

STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS

In the Matter of:

NATIONSCAPITAL MORTGAGE CORP.,  
STEVEN WILLIS, DESIGNATED  
BROKER, JAMIE CHISICK, PRESIDENT  
AND OWNER, MICHAEL BUFF,  
VICE PRESIDENT AND EMPLOYEE,  
AND SCOTT JOHNSTON, EMPLOYEE

97-083-001

TEMPORARY ORDER TO  
CEASE AND DESIST

Respondents

COMES NOW the Director, through his designee Mark Thomson, Assistant Director, Division of Consumer Services, and finding that the public is likely to be substantially injured by delay in issuing a cease and desist order, the Director enters this temporary order to cease and desist pursuant to chapter 19.146 RCW (the "Act") and RCW 19.146.220, Laws of 1994, Sec. 12(2), based on the following findings:

I. FACTUAL FINDINGS

A. Nationscapital Mortgage Corporation ("Nations") is a California corporation licensed and authorized to hold itself out and conduct the business of a mortgage broker, as defined under RCW 19.146.010(10) and WAC 208-660-010(28) and (20), respectively, at 800 Bellevue Way NE, Suite 400, Office 448, Bellevue, Washington 98004. The license for this location was issued pursuant to the Act by the Director on May 30, 1995. Prior to this time the predecessor to Nations, G.A.M.C. Mortgage, held a license issued by the Director on November 14, 1994.

Nations' corporate offices are located at 1045 W. Katella Ave., Suite 200, Orange, California 92867. The California office of Nations is not now, nor has it ever been licensed to

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2 hold itself out as a mortgage broker in the State of Washington or as a mortgage broker able to  
3 conduct business with Washington consumers.

4 B. Steven Willis ("Willis") is registered with the Department as the designated broker  
5 for Nations at the above licensed location. Willis successfully completed the designated broker  
6 examination required under RCW 19.146.210(1)(e), on May 27, 1995, and became the designated  
7 broker for Nations upon its licensed date of May 30, 1995.

8 C. Jamie Chisick ("Chisick") has been the president and sole owner of Nations since  
9 at least March 1, 1995.

10 D. Michael Buff ("Buff") is the vice president of operations of Nations at its  
11 California corporate offices and has held himself out to the Department as an officer responsible  
12 for compliance issues including business practices, disclosures and records retention.

13 E. Scott Johnston ("Johnston") is known by the Department to be an employee of  
14 Nations' licensed location.

15 F. The Department began receiving complaints from consumers against Nations in  
16 July of 1995. Complaints continued to be filed against Nations as late as June 1997. Each of the  
17 complainants consistently complained, among other things, that Nations had made false promises  
18 in regards to loan programs, interest rates, and costs. Some of the complainants complained that  
19 Nations either promised them a fixed rate loan and delivered a variable rate loan, or delivered a  
20 variable rate loan with the false promise that the loan could be converted to a fixed rate loan. All  
21 complainants alleged that Nations failed to adequately provide disclosures as is required under  
22 state and federal law. Such disclosures are required to provide consumers with information  
23 necessary to make an intelligent financial decision and to protect the consumers from financial  
24 harm.

25 G. The Department continues to investigate the complainants' allegations, however,  
26 preliminary findings have been made in regard to a complaint filed by John and Carol Salick on

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2 April 29, 1997. After a thorough review of the documentation in the Salick complaint the  
3 Department cited the following practices and violations:

4 1. The Salick loan was originated from Nations' California corporate offices,  
5 an unlicensed location, without the benefit of a bond protecting the Salicks' from violations  
6 committed by Nations at this location. As cited by the Department, this is an apparent violation of  
7 RCW 19.146.265, RCW 19.146.200(1) and RCW 19.146.205(3).

8 2. The Salick complaint involved consumers who believed that they had been  
9 told that their loan costs would not exceed \$1,500.00 for a \$73,000.00 refinance loan, but found  
10 upon disbursement of their loan proceeds that the costs were actually \$16,688.53, or  
11 approximately 23% of the loan amount. Nations failed to provide certain required disclosures in  
12 their entirety to the Salicks. Other disclosures were determined by the Department to have been  
13 completed and delivered in violation of both state and federal law. Specifically noted in the  
14 Department's findings were the apparently intentional acts of misleading the Salicks in regard to  
15 the costs they would incur on their loan. On one of the federal Truth in Lending Disclosure  
16 statements provided to the Salicks, the Salicks were informed that they would not have to pay  
17 certain fees, when in reality, the Salicks did pay those fees. Specifically, this disclosure showed  
18 "These are FEES NOT paid by the Borrower . . . BROKERS FEE . . . 8,805.00." The final  
19 closing documents on the Salick loan clearly show that the Salicks paid \$8,805.00 in broker  
20 origination fees. In response to this allegation by the Department and the Salicks, Nations'  
21 attorneys responded by letter dated August 27, 1997, "Specifically, you do correctly point out in  
22 your letter that there is a discrepancy on page 2 of the Salicks' April 7, 1997 final TIL disclosure -  
23 a discrepancy which this firm overlooked both in our review of the Disclosure Statement last  
24 month and in our letter to Alicia Haus of your Department dated July 31, 1997. As you point out,  
25 although the Prepaid Finance Charge itemization expressly disclosed the loan origination fee of  
26 \$8,805 to be paid to Nationscapital as broker, another box below it lists the \$8,805 fee under the

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2 heading 'These are FEES NOT paid by the borrower.' This discrepancy will indeed cause  
3 Nationscapital to re-evaluate whether and in what amount restitution is due to the Salicks."

4 Lest the respondents categorize this disclosure event as an isolated occurrence exhibiting  
5 no pattern of consumer harm, the Department notes that consumer/complainant Nancy Anderson  
6 received a Good Faith Estimate disclosure signed by President Chisick on July 31, 1996,  
7 disclosing "COMPENSATION TO BROKER NOT PAID OUT OF LOAN PROCEEDS" when  
8 Nations' compensation, based on documents provided by Nations, appears to have been paid  
9 directly from loan proceeds. The Department has preliminarily identified these types of  
10 disclosures as a pattern of practice because they appear in one third of the complaints filed against  
11 Nations. The violations cited in the Salick complaint were RCW 19.146.030, and RCW  
12 19.146.0201, as well as, violations of the Truth in Lending Act and the Real Estate Settlement  
13 Procedures Act.

14 3. The Department's review found that Willis, in conjunction with Johnston  
15 and Nations, conspired to falsely notarize closing documents; a violation of RCW 19.146.0201(1).  
16 A review of the facts in the Salick complaint show that Willis was never in the physical presence  
17 of the Salicks, however, he notarized legal documents swearing that the Salicks had signed those  
18 documents in his presence.

19 4. The Department's review of the Salick complaint further found that the  
20 Salicks had apparently suffered harm of approximately \$13,005.00, when they entered into the  
21 transaction with Nations. The Department cited that this harm was the result of apparent "bait and  
22 switch" practices and the employment of a scheme, device or artifice to mislead and defraud the  
23 Salicks and to obtain the Salicks' property by fraud or misrepresentation. These were cited as  
24 apparent violations of RCW 19.146.0201(1), (2), (3) and (7).

25 The Department found Nations' practices in regard to the Salick complaint to be  
26 disconcerting to the point of alarm. In its letter of resolution to this complaint the Department

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2 wrote, "The February 21, 1997, disclosures appear to be so far from the reality of the transaction  
3 the Complainants were bargaining for as to be considered a form of deception. Coupled with the  
4 subsequent disclosures provided to the borrower in the eleventh hour of signing papers this can  
5 only be seen as an attempt to confuse the borrower about the reality of the loan. Such practice is  
6 considered by the Department to be a form of bait and switch."

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8 H. In September of 1996, Nations began applying with the Department to become a  
9 licensed consumer loan company in Washington. An investigation of Nations began at that time  
10 and continues to date. Several factors have contributed to the extension of the investigation of  
11 Nations' request for a license. Chief among these factors is Nations' incomplete application  
12 package and a greater degree of investigative scrutiny triggered by the severity of the allegations  
13 filed against Nations.

14 I. On June 24, 1997, three agents of the Department arrived at the Bellevue office of  
15 Nations to begin an investigation pursuant to RCW 19.146.235 and RCW 31.04.145 (the  
16 Director's investigative authority pursuant to the Mortgage Broker Practices Act and the  
17 Consumer Loan Act, respectively). The Department's agents met with Willis and Johnston for  
18 approximately three hours. Designated Broker Willis was informed that the agents were  
19 interested in investigating Nations for purposes of the consumer loan license application as well as  
20 determining the degree of consumer harm that may have taken place with Washington consumers.  
21 Willis was informed that the investigation had been triggered by recent complaints filed by  
22 consumers Salick and Nevada Prader, in addition to past complaints recorded by consumers.

23 Willis was presented with a written request for books, records and documents that Nations  
24 was required to maintain at its Bellevue location pursuant to RCW 19.146.060. Willis responded  
25 to the Department's agents that no records of Nations' Washington business had ever been  
26 maintained in the State of Washington since before he had taken over as designated broker.  
Willis stated that he believed that Nations' president Chisick had obtained permission from the

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2 Director to maintain the company's records outside the State of Washington. Willis immediately  
3 contacted Chisick in California and the Department's Supervising Analyst spoke with Chisick  
4 over the speaker phone so that their conversation could be heard by the Department's agents and  
5 Willis.

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7 In this conversation Chisick was informed that it was a violation of the Act for Nations to  
8 have removed its books and records from Washington and that pursuant to the investigative  
9 authority authorized under RCW 19.146.235, such books and records were to be made readily  
10 available at any time for the Department's review. Chisick responded that Nations held written  
11 approval from the Director to maintain its books and records in California. Chisick was asked to  
12 produce a copy of this written approval by facsimile at Nations' Bellevue office, but failed to do  
13 so. To date, Nations has been unable to produce any such document, and the Department is  
14 confident that no such document has been issued to Nations or any other licensed mortgage broker  
15 under the Director's supervision.

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17 During this conversation Chisick was informed of the purpose of the Department's  
18 investigation. Chisick was informed that Willis would be presented with a formal Demand for  
19 Production of Records and that this demand required compliance by Nations. The Department's  
20 Supervising Analyst was assured by Chisick that the books and records requested would be made  
21 available for immediate review in compliance with the demand.

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23 Following this conversation, a second conversation was held with Buff, vice president for  
24 Nations. Again this conversation was placed on speaker phone so that the matter could be heard  
25 by all present. In this conversation, Buff assured the Supervising Analyst that Nations did indeed  
26 hold written approval to maintain its records in Washington. Buff was requested to provide a  
copy of this written approval for review. To date, Nations has been unable to produce any such  
document, and the Department is confident that no such document has been issued to Nations or  
any other licensed mortgage broker under the Director's supervision.

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2 J. During the investigation, Willis and Johnston provided the following information  
3 to the Department's agents:

4 1. That all loans originated by Nations were solicited, counseled and  
5 originated from the location in California.

6 2. That Riverview Escrow Company, Inc. ("Riverview"), a California escrow  
7 company owned by Chisick, performed all escrow functions for Nations. Riverview does not  
8 now, nor has it ever held a license issued by the Director pursuant to chapter 18.44 RCW, the  
9 Escrow Agent Registration Act.

10 3. When asked about the trust account Nations is required to maintain for the  
11 protection of consumer funds, Willis was unable to provide any information as to its existence or  
12 whereabouts. He stated that all trust accounting matters were handled in California and that when  
13 funds were received from consumers for payment of third-party services, he would forward those  
14 funds to California with no knowledge of how they were subsequently handled.

15 4. Willis and Johnston were not aware that the Act required three separate  
16 disclosures to be made to consumers in addition to the federal disclosures, and could not provide  
17 any evidence or assurance that Nations ever made these three disclosures to consumers. Willis  
18 and Johnston were unable to provide an explanation for the untimely and inaccurate provision of  
19 federally required disclosures in the Salick complaint.

20 5. Willis and Johnston stated that despite the disclosure to Salick that he  
21 would not pay the brokers fee of \$8,805.00, in reality Salick did pay the fee and Nations was  
22 aware that Salick would pay the fee. When Willis and Johnston were asked if they could see how  
23 the Salicks may have been too confused to make a rational decision about accepting the loan  
24 offered by Nations, they both agreed that the Salicks would likely have been confused by the  
25 disclosures and information provided. Willis was asked if this wasn't "bait and switch." He  
26 replied to the Department's agents that in Salick's case "it would appear that way."

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3 6. Willis and Johnston were asked if Nations used any sales, marketing,  
4 solicitation, telemarketing or employee manuals. They replied that Nations did, but since no  
5 records were maintained in the Bellevue office they were unable to provide them for review.  
6 Willis was asked again if there were any manuals on the premises. Willis replied that there were  
7 not. The Department's Supervising Analyst stated that the Department had legal access pursuant  
8 to RCW 19.146.235, to all places of storage where records might be kept, and that the agents  
9 intended to access those places in search of any manuals before departing. Willis immediately  
10 stood and from a shelf, provided the Department's agents with the following manuals:

- 11 a. Nationscapital Mortgage Corporation Telemarketing Manual
- 12 b. Nationscapital Loan Officer Sales Book
- 13 c. Nationscapital Mortgage Corporation Loan Officer Scripts Only

14 7. The Department's Supervising Analyst asked Willis if the manner in which  
15 Salick's loan had been solicited and originated was typical for Nations. He replied that the Salick  
16 loan was typical of a loan originated by Nations.

17 8. The Department's Supervising Analyst asked Willis why Nations had so  
18 many severe allegations charged against it by consumers. Willis replied that Nations was "very  
19 aggressive."

20 K. The Department's agents informed Willis that he would be placed under oath for  
21 testimony by the Director's agents as is authorized by RCW 19.146.235. Willis requested that he  
22 be allowed to consult with his attorney before being placed under oath. Willis telephoned his  
23 attorney in private and then informed the Department's agents that it was okay to place him under  
24 oath. Although Willis and his attorneys have since claimed in written documents that Willis was  
25 placed under oath "without prior notice to its counsel" and "without an adequate opportunity for  
26 counsel to be present," these statements are neither true nor outside of the authority authorized the  
Director or his agents pursuant to RCW 19.146.235.



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Once Willis was placed under oath, the Department's Supervising Analyst reconfirmed the information provided in I.J. above.

L. During the June 24, 1997, investigation, pursuant to the authority granted under chapter 18.44 RCW, the Escrow Agent Registration Act, Willis was served with Subpoena No. 97-082-S02 requiring Nations to produce any documents relating to the Department's investigation of the unlicensed conduct of business by Riverview. To date, Nations has failed to comply with this subpoena.

M. On June 25, 1997, Buff contacted the Department's Supervising Analyst and informed him that Nations intended to comply with the Riverview Subpoena No. 97-082-S02 and that the Nations records requested by the Department pursuant to the Demand for Production of Records would be made available within a week. The Department's Supervising Analyst reminded Buff that Nations had already committed serious violations of the Act and that every day's delay further compounded those violations and the penalties associated with those violations. Buff assured the Supervising Analyst that Nations understood this.

N. On September 18, 1994, Chisick provided the Department with a Certificate of Compliance and Authorization to Examine Trust Accounts, for trust account number 300-067-808, held at First Interstate Bank of WA, N.A. On June 25, 1997, the Department's Supervising Analyst contacted the bank, which had been purchased by another bank. The new bank informed the Supervising Analyst that the account had long since been closed and that no other information concerning the account existed.

O. On June 26, 1997, the Department learned that the Department of Licensing's Notary Division was conducting a separate investigation of Willis and Nations for falsifying notary seals on real estate documents.

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2 Q. On July 2, 1997, Buff left a message with the Department that the Nations records  
3 were currently being gathered and that he would contact the Department as soon as they were  
4 available.

5 R. On July 9, 1997, Nations' attorney Douglas Smart ("Smart") informed the  
6 Department that it would not provide any records requested by Demand until the Department had  
7 provided written assurance that it would not comply with any requests for Nations records made  
8 pursuant to chapter 42.17 RCW. The letter further informed the Department that Nations  
9 intended to comply with Subpoena No. 97-082-S02 in regard to Riverview, however, Chisick as  
10 owner of Riverview did not intend to comply with the Department's separate subpoena served  
11 upon Riverview. Despite Smart's written assurances, Nations has failed to comply with Subpoena  
12 No. 97-082-S02.

13 S. On July 24, 1997, the Department entered a second Demand for Production of  
14 Records and served this upon Nations. This second demand instructed Nations to make its  
15 records available to the Department no later than August 1, 1997. To date, Nations has not  
16 complied with this demand.

17 T. On August 4, 1997, the Department's Supervising Analyst spoke with Nations'  
18 attorney, Smart. Smart reiterated Nations' demands that the Department provide written  
19 confirmation that the Department would not comply with public records requests made under  
20 chapter 42.17 RCW. The Department's Supervising Analyst informed Smart that the Department  
21 could not possibly comply with such an agreement to withhold public records lawfully requested,  
22 and that to do so would jeopardize the Department under chapter 42.17 RCW. Smart replied that  
23 no records would be provided under the Demand without the assurance that the Department  
24 would refrain from making any of Nations' records available to the public pursuant to chapter  
25 42.17 RCW. The Department's Supervising Analyst informed Smart that the Department had no  
26 choice but to serve Nations with a subpoena.

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U. On August 6, 1997, the Department served Nations with Subpoena No. 97-083-S03. On that same date, Smart informed the Department by letter that “. . . Nationscapital intended to fully comply with your agency’s document requests and subpoenas . . .” To date, Nations has failed to make any records available to the Department.

V. On August 15, 1997, Nations obtained a Temporary Restraining Order against the Department prohibiting the Department from providing to any third-parties, any future records that it may obtain in its investigation. The Order was granted in Nations favor with a hearing on a Motion for Preliminary Injunction scheduled for September 15, 1997.

W. On August 21, 1997, the Department notified Nations that agents of the Department would appear on August 26, 1997, to investigate the records that should now be available. The Department also notified Nations that it could see no possible reason for delay since the acquisition of the Temporary Restraining Order against the Department. On August 25, 1997, Nations’ second attorney, Paul Battaglia, informed the Department that the records would not be made available until a later date.

X. Given the foregoing facts and findings, the Director has reason to believe that consumers have suffered harm, continue to suffer harm and will suffer future harm from the business practices of Nations:

1. Nations’ employees have admitted that Nations originates all of its loans from an unlicensed location in California. The surety bond providing protection to Washington consumers is identified specifically to the Washington location. The Director is concerned that Washington consumers may not be afforded the protection of the bond.

2. The Director has reason to believe that Nations has not maintained a trust account within Washington for the protection of consumer funds. A trust account is required pursuant to the Act to safeguard other people’s money held by a mortgage broker. Such failure to maintain a trust account presents very real and imminent harm to consumers. By Willis’ own

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2 statements, any trust funds received by the Bellevue office were transferred to the California  
3 office. The Department has been unable to determine to what degree consumer's funds may have  
4 been transferred outside the State of Washington.

5           3. Nations is known to direct all of its escrow closings to Riverview, a  
6 California escrow company that is not licensed or bonded to conduct escrow business in  
7 Washington. The escrow company is known to be under the ownership and direction of Chisick,  
8 and Chisick profits directly from this steering of business to this unlicensed company. Although a  
9 separate investigation of Riverview by the Department is being conducted, when Nations directs  
10 its customers to Riverview they create the very real likelihood of past, present and future financial  
11 harm to Washington consumers.

12           4. Since June 24, 1997, Nations has repeatedly refused the Department access  
13 to its Washington books and records despite the Department's lawful service of two demands and  
14 a subpoena for such books and records. Despite Nations' most recent assurances that books and  
15 records will be made available to the Department, the Director has no reason to believe, based on  
16 Nations' past violations, and alternating assurances and refusals to provide records, that Nations  
17 will ever substantially comply with the Department's investigative authority. Such investigation  
18 of the books and records by the Department is vital to determine the extent of consumer harm that  
19 may exist or is imminent in the State of Washington. Absent the opportunity to examine these  
20 books and records to determine whether a pattern of unfair or deceptive business practices exist,  
21 the Director must assume that the pattern of consumer complaints received by the Department is  
22 indicative of Nations' business practices. These practices post the risk of substantial injury to the  
23 public. Further, the Director has reason to believe that Nations has intentionally withheld access  
24 to its books and records to prohibit the Department from ascertaining the degree to which  
25 consumers may have suffered harm.  
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2 Y. An investigation by the Department into the business practices of Nations began  
3 on June 24, 1997, and continues to date.

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5 II.  GROUNDS FOR ENTRY OF ORDER TO CEASE AND DESIST

6 A. Pursuant to RCW 19.146.200, a person may not engage in the business of a  
7 mortgage broker, except as an employee of a person licensed or exempt from licensing, without  
8 first obtaining and maintaining a license under this chapter.

9 Pursuant to RCW 19.146.265, a licensed mortgage broker may apply to the Director for  
10 authority to establish one or more branch offices under the same or different name as the main  
11 office upon the payment of a fee as prescribed by the Director by rule. The Director shall issue a  
12 duplicate license for each of the branch offices showing the location of the main office and the  
13 particular branch. Each duplicate license shall be prominently displayed in the office for which it  
14 is issued. Each branch office shall be required to have a branch manager who meets the  
15 experience and educational requirements for branch managers as established by rule of the  
16 Director. Respondents are in violation of these sections when they hold themselves out as  
17 mortgage brokers from offices other than that licensed by the Director. Such practice presents  
18 imminent harm to consumers in that Respondents' practices are unregulated and effectively  
19 unknown by the Department until consumer harm transpires as in the Salick loan.

20 B. Pursuant to RCW 19.146.205(3)(a) and WAC 208-660-080(3), each applicant for  
21 a mortgage broker's license shall file and maintain a surety bond, in an amount of not greater than  
22 sixty thousand dollars nor less than twenty thousand dollars which the Director deems adequate to  
23 protect the public interest, executed by the applicant as obligor and by a surety company  
24 authorized to do a surety business in this state as surety. Based upon the monthly average number  
25 of loan originators, the required surety bond amount for applicants with more than 15 loan  
26 originators is \$60,000.

Respondents are in apparent violation of these sections for two reasons:

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3 1. Nations' Surety Bond Endorsement identifies, "THE ADDRESS OF THE  
4 PRINCIPAL TO READ: 800 BELLEVUE WAY NE, SUITE 448, CITY OF BELLEVUE, WA  
5 98004." Although the Department would argue that the bond must cover all violations committed  
6 by Nations regardless of the location or lack of license, history with such surety bond issues does  
7 not clearly support this argument, and consumers in Washington may not ultimately be afforded  
8 the protection they deserve.

9 2. As cited above, mortgage brokers with more than 15 loan originators are  
10 required to maintain a bond in the amount of \$60,000. Nations' bond is made in the amount of  
11 \$40,000. The Department believes, based on Nations' perceived size and widely disbursed  
12 geographical coverage (Nations is known to operate in several states), that Nations' has  
13 maintained a bond in an amount inadequate to provide protection to Washington consumers.

14 Such violations by Respondents present a threat of imminent harm to consumers in the  
15 event that a claim against the surety bond should arise.

16 C. Pursuant to RCW 19.146.0201, it is unlawful for a loan originator, mortgage  
17 broker required to be licensed under this chapter, or mortgage broker otherwise exempted from  
18 this chapter under RCW 19.146.020(1)(d) or (f) in connection with a residential mortgage loan  
19 to:  
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21 (1) Directly or indirectly employ any scheme, device, or artifice to defraud or  
22 mislead borrowers or lenders or to defraud any person;

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

24 (3) Obtain property by fraud or misrepresentation;  
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2 (6) Fail to make disclosures to loan applicants and noninstitutional investors  
3 as required by RCW 19.146.030 and any other applicable state or federal law;

4 (7) Make, in any manner, any false or deceptive statement or representation  
5 with regard to the rates, points, or other financing terms or conditions for a residential mortgage  
6 loan or engage in bait and switch advertising.  
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8 Respondents are in apparent violation of these sections when they conduct business  
9 practices as are described in section I. of this order. It is clear to the Director that harm has  
10 occurred to John and Carol Salick. Based upon the Department's investigation to date,  
11 additional consumer complaints, and the statements of Nations own designated broker and  
12 employee in Washington, the Director has grounds to believe that other consumers have  
13 suffered harm or will suffer harm at the hands of Nations.  
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15 Additionally, it is a violation of RCW 19.146.0201(8), to make any false statement in  
16 connection with any reports filed by a licensee, or in connection with any examination of the  
17 licensee's business. The Director has reason to believe that Respondents have repeatedly  
18 provided false statements in connection with its investigation. These false statements began  
19 with Willis' claim that no manuals existed for the Department's review on June 24, 1997, and  
20 have continued throughout the processing of the Salick complaint in which Respondents have  
21 repeatedly stated that the events transpired differently than is true. Such false statements have  
22 finally been acknowledged by Nations' own attorneys as shown in section I.G.2. of this order.  
23 These actions, combined with Respondents' false assurances of compliance with lawfully  
24 entered demands and subpoenas has created an environment of distrust such that the Director  
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2 can no longer rely on the veracity of any statements made by Nations. Since regulatory trust is  
3 the cornerstone of consumer protection the Director continues to be concerned over the well  
4 being of Washington consumers in their interaction with Nations.

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6 D. Pursuant to RCW 19.146.030, mortgage brokers are required to make specific  
7 disclosures to consumers. The purpose of these disclosures is to provide the consumer with  
8 advance notice and reasonable assurances concerning the transaction they intend to undertake.  
9 Failure to provide disclosures as required, or altering the content of the disclosures required, is  
10 a deceptive practice and can be used as a tool to mislead borrowers into accepting loan products  
11 and services that they would otherwise be disinclined to accept. Based upon the Department's  
12 limited review of Nations' records, statements made by complainants, and statements made by  
13 Nations' designated broker, the Department believes that Nations routinely alters certain  
14 disclosures and fails altogether to deliver other disclosures. Such practice is believed by the  
15 Director to place consumers in a position of irreversible harm and is considered a serious  
16 violation of the Act.

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19 E. Pursuant to RCW 19.146.050, a mortgage broker shall deposit, prior to the end  
20 of the next business day, all moneys received from borrowers for third-party provider services  
21 in a trust account of a federally insured financial institution located in this state. The trust  
22 account shall be designated and maintained for the benefit of borrowers. Moneys maintained in  
23 the trust account shall be exempt from execution, attachment, or garnishment. A mortgage  
24 broker shall not in any way encumber the corpus of the trust account or commingle any other  
25 operating funds with trust account funds. Withdrawals from the trust account shall be only for  
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2 the payment of bona fide services rendered by a third-party provider or for refunds to  
3 borrowers. Any interest earned on the trust account shall be refunded or credited to the  
4 borrowers at closing. Respondents are in violation of this section when they fail to maintain a  
5 trust account as required by this section.  
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7 The Department has reason to believe, based upon its investigation of the last known  
8 trust account, Willis' statements that trust funds have been received, but have been forwarded  
9 to California and Nations refusal to deliver any records concerning the existence of a trust  
10 account, that Nations has failed to maintain a trust account. This issue is of such import to  
11 consumers of the State of Washington to cause the legislature to classify the failure to maintain  
12 a trust account as a Class C felony under Title 9A.20 RCW, and pursuant to RCW 19.146.110.  
13 The Director has consistently registered his concern with this issue as is identified in Mortgage  
14 Broker Alerts #94-1 and #94-2 delivered to all current and prospective licensees including  
15 Nations.  
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17 Pursuant to these alerts, the Director stated "I have initiated a **'ZERO TOLERANCE'**  
18 policy regarding violations of the trust account provisions of the MBPA . . . I have directed  
19 field examiners to recommend [1] revocation of licenses pursuant to RCW 19.146.220(2)(c)  
20 and [2] criminal referrals pursuant to RCW 19.146.110 regarding any mortgage broker who  
21 abuses the trust account provisions of the MBPA. The examiner, **at any time**, should be able to  
22 [1] reconcile the trust account bank statement to the trust account books and [2] determine that  
23 funds held in trust for one borrower are not being used for the benefit of others. The purpose of  
24 this Alert is to inform you how the Department intends to enforce the provisions of the MBPA."  
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2 The Department's records show that these letters were delivered to Chisick as owner of  
3 Nations' predecessor G.A.M.C. in November 1994, and again to Nations and Willis when the  
4 company changed names and appointed Willis as designated broker.

5  
6 F. Pursuant to RCW 19.146.060(2), a mortgage broker shall maintain accurate,  
7 current, and readily available books and records at the mortgage broker's usual business  
8 location until at least four years have elapsed following the effective period to which the books  
9 and records relate. Respondents were and are in violation of this section when they removed  
10 Washington books and records to California, and/or failed to retain its Washington books and  
11 records at any location other than the Bellevue office. It is imperative to consumer protection  
12 that books and records be available for Department review. Without access to such records the  
13 Director is unable to ascertain to what extent consumer harm may exist and is effectively  
14 unable to protect Washington consumers against unfair and deceptive business practices.

15  
16 G. Pursuant to RCW 19.146.235, including amendments effective July 21, 1997,  
17 for the purposes of investigating complaints arising under this chapter, the Director may at any  
18 time, either personally or by a designee, examine the business, including but not limited to the  
19 books, accounts, records, and files used therein, of every licensee and of every person engaged  
20 in the business of mortgage brokering, whether such a person shall act or claim to act under or  
21 without the authority of this chapter. For that purpose the Director and designated  
22 representatives shall have access during regular business hours to the offices and places of  
23 business, books, accounts, papers, records, files, safes, and vaults of all such persons. The  
24 Director or designated person may direct or order the attendance of and examine under oath all  
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2 persons whose testimony may be required about the loans or the business or subject matter of  
3 any such examination or investigation, and may direct or order such person to produce books,  
4 accounts, records, files, or other documents the Director or designated person deems relevant to  
5 the inquiry. If a person who receives such a directive or order does not attend and testify, or  
6 does not produce the requested books, records, files, or other documents within the time period  
7 established in the directive or order, then the Director or designated person may issue a  
8 subpoena requiring attendance or compelling production of books, records, files, or other  
9 documents. No person subject to examination or investigation under this chapter shall  
10 withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records,  
11 or other information.  
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14 Respondents are in violation of this section when they failed to provide the Department  
15 with access to books and records and have repeatedly failed to comply with lawfully entered  
16 demands and subpoenas. The ability of the Department to investigate records at any time is  
17 essential to the issue of consumer protection. The Director has reason to believe that such  
18 violations are intentionally committed by Nations to prohibit the Department from ascertaining  
19 the degree to which consumers may have suffered harm or the extent of violations committed by  
20 Respondents.  
21

22 H. Pursuant to RCW 19.146.220(1), the Director shall enforce all laws and rules  
23 relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and  
24 hold hearings. The Director may impose any one or more of the following sanctions:  
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(a) Suspend or revoke licenses, deny applications for licenses, or impose penalties upon violators of cease and desist orders issued under this chapter. The Director may impose fines, as established by rule by the Director, for violations of or failure to comply with any lawful directive, order, or requirement of the Director. Each day's continuance of the violation or failure to comply is a separate and distinct violation or failure;

(b) Issue an order directing a licensee, its employee or loan originator, or other person subject to this chapter to cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter, or to pay restitution to an injured borrower; or

(c) Issue an order removing from office or prohibiting from participation from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator, as the case may be, of any licensed mortgage broker.

(2) The Director may take those actions specified in subsection (1) of this section if the Director finds any of the following:

(a) The licensee has failed to pay a fee due the State of Washington under this chapter or, to maintain in effect the bond or approved alternative required under this chapter; or

(b) The licensee, employee or loan originator of the licensee, or person subject to the license requirements or prohibited practices of this chapter has failed to

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2 comply with any specific order or demand of the Director lawfully made and directed to the  
3 licensee, employee, or loan originator of the licensee in accordance with this chapter; or

4 (c) The licensee, its employee or loan originator, or other person  
5 subject to this chapter has violated any provision of this chapter or a rule adopted under this  
6 chapter.  
7

8 I. Pursuant to RCW 19.146.227, whenever the Director determines that the public is  
9 likely to be substantially injured by delay in issuing a cease and desist order, the Director may  
10 immediately issue a Temporary Order to Cease and Desist. The order shall become effective at  
11 the time specified in the order. Based on the foregoing facts, findings, and apparent violations the  
12 Director has determined that the public is likely to be substantially injured by delay in issuing a  
13 cease and desist order.  
14

15 **III. ORDER**

16 Based on the facts contained in the factual findings set forth above, the Director finds that  
17 Nations, Willis, Chisick, Buff and Johnston (hereinafter "Respondents") have violated RCW  
18 19.146.200, RCW 19.146.265, RCW 19.146.205(3)(a), RCW 19.146.0201(1), (2), (3), (7) and  
19 (8), RCW 19.146.030, RCW 19.146.050, RCW 19.146.060 and RCW 19.146.235, and have  
20 conducted business in a manner injurious to the public.

21 Therefore,

22 IT IS HEREBY ORDERED that Respondents cease and desist from making and/or  
23 assisting people in obtaining or applying to obtain residential mortgage loans and/or holding  
24 Nations, or themselves as individuals, out as able to make residential mortgage loans and/or assist  
25 people in obtaining or applying to obtain residential mortgage loans in the State of Washington  
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2 from any location, including the location in Bellevue, Washington and Nations corporate offices  
3 in California, and

4 IT IS FURTHER ORDERED that Respondents, its officers, employees, and agents shall  
5 return to Nations' Washington place of business all books, records and documents associated with  
6 Washington business, and that Respondents make such books, records and documents available  
7 immediately to the Director's agents for review and copy as necessary, and Respondents and  
8 Nations' employees, officers and agents shall not mutilate, destroy, or secrete any books, records,  
9 computer records, or other information relating to Nations' Washington mortgage broker  
10 business, and

11 IT IS FUTHER ORDERED that Respondents retain copies and immediately transfer all  
12 the originals of any open Washington consumer loan files for further processing, closing and  
13 funding to another mortgage broker or lender as follows:

14 1. Such mortgage broker or lender shall be located within the State of  
15 Washington and be duly licensed, or exempt from licensing, by the Director.

16 2. Such mortgage broker or lender shall not currently be the subject of any  
17 investigation or enforcement order filed by this state or any other state within the United States  
18 related to the business of mortgage brokers.

19 3. Such mortgage broker or lender shall not be required to provide any  
20 compensation to Respondents for the transfer of these loan files, and shall be provided a full copy  
21 of this order.

22 4. Such transfer shall take place within five (5) business days of the service of  
23 this order and Respondents shall notify the Department prior to transfer of the files identifying  
24 which mortgage broker or lender has been chosen for the receipt of transfer of the files, along with  
25 a list of the borrower names and addresses transferred to the other mortgage broker.  
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2 5. Such transfer shall include a notice upon the date of transfer to each  
3 consumer whose loan has been transferred which shall read exactly as follows:  
4

5 **NATIONSCAPITAL MORTGAGE CORP. HAS BEEN ORDERED TO**  
6 **CEASE AND DESIST THE BUSINESS OF A MORTGAGE BROKER WITHIN THE**  
7 **STATE OF WASHINGTON. YOUR LOAN HAS BEEN TRANSFERRED TO THE**  
8 **FOLLOWING MORTGAGE BROKER (PROVIDE NAME, ADDRESS, TELEPHONE**  
9 **NUMBER) SO THAT THE PROCESSING OF YOUR LOAN MAY CONTINUE. ANY**  
10 **QUESTIONS REGARDING THE CEASE AND DESIST ORDER, OR THE TRANSFER**  
11 **OF YOUR FILE SHOULD BE DIRECTED TO CHUCK CROSS, SUPERVISING**  
12 **ANALYST, DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF**  
13 **CONSUMER SERVICES, INVESTIGATION/ENFORCEMENT SECTION, PO BOX**  
14 **41200, OLYMPIA, WASHINGTON 98504, (360) 902-8795.**

15 IT IS FURTHER ORDERED that Respondents shall provide evidence to the Department,  
16 within five (5) days of the date of service of this order, that a trust account has been maintained  
17 within the State of Washington pursuant to RCW 19.146.050, along with details of all consumer  
18 funds passing into and out of the trust account, or if such account has not been maintained, a  
19 statement to that effect including detailed information of the consumers who have provided trust  
20 funds to Respondents, regardless of whether such funds may have been received upfront, during,  
21 or from the loan proceeds of the transaction, and provide information as to the specific handling of  
22 these trust funds.

23 IT IS FURTHER ORDERED that Respondents immediately undertake whatever measures  
24 are necessary to insure that Nations' surety bond protects Washington consumers for past and  
25 current violations as intended by Washington law. Confirmation of such insurance shall be  
26 provided to the Department within five (5) days of the service of this order.

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IT IS FURTHER ORDERED that Respondents immediately cease the use of Riverview Escrow Company, Inc. for any closing services within Washington and that Chisick undertake whatever steps are necessary to remove any closings from the control of Riverview and transfer those closing transactions to an escrow company duly licensed and bonded in Washington, or a company exempt from licensing in the State of Washington.

IT IS FURTHER ORDERED that Respondents immediately post the enclosed PUBLIC NOTICE on the exterior of its Bellevue office in plain view to the public.

IT IS FURTHER ORDERED that this order shall take effect immediately.

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NOTICE

YOU ARE ENTITLED TO A HEARING PURSUANT TO CHAPTER 19.146 RCW TO DETERMINE WHETHER THIS ORDER SHALL BECOME PERMANENT. IF YOU DESIRE A HEARING, THEN YOU MUST RETURN THE ATTACHED APPLICATION FOR ADJUDICATIVE HEARING INCORPORATED HEREIN BY THIS REFERENCE. FAILURE TO COMPLETE AND RETURN THE APPLICATION FOR ADJUDICATIVE HEARING FORM SO THAT IT IS RECEIVED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS WITHIN TWENTY (20) DAYS OF THE DATE THAT THIS ORDER WAS SERVED ON YOU WILL CONSTITUTE A DEFAULT AND WILL RESULT IN THE LOSS OF YOUR RIGHT TO A HEARING. SERVICE ON YOU IS DEFINED AS POSTING IN THE U.S. MAIL, POSTAGE PREPAID, TO YOUR LAST KNOWN ADDRESS OR PERSONAL SERVICE. BE ADVISED THAT DEFAULT WILL RESULT IN THIS ORDER TO CEASE AND DESIST BECOMING PERMANENT ON THE TWENTY-FIRST (21ST) DAY FOLLOWING SERVICE OF THIS ORDER UPON YOU. ANY HEARING WILL BE HELD WITHIN FOURTEEN (14) DAYS FROM THE DATE THE DEPARTMENT OF FINANCIAL INSTITUTIONS RECEIVES YOUR APPLICATION FOR ADJUDICATIVE HEARING OR ON SUCH LATER DATE AS IS REQUESTED.

DATED this 29<sup>th</sup> day of August, 1997.

  
\_\_\_\_\_  
MARK THOMSON  
Assistant Director  
Division of Consumer Services  
Department of Financial  
Institutions

Presented by:

  
\_\_\_\_\_  
Chuck Cross, Supervising Analyst

Approved as to form by:

  
\_\_\_\_\_  
Alice Blado, AAG

TEMPORARY ORDER TO  
CEASE AND DESIST - 25

Department of Financial Institutions  
Division of Consumer Services  
318 General Administration Bldg.  
Olympia, WA 98504-1200  
(360) 902-8703

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## NOTICE TO THE PUBLIC

PURSUANT TO THE AUTHORITY GRANTED THE DIRECTOR OF FINANCIAL INSTITUTIONS UNDER CHAPTER 19.146 RCW, THE MORTGAGE BROKER PRACTICES ACT, THE DIRECTOR HAS ORDERED THE TEMPORARY CLOSURE OF:

### **NATIONSCAPITAL MORTGAGE CORP.**

**LOCATED AT: 800 BELLEVUE WAY NE, SUITE 400, OFFICE 448  
BELLEVUE, WASHINGTON 98004**

**CORPORATE: 1045 W. KATELLA AVE., SUITE 200  
ORANGE, CALIFORNIA 92867**

### **THE ORDER REQUIRES THAT NATIONSCAPITAL MORTGAGE CORP.:**

**Cease and Desist from holding itself out as a mortgage broker in Washington from any location including its California location.**

**Make available to agents of the Department of Financial Institutions all books and records pertaining to its Washington business.**

**Within five (5) business days of service of the order, transfer all consumer loan files to the custody of a licensed mortgage broker or lender, or mortgage broker exempt from licensing in Washington.**

**Provide evidence of the existence of a Washington trust account and information relating to the dispensation of consumer trust funds.**

**Undertake steps to provide adequate bond coverage to consumers with whom it has transacted business.**

**Cease and desist the use of Riverview Escrow Company, Inc., and undertake steps to remove any loan closings from Riverview's control and transfer such closings to a duly licensed and bonded escrow company, or company exempt from licensing in Washington.**

**TEMPORARY CEASE AND DESIST ORDER NO. 97-083-001 WAS ENTERED BY THE DIRECTOR OF FINANCIAL INSTITUTIONS ON AUGUST 29, 1997. THE ORDER IS EFFECTIVE IMMEDIATELY WITH NO PREDETERMINED DATE OF EXPIRATION.**

**INFORMATION OR QUESTIONS ABOUT THIS ORDER CAN BE OBTAINED BY**

**CONTACTING: Chuck Cross, Supervising Analyst  
Washington State Department of Financial Institutions  
Division of Consumer Services, Investigation/Enforcement Section  
(360) 902-8795**

