by operation of law in a merger or otherwise.

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(41) "Truth in Lending Act" means the Truth in Lending Act, 15 U.S.C. Sections 1601 et seq., and Regulation Z, 12 C.F.R. Sections 226 et seq.

D. Certain Prohibitions. Pursuant to RCW 19.146.0201, 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 engage in certain prohibitive practices outlined in this section.[38] Allegations of specific prohibited acts committed by Nations are discussed below:

1. Pursuant to RCW 19.146.0201(1), it is a violation to 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; or (3) Obtain property by fraud or misrepresentation.

Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in violation of this section when they either personally commit the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.G., IV.H., IV.I., IV.J., and IV.K. of this order, instruct employees to commit the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.G., IV.H., IV.I., IV.J., and IV.K. of this order, create an environment that instructs, requires or condones others in the commission of the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.G., IV.H., IV.I., IV.J., and IV.K. of this order, or fail to undertake whatever reasonable steps might be necessary to prevent Nations employees from committing the acts

[38] Prior to 7/21/97, this paragraph referred to violations of this section as "unlawful" rather than "a violation of this chapter."

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and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.G., IV.H., IV.I., IV.J., and IV.K. of this order.

2. Pursuant to RCW 19.146.0201(6), it is a violation to 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.

Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in violation of this section when they either personally commit the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.I., and IV.J. of this order, instruct employees to commit the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.I., and IV.J. of this order, create an environment that instructs, requires or condones others in the commission of the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.I., and IV.J. of this order, or fail to undertake whatever reasonable steps might be necessary to prevent Nations employees from committing the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.I., and IV.J. of this order.

3. Pursuant to RCW 19.146.0201(7), it is a violation to 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.

Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in violation of this section when they either personally commit the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.G., IV.H., IV.I., and IV.J. of this order, instruct employees to commit the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.G.,

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IV.H., IV.I., and IV.J. of this order, create an environment that instructs, requires or condones others in the commission of the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.G., IV.H., IV.I., and IV.J. of this order, or fail to undertake whatever reasonable steps might be necessary to prevent Nations employees from committing the acts and practices listed in sections IV.C., IV.D., IV.E., IV.F., IV.G., IV.H., IV.I., and IV.J. of this order.

4. Pursuant to RCW 19.146.0201(8), prior to July 21, 1997, it was a violation to make any false statement in connection with any reports filed by a licensee or in connection with any examination of the licensee's business.

Nations, Jamie Chisick, Brad Chisick and Willis were in violation of this section when they provided the Department with a false representation of the business change from GAMC to Nations in 1995.

Jamie Chisick was in violation of this section when he informed the Department on March 18, 1997, that "Riverview's handling of non-escrow services often results in reduced costs to Nationscapital's clients."

Willis was in violation of this section when he provided false information during the Department's June 24, 1997, investigation concerning the existence of sales manuals at the Bellevue office.

Nations, Jamie Chisick, Buff and Willis were in violation of this section when they attempted to convince the Department's investigators that they held approval from the Director to maintain Nations' records in California.

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Nations, Jamie Chisick and Buff were in violation of this section when they made statements to the Department that Nations' Washington records would be promptly returned to Washington and made available to the Department.

5. Pursuant to RCW 19.146.0201(8), as of July 21, 1997, it is a violation 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.

Nations, Jamie Chisick, and Buff were in violation of this section when they stated to the Department that all records had been produced as requested and that no documents had been removed from the loan files. Nations, Jamie Chisick and Buff were in violation of this section when they, subsequent to the Stay, informed the Department in writing on November 4, 1997, that Nations had implemented steps to insure full compliance with the Act, when, they clearly had not.

6. Pursuant to RCW 19.146.0201(11), and prior to July 21, 1997, it was a violation to 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 or the equal credit opportunity act, 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. Also, prior to July 21, 1997, and pursuant to RCW 19.146.030(4), a violation of the Truth-in-Lending

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Act, Regulation Z, the Real Estate Settlement Procedures Act, and Regulation X is a violation of RCW 19.146.030 for purposes of this chapter.

From July 21, 1997, pursuant to RCW 19.146.0201(10), it is a violation to 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.

Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in violation of this section when they either personally commit the acts and practices listed in sections IV.C, IV.E., IV.F., IV.J., and IV.M. of this order, instruct employees to commit the acts and practices listed in sections IV.C., IV.E., IV.F., IV.J., and IV.M. of this order, create an environment that instructs, requires or condones others in the commission of the acts and practices listed in sections IV.C., IV.E., IV.F., IV.J., and IV.M. of this order, or fail to undertake whatever reasonable steps might be necessary to prevent Nations employees from committing the acts and practices listed in sections IV.C., IV.E., IV.F., IV.J., and IV.M. of this order.

E. Written Disclosure of Fees and Costs. Pursuant to RCW 19.146.030(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

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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.[39] Pursuant to RCW 19.146.030(2), the written disclosure shall contain specific information. Nations violations of RCW 19.146.030(1) and (2) are discussed by type or content of required disclosure below:

1. Pursuant to RCW 19.146.030(2)(a), it is a violation to fail to provide within the required time period, 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. (Referred to earlier as the "TIL Disclosure.")

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[39] Prior to 7/21/97, this paragraph cited a violation for failure to make the required disclosures "upon receipt of a loan application and before receipt of any moneys from a borrower." Although the Department has determined that Nations committed at least 68 violations under the prior language of RCW 19.146.030, for consistency in this

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Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in violation of this section when they: i). either personally fail to provide the TIL Disclosure as required by this section, or commit the acts and practices listed in sections IV.C, IV.D., IV.E., and IV.J. of this order; ii). instruct employees to fail to provide the TIL Disclosure as required by this section, or instruct employees to commit the acts and practices listed in sections IV.C., IV.D., IV.E., and IV.J. of this order; iii). create an environment that instructs or requires others to fail to provide the TIL Disclosure as required by this section, or instruct, require or condone others in the commission of the acts and practices listed in sections IV.C., IV.D., IV.E., and IV.J. of this order, or iv). fail to undertake whatever reasonable steps might be necessary to insure the provision of the TIL Disclosure as required by this section by Nations employees, or fail to undertake whatever reasonable steps might be necessary to prevent Nations employees from committing the acts and practices listed in sections IV.C., IV.D., IV.E., and IV.J. of this order.

2. Pursuant to RCW 19.146.030(2)(b), it is a violation to fail to provide within the required time period, 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

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order, these 68 violations are included as violations under the less restrictive language of the section from 7/21/97 forward.

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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, shall be deemed to comply with the disclosure requirements of this subsection. (Referred to earlier as the "GFE Disclosure.")

Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in violation of this section when they: i). either personally fail to provide the GFE Disclosure as required by this section, or commit the acts and practices listed in sections IV.C, IV.D., IV.E., and IV.J. of this order; ii). instruct employees to fail to provide the GFE Disclosure as required by this section, or instruct employees to commit the acts and practices listed in sections IV.C., IV.D., IV.E., and IV.J. of this order; iii). create an environment that instructs or requires others to fail to provide the GFE Disclosure as required by this section, or instruct, require or condone others in the commission of the acts and practices listed in sections IV.C., IV.D., IV.E., and IV.J. of this order, or iv). fail to undertake whatever reasonable steps might be necessary to insure the provision of the GFE Disclosure as required by this section by Nations employees, or fail to undertake whatever reasonable steps might be necessary to prevent Nations employees from committing the acts and practices listed in sections IV.C., IV.D., IV.E., and IV.J. of this order.

3. Pursuant to RCW 19.146.030(2)(c), it is a violation to fail to provide within the required time period, a disclosure, if applicable, covering the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and

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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. (Referred to earlier as the "Rate Lock Disclosure.")

Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in violation of this section when they: i). either personally fail to provide the Rate Lock Disclosure as required by this section, or commit the acts and practices listed in sections IV.C, IV.D., and IV.J. of this order; ii). instruct employees to fail to provide the Rate Lock Disclosure as required by this section, or instruct employees to commit the acts and practices listed in sections IV.C., IV.D., and IV.J. of this order; iii). create an environment that instructs or requires others to fail to provide the Rate Lock Disclosure as required by this section, or instruct, require or condone others in the commission of the acts and practices listed in sections IV.C., IV.D., and IV.J. of this order, or iv). fail to undertake whatever reasonable steps might be necessary to insure the provision of the Rate Lock Disclosure as required by this section by Nations employees, or fail to undertake whatever reasonable steps might be necessary to prevent Nations employees from committing the acts and practices listed in sections IV.C., IV.D., and IV.J. of this order.

4. Pursuant to RCW 19.146.030(2)(d), it is a violation to fail to provide within the required time period, 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

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the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent. (Referred to earl as "Third Party Provider Reports Disclosure.")

Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in violation of this section when they: i). either personally fail to provide the Third Party Provider Reports Disclosure as required by this section, or commit the acts and practices listed in sections IV.C, IV.D., and IV.J. of this order; ii). instruct employees to fail to provide the Third Party Provider Reports Disclosure as required by this section, or instruct employees to commit the acts and practices listed in sections IV.C., IV.D., and IV.J. of this order; iii). create an environment that instructs or requires others to fail to provide the Third Party Provider Reports Disclosure as required by this section, or instruct, require or condone others in the commission of the acts and practices listed in sections IV.C., IV.D., and IV.J. of this order, or iv). fail to undertake whatever reasonable steps might be necessary to insure the provision of the Third Party Provider Reports Disclosure as required by this section by Nations employees, or fail to undertake whatever reasonable steps might be necessary to prevent Nations employees from committing the acts and practices listed in sections IV.C., IV.D., IV.E., and IV.J. of this order.

5. Pursuant to RCW 19.146.030(2)(e), it is a violation to fail to provide information to the borrower covering whether and under what conditions any lock-in fees are refundable to the borrower.

Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in violation of this section when they: i). either personally fail to provide this additional Rate Lock

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Disclosure as required by this section, or commit the acts and practices listed in sections IV.C, IV.D., and IV.J. of this order; ii). instruct employees to fail to provide this additional Rate Lock Disclosure as required by this section, or instruct employees to commit the acts and practices listed in sections IV.C., IV.D., and IV.J. of this order; iii). create an environment that instructs or requires others to fail to provide this additional Rate Lock Disclosure as required by this section, or instruct, require or condone others in the commission of the acts and practices listed in sections IV.C., IV.D., and IV.J. of this order, or iv). fail to undertake whatever reasonable steps might be necessary to insure the provision of this additional Rate Lock Disclosure as required by this section by Nations employees, or fail to undertake whatever reasonable steps might be necessary to prevent Nations employees from committing the acts and practices listed in sections IV.C., IV.D., and IV.J. of this order.

6. Pursuant to RCW 19.146.030(2)(f), it is a violation to fail to provide, 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. (Referred to earlier as the "Trust Funds Disclosure.")

Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in violation of this section when they: i). either personally fail to provide the Trust Funds Disclosure as required by this section, or commit the acts and practices listed in sections IV.C, IV.D., IV.E., and IV.J. of this order; ii). instruct employees to fail to provide the Trust Funds Disclosure as required by this section, or instruct employees to commit the acts and practices listed in sections IV.C., IV.D., IV.E., and IV.J. of this order; iii). create an environment that

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instructs or requires others to fail to provide the Trust Funds Disclosure as required by this section, or instruct, require or condone others in the commission of the acts and practices listed in sections IV.C., IV.D., IV.E., and IV.J. of this order, or iv). fail to undertake whatever reasonable steps might be necessary to insure the provision of the Trust Funds Disclosure as required by this section by Nations employees, or fail to undertake whatever reasonable steps might be necessary to prevent Nations employees from committing the acts and practices listed in sections IV.C., IV.D., IV.E., and IV.J. of this order.

7. Pursuant to RCW 19.146.030(4)[40], 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.

Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Johnson, Williams and Kraus are in violation of this section when they: i). either personally fail to provide this disclosure as

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[40] Prior to 7/21/97, this paragraph was codified as RCW 19.146.030(5). No other change was made to this section of the amended statute.

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required by this section, or commit the acts and practices listed in sections IV.I., and IV.J. of this order; ii). instruct employees to fail to provide this disclosure as required by this section, or instruct employees to commit the acts and practices listed in sections IV.I., and IV.J. of this order; iii). create an environment that instructs or requires others to fail to provide this disclosure as required by this section, or instruct, require or condone others in the commission of the acts and practices listed in sections IV.I., and IV.J. of this order, or iv). fail to undertake whatever reasonable steps might be necessary to insure the provision of this disclosure as required by this section by Nations employees, or fail to undertake whatever reasonable steps might be necessary to prevent Nations employees from committing the acts and practices listed in sections IV.I., and IV.J. of this order.

F. Moneys for Third-Party Provider Services Deemed in Trust -- Deposit of Moneys in Trust Account--Use of Trust Account. Pursuant to RCW 19.146.050, all moneys received by a mortgage broker from a borrower for payment of third-party provider services shall be deemed as held in trust immediately upon receipt by the mortgage broker. A mortgage broker shall deposit, prior to the end of the third business day following receipt of such trust funds, all such trust funds in a trust account of a federally insured financial institution located in this state. All trust account funds collected under this chapter must remain on deposit in a trust account in the state of Washington until disbursement. The trust account shall be designated and maintained for the benefit of borrowers. Moneys maintained in the trust account shall be exempt from execution, attachment, or garnishment. A mortgage broker shall not in any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds.

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Withdrawals from the trust account shall be only for the payment of bona fide services rendered by a third-party provider or for refunds to borrowers. The director shall make rules which: (1) Direct mortgage brokers how to handle checks and other instruments that are received by the broker and that combine trust funds with other funds; and (2) permit transfer of trust funds out of the trust account for payment of other costs only when necessary and only with the prior express written permission of the borrower. Any interest earned on the trust account shall be refunded or credited to the borrowers at closing. Trust accounts that are operated in a manner consistent with this section and any rules adopted by the director, are considered exempt from taxation under chapter 82.04 RCW.

Chapter 208-660 WAC, PART D, TRUST ACCOUNTS AND ACCOUNTING REQUIREMENTS, states:

1. 208-660-08010. Establishment of trust account for borrower funds to pay third-party providers. Each mortgage broker shall as trustee hold all funds received from borrowers for payment to third-party providers. The funds may not be used for the benefit of the mortgage broker or any person not entitled to such benefit, except as may be expressly permitted by the Mortgage Broker Practices Act. Each mortgage broker shall establish a trust account(s) for the funds in a financial institution's branch located in this state. Each mortgage broker is responsible for depositing, holding, disbursing, accounting for, and otherwise dealing with the funds, in accordance with the act.

2. 208-660-08020. Required trust account records and procedures. Each mortgage broker shall establish and maintain a system of records and procedures for trust

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accounts as provided in the Mortgage Broker Practices Act. Any alternative records or procedures proposed for use by the mortgage broker shall be approved in advance by the director or his or her designee. Each mortgage broker shall maintain as part of its books and records:

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

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

(3) A trust account check register consisting of a record of all deposits to and disbursements from the trust account;

(4) Reconciled trust account bank statements;

(5) A monthly trial balance of the ledger of trust accounts, and a reconciliation of the ledger of trust accounts with the related bank statement(s) and the related check register(s).

The reconciled balance of the trust account(s) must at all times equal the sum of:

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(a) The outstanding amount of funds received from borrowers for payment of third-party providers; and

(b) The outstanding amount of any deposits into the trust fund of the mortgage broker's own funds in accordance with WAC 208-660-08025(4).

3. 208-660-08025. Trust account deposit requirements.

(1) All funds received from borrowers or on behalf of borrowers for the payment of third-party providers, whether specifically identified as such or not, and regardless of when they are received, must be deposited in the trust account(s) prior to the end of the next business day following receipt. In order to satisfy this requirement in regard to the deposit of a check or money order, the mortgage broker must within one business day after receipt of the check or money order:

(a) Endorse the check or money order "for deposit only" with the broker's trust account number and mail the check postage prepaid to its financial institution; or

(b) Endorse the check or money order "for deposit only" with the mortgage broker's trust account deposit number and mail the check or money order postage prepaid to the main office of the broker. The main office shall, in turn, deposit the check or money order in its financial institution prior to the end of the next business day after receipt of the check or money order in the main office; or

(c) Deposit the check or money order into its trust account by depositing it directly at the branch where its trust account is held or at an ATM of its financial institution.

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

(3) Receipt of funds by wire transfer or any means other than cash, check, or money order, must be posted in the same manner as other receipts. Any such transfer of funds must include a traceable identifying name or number supplied by the financial institution or transferring entity. The mortgage broker must also retain a receipt for the deposit of the funds which must contain the traceable identifying name or number supplied by the financial institution or transferring entity.

(4) Deposits to the trust account(s) must be limited to funds delivered to the mortgage broker for payment to third-party providers, except a mortgage broker may deposit its own funds into the trust account(s) to prevent a disbursement in excess of an individual borrower's subaccount, provided that the exact sum of deficiency is deposited and detailed records of the deposit and its purpose are maintained in the trust ledger and the trust account(s) check register. Any deposits of the mortgage broker's own funds into the trust account(s) must be held in trust in the same manner as funds paid by borrowers for the payment of third-party providers and treated accordingly in compliance with the Mortgage Broker Practices Act. If a mortgage broker has deposited its own funds into its trust account, the mortgage broker may receive reimbursement for such deposit at closing into its general business bank account provided:

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(a) All third-party provider's charges associated with the mortgage broker's deposit have been paid;

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

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

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

4. 208-660-08030. Trust account disbursement requirements.

(1) Each mortgage broker is responsible for the disbursement of all trust account funds, whether disbursed by personal signature, signature plate, or signature of another person authorized to act on the mortgage broker's behalf.

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

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borrower's or broker's deposit of sufficient funds into the trust account(s) is available for withdrawal.

(5) Among other prohibited disbursements, no disbursement may be made from a borrower's subaccount:

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

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

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

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

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

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

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

Nations, Jamie Chisick, Buff and Willis are in violation of the trust accounting requirements under both the Act and the rules to the Act, as identified above, when they commit the violations noted in section IV.L. of this order.

G. Accounting Requirements. Pursuant to RCW 19.146.060(2), and prior to July 21, 1997, a mortgage broker shall maintain accurate, current, and readily available books and records at the mortgage broker's usual business location until at least four years have elapsed following the effective period to which the books and records relate.

Pursuant to RCW 19.146.060(2), from July 21, 1997, except as otherwise provided in subsection (3) of this section, 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 have elapsed following the effective period to which the books and records relate.

Pursuant to RCW 19.146.060(3), where a mortgage broker's usual business location is outside of the state of Washington, the mortgage broker shall, as determined by the director by rule, either maintain its books and records at a location in this state, or reimburse the director

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for his or her expenses, including but not limited to transportation, food, and lodging expenses, relating to any examination or investigation resulting under this chapter.

Pursuant to RCW 19.146.060(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.

Pursuant to WAC 208-660-140(2), all books and records must be kept in a location in this state that is readily accessible to the department. However, a mortgage broker may store its books and records outside the state with the prior approval of the director, and after executing a written agreement with the director:

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(a) To provide access to its books and records to investigate complaints against the mortgage broker; and

(b) To pay the department's travel, lodging and per diem expenses incurred in travel to examine books and records stored out-of-state.

Pursuant to WAC 208-660-140(3), books and records include without limitation: The original contracts for the broker's compensation, an accounting of all funds received in connection with 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.

Nations, Jamie Chisick, Brad Chisick, Buff and Willis are in violation of these sections when they fail to maintain books and records as discussed under section IV.A. of this order.

H. License – Required. Pursuant to RCW 19.146.200(1), a person may not engage in the business of a mortgage broker, except as an employee of a person licensed or exempt from licensing, without first obtaining and maintaining a license under this chapter.

Pursuant to RCW 19.146.250, no license issued under the provisions of this chapter shall authorize any person other than the person to whom it is issued to do any act by virtue thereof nor to operate in any other manner than under his or her own name except:

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

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(2) A broker may establish one or more branch offices under a name or names different from that of the main office if the name or names are approved by the director, so long as each branch office is clearly identified as a branch or division of the main office. Both the name of the branch office and of the main office must clearly appear on the sign identifying the office, if any, and in any advertisement or on any letterhead of any stationery or any forms, or signs used by the mortgage firm on which either the name of the main or branch offices appears.

Pursuant to RCW 19.146.265, a licensed mortgage broker may apply to the director for authority to establish one or more branch offices under the same or different name as the main office upon the payment of a fee as prescribed by the director by rule. Provided that the applicant is in good standing with the department, as defined in rule by the director, the director shall promptly issue a duplicate license for each of the branch offices showing the location of the main office and the particular branch. Each duplicate license shall be prominently displayed in the office for which it is issued.

Pursuant to WAC 208-660-110(1), a license may not be transferred.

The above sections, and the definitions of "branch office," "holds oneself out," and "mortgage broker," establish a violation for any person or mortgage broker that hold themselves out as a mortgage broker to Washington consumers from any fixed physical location, unless such location holds either a license issued pursuant to RCW 19.146.200 or a branch license issued pursuant to RCW 19.146.265.

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Nations, Jamie Chisick, Brad Chisick, Buff, Willis, Williams and Kraus are in violation of these sections when they participated in, authorized, supervised, instructed, or condoned the unlicensed acts of holding Nations out as a mortgage broker in Washington from locations in Portland and California as is discussed in section IV.K. of this order. Nations, Chisick and Willis are in violation of these sections when they participated in, authorized, supervised, instructed, or condoned unlicensed acts of holding Nations out as a mortgage broker in Washington prior to holding a license as is discussed specifically in sections IV.K.7. and 8. Further, Nations, Jamie Chisick, Brad Chisick and Willis are in violation of WAC 208-660-110(1), when they convinced the Department that a license transfer from GAMC to Nations was actually a name change authorized under the rules.

At times, representatives of Nations and GAMC have provided the Department with conflicting information concerning the legal and licensed status of Nations and GAMC. Jamie Chisick and Willis are in violation of RCW 19.146.250, when they held GAMC out under the name of Nations as able to conduct business with Washington consumers.

I. Investigation Powers--Duties of Person Subject to Examination or Investigation. Pursuant to RCW 19.146.235, 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

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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.

Nations, Jamie Chisick, Buff and Willis are in violation of this section when, as discussed under sections III.B. and IV.A. of this order, they:

1. Withheld, refused or delayed the Department access to records.
2. Removed records to California.
3. Failed to comply with three demands, a subpoena and a directive.
4. Destroyed or secreted file documents.

J. License Application Denial or Condition; License Suspension or Revocation. Pursuant to WAC 208-660-160(1), the director may deny or condition approval of a license application, or

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suspend or revoke a license if the applicant or licensee, or any principal or designated broker of the applicant or licensee:

(e) Has failed to demonstrate financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of the Mortgage Broker Practices Act.

(f) Has omitted, misrepresented, or concealed material facts in obtaining a license or in obtaining reinstatement thereof;

(g) Has violated the provisions of the Mortgage Broker Practices Act, or the Consumer Protection Act;

(j) Has aided or abetted an unlicensed person to practice in violation of the Mortgage Broker Practices Act;

(k) Has demonstrated incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(m) Has failed to comply with an order, directive, or requirement of the director, or his or her designee, or with an assurance of discontinuance entered into with the director, or his or her designee;

(n) Has performed an act of misrepresentation or fraud in any aspect of the conduct of the mortgage broker business or profession;

(o) Has failed to cooperate with the director, or his or her designee, including without limitation by:

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(i) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation for disciplinary actions or denial, suspension, or revocation of a license; or

(ii) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation into a complaint against the licensee filed with the department, or providing a full and complete written explanation of the circumstances of the complaint upon request by the director;

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

(2) The director may deny or condition approval of a branch office application, or suspend or revoke a branch office certificate, if the branch office manager has failed to provide any required items described in subsection (1)(r) and (s) of this section.

K. Powers and Duties—Violations Pursuant to RCW 19.146.220(1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

Pursuant to RCW 19.146.220(2), the director may impose the following sanctions:

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(a) Deny applications for licenses for: (i) Violations of orders, including cease and desist orders issued under this chapter; or (ii) any violation of RCW 19.146.050 or 19.146.0201(1) through (9);

(b) Suspend or revoke licenses for:

(i) 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) 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;

(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

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(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;

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

(3) Each 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.

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

L. Administration and Interpretation. Pursuant to RCW 19.146.223, the director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005.

M. Findings and Declaration. Pursuant to RCW 19.146.005, the legislature finds and declares that the brokering of residential real estate loans substantially affects the public interest. The practices of mortgage brokers have had significant impact on the citizens of the state and the banking and real estate industries. It is the intent of the legislature to establish a state system of

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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.

N. Fees. Pursuant to RCW 19.146.228, the director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

(2) 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.

Pursuant to WAC 208-660-060(4), upon completion of any investigation of the books and records of a mortgage broker other than a licensee, the department will furnish to the broker a billing to cover the cost of the investigation. The investigation charge will be calculated at the rate of forty-five dollars per hour that each staff person devoted to the investigation. The investigation billing will be paid by the mortgage broker promptly upon receipt.

O. Claims Against Bond. Pursuant to RCW 19.146.240(1) The director or any person injured by a violation of this chapter may bring an action against the surety bond or approved alternative of the licensed mortgage broker who committed the violation or who employed or engaged the loan originator who committed the violation.

Pursuant to RCW 19.146.240(2)(a), the director or any person who is damaged by the licensee's or its loan originator's violation of this chapter, or rules adopted under this chapter, may bring suit upon the surety bond or approved alternative in the superior court of any county in which jurisdiction over the licensee may be obtained. Jurisdiction shall be exclusively in the

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superior court. Any such action must be brought not later than one year after the alleged violation of this chapter or rules adopted under this chapter.

Pursuant to RCW 19.146.240(3) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available at law.

P. Fines and Penalties. Pursuant to WAC 208-660-165, each mortgage broker and each of its principals, designated brokers, officers, employees, independent contractors, and agents shall comply with the applicable provisions of the Mortgage Broker Practices Act. Each 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. Each day's continuance of the violation is a separate and distinct offense. In addition, the director in his or her discretion may by order assess other penalties for a violation of the Mortgage Broker Practices Act.

Q. Liability. RCW 19.146.245, 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.

R. Criminal penalties. Pursuant to RCW 19.146.110, any person who violates any provision of this chapter other than RCW 19.146.050 or any rule or order of the director shall be guilty of a misdemeanor punishable under chapter 9A.20 RCW. Any person who violates RCW 19.146.050 shall be guilty of a class C felony under chapter 9A.20 RCW.

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VI. NOTICE OF INTENTION TO ENTER AN ORDER

Respondents violations of the Act as set forth above constitute the basis for the entry of an order under RCW 19.146.220. Therefore, it is the Director's intention to ORDER:

A. Nationscapital Mortgage Corp. ("Nations"):

1. Nations' license to hold itself out as a mortgage broker to Washington consumers from any location is revoked for a period of twenty years.

2. Nations' application for branch licenses in Portland and California is denied.

3. Nations shall maintain its books and records in compliance with RCW 19.146.060 and the rules thereunder.

4. Nations shall pay restitution to 122 consumers in the amount of $735,641.13, as represented in Exhibit D of this order.

5. Nations shall pay a fine of $474,250.00, detailed as follows:

a. Violations of RCW 19.146.0201(1) – (3), assessed at $100.00 per day times 643 separate violations, for a total of $64,300.00.

b. Violations of RCW 19.146.0201(6), assessed at $100.00 per day times 643 separate violations, for a total of $64,300.00.

c. Violations of RCW 19.146.0201(7), assessed at $100.00 per day times 293 separate violations for a total of $29,300.00.

d. Violation of RCW 19.146.0201(8) pre-July 21, 1997, assessed at $100.00 per day for 91 days of a single violation for a total of $9,100.00.

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e. Violation of RCW 19.146.0201(8), assessed at $100.00 per day times 371 separate violations for a total of $37,100.00.

f. Violations of RCW 19.146.0201(10), assessed at $100.00 per day times 371 separate violations for a total of $37,100.00.

g. Violations of RCW 19.146.050, assessed at $75 per day, for a total of $20,850.00, detailed as follows:

i. 187 days late on deposit times $75.00 for $14,025.00.

ii. 1 commingling deposit times $75.00 for $75.00.

iii. 26 failures to deposit times $75.00 for $1,950.00.

iv. 64 counts of commingling or conversion times $75.00 for $4,800.00.

h. Violation of RCW 19.146.060(3), assessed at $100.00 per day for 978 days of a single violation for a total of $97,800.00.

i. Violations of RCW 19.146.265, assessed at $100.00 per day for 978 days of a single violation for a total of $97,800.00.

j. A violation of failure to comply with any directive or order of the director beginning August 18, 1997 and continuing for 166 days for a total of $16,600.00.

6. Nations shall pay an investigation fee of $29,040.75 for 645.35 hours of investigation.

B. Jamie Chisick.

1. Jamie Chisick is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under this chapter, as an officer, principal, employee, or loan originator, for a period of twenty (20) years, based upon violations of RCW

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19.146.0201, RCW 19.146.030, RCW 19.146.200 and RCW 19.146.265, and failure to comply with any directive or order of the director.

2. Jamie Chisick shall maintain Nations books and records in compliance with RCW 19.146.060 and the rules thereunder.

3. Jamie Chisick, on behalf of Nations or personally, shall pay restitution to 122 consumers in the amount of $735,641.13, as represented in Exhibit D of this order, however this restitution shall be paid only once by either Jamie Chisick, Brad Chisick or Nations.

4. Jamie Chisick shall pay a fine of $474,250.00, detailed as follows:

a. Violations of RCW 19.146.0201(1) – (3), assessed at $100.00 per day times 643 separate violations, for a total of $64,300.00.

b. Violations of RCW 19.146.0201(6), assessed at $100.00 per day times 643 separate violations, for a total of $64,300.00.

c. Violations of RCW 19.146.0201(7), assessed at $100.00 per day times 293 separate violations for a total of $29,300.00.

d. Violation of RCW 19.146.0201(8) pre-July 21, 1997, assessed at $100.00 per day for 91 days of a single violation for a total of $9,100.00.

e. Violation of RCW 19.146.0201(8), assessed at $100.00 per day times 371 separate violations for a total of $37,100.00.

f. Violations of RCW 19.146.0201(10), assessed at $100.00 per day times 371 separate violations for a total of $37,100.00.

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g. Violations of RCW 19.146.050, assessed at $75 per day, for a total of $20,850.00, detailed as follows:

i. 187 days late on deposit times $75.00 for $14,025.00.

ii. 1 commingling deposit times $75.00 for $75.00.

iii. 26 failures to deposit times $75.00 for $1,950.00.

iv. 64 counts of commingling or conversion times $75.00 for $4,800.00.

h. Violation of RCW 19.146.060(3), assessed at $100.00 per day for 978 days of a single violation for a total of $97,800.00.

i. Violations of RCW 19.146.265, assessed at $100.00 per day for 978 days of a single violation for a total of $97,800.00.

j. A violation of failure to comply with any directive or order of the director beginning August 18, 1997 and continuing for 166 days for a total of $16,600.00.

5. Jamie Chisick shall pay, on behalf of Nations, an investigation fee of $29,040.75 for 645.35 hours of investigation, however, this fee shall be paid only once either by Nations, Jamie Chisick or Brad Chisick.

C. Brad Chisick.

1. Brad Chisick is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under this chapter, as an officer, principal, employee, or loan originator, for a period of twenty (20) years, based upon violations of RCW 19.146.0201, RCW 19.146.030, RCW 19.146.200 and RCW 19.146.265.

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2. Brad Chisick, on behalf of Nations or personally, shall pay restitution to 122 consumers in the amount of $735,641.13, as represented in Exhibit D of this order, however this restitution shall be paid only once by either Jamie Chisick, Brad Chisick or Nations.

3. Brad Chisick shall pay, on behalf of Nations, an investigation fee of $29,040.75 for 645.35 hours of investigation, however, this fee shall be paid only once either by Nations, Jamie Chisick, or Brad Chisick.

D. Steven Willis ("Willis").

1. Willis is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under this chapter, as an officer, principal, employee, or loan originator, for a period of fifteen (15) years, based upon violations of RCW 19.146.0201, RCW 19.146.030, RCW 19.146.200 and RCW 19.146.265, and failure to comply with any directive or order of the director.

2. Willis shall pay a fine of $404,700.00 detailed as follows:

a. Violations of RCW 19.146.0201(1) – (3), assessed at $100.00 per day times 643 separate violations, for a total of $64,300.00.

b. Violations of RCW 19.146.0201(6), assessed at $100.00 per day times 643 separate violations, for a total of $64,300.00.

c. Violations of RCW 19.146.0201(7), assessed at $100.00 per day times 293 separate violations for a total of $29,300.00.

d. Violations of RCW 19.146.0201(10), assessed at $100.00 per day times 371 separate violations for a total of $37,100.00.

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e. Violations of RCW 19.146.050, assessed at $75 per day, for a total of $14,100.00, detailed as follows:

i. 187 days late on deposit times $75.00 for $14,025.00.

ii. 1 commingling deposit times $75.00 for $75.00.

f. Violation of RCW 19.146.060(3), assessed at $100.00 per day for 978 days of a single violation for a total of $97,800.00.

g. Violations of RCW 19.146.265, assessed at $100.00 per day for 978 days of a single violation for a total of $97,800.00.

E. Michael Buff ("Buff").

1. Buff is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under this chapter, as an officer, principal, employee, or loan originator, for a period of five (5) years, based upon violations of RCW 19.146.0201, RCW 19.146.030, and RCW 19.146.265, failure to comply with any directive or order of the director.

2. Buff shall pay a fine of $37,100.00, detailed as follows:

a. Violation of RCW 19.146.0201(8), assessed at $100.00 per day times 371 separate violations for a total of $37,100.00.

F. Scott Johnson ("Johnson").

Johnson is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under this chapter, as an officer, principal,

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employee, or loan originator, for a period of five (5) years, based upon violations of RCW 19.146.0201, RCW 19.146.030.

G. Darren Williams ("Williams")

Williams is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under this chapter, as an officer, principal, employee, or loan originator, for a period of five (5) years, based upon violations of RCW 19.146.0201, RCW 19.146.030, and RCW 19.146.265.

H. Kevin Kraus ("Kraus")

Kraus is prohibited from participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under this chapter, as an officer, principal, employee, or loan originator, for a period of five (5) years, based upon violations of RCW 19.146.0201, RCW 19.146.030, and RCW 19.146.265.

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VII. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist is entered pursuant to RCW 19.146.220, RCW 19.146.230 and chapter 34.05 RCW. The Respondents may make a written request for hearing as set forth in the Notice of Opportunity to Defend and Opportunity for Hearing accompanying this Statement of Charges and Notice of Intent to Enter an Order.

DATED this 13th day of May, 1998.

Mark Thomson
MARK THOMSON
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

Chuck Cross
Supervising Analyst

Reviewed by:

Alice Blado
Alice Blado
Assistant Attorney General

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