

STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES

In The Matter Of:

CENTURY MORTGAGE, INC., RONALD  
BURGER, DESIGNATED BROKER AND  
OWNER, DALE SAGE GIBBONS,  
OWNER, DWAIN R. KLEIN, OWNER,  
GENE ARTHUR TAYLOR, MICHAEL  
DEASY, CURTIS ORVICK, JON WEBB,  
SCOTT TOLLEFSON, DAVID BURGER,  
AND MARK HODGE,

Respondents

NO. C-02-285-03-CO01

OAH Case No. 2002-DFI-0006

CONSENT ORDER  
BETWEEN THE DEPARTMENT  
AND **DWAIN R. KLEIN**

COMES NOW the Director, Division of Consumer Services, Department of Financial Institutions, (Director), Mark Thomson and Dwaine R. Klein (hereinafter referred to as “Respondent Klein”), by and through his attorney, Corey F. Brock, and finding that the issues raised in the captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 19.146 of Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

**I. AGREEMENT AND ORDER**

The Department of Financial Institutions, Division of Consumer Services (Department) and Respondent Klein have agreed upon a basis for resolution of the matters alleged in Statement of Charges and Notice of Intention to Enter an Order To Revoke License, Prohibit from Participation in Industry and Assess Monetary Penalties (“Statement of Charges”) No. C-02-285-02-SC04 issued August 26, 2002 (copy attached hereto). Pursuant to chapter 19.146 RCW, the Mortgage Broker Practices Act (Act) and RCW 34.05.060 of the Administrative Procedure Act, Respondent Klein,

hereby agrees to the Department's entry of this Consent Order and further agrees that the issues raised in the above captioned matter may be economically and efficiently settled by entry of this Consent Order.

Based upon the foregoing:

A. It is AGREED that the Department has jurisdiction over the subject matter of the activities discussed herein.

B. It is AGREED that the parties shall be bound by the terms and conditions of this Consent Order as set forth herein.

C. It is AGREED that Respondent Klein has been informed of his right to a hearing before an administrative law judge, and that he has waived same right to a hearing and any and all administrative and judicial review of the issues raised in this matter, or of the resolution reached herein. Accordingly, Respondent Klein agrees to dismiss his appeal and to inform the Office of Administrative Hearings in writing of his dismissal.

D. It is AGREED that Respondent Klein understands that failure to abide by the terms and conditions of this Consent Order may result in further legal action by the Director. In the event of such legal action, Respondent Klein may be responsible to reimburse the Director for the cost incurred in pursuing such action, including but not limited to, attorney fees.

E. It is AGREED that Respondent Klein be prohibited from participating in the mortgage broker industry for twenty (20) years in any capacity, including but not limited to: (1) any financial capacity whether active or passive or (2) as an officer, director, principal, employee, or loan originator.

F. It is AGREED that Respondent Klein refrain from applying for a mortgage broker license or branch license under any name from the Department for a period of 20 years.

G. It is AGREED that Respondent Klein provide the Department truthful and complete sworn statements outlining his activities with respect to Century Mortgage, Inc. and any and all persons involved or in any way associated with Century Mortgage, Inc., including but not limited to the named Respondents, employees, businesses and persons with whom Century Mortgage, Inc. dealt, communicated, or otherwise related. The “sworn statements” may take the form of affidavits, declarations, or deposition testimony, at the Department’s discretion.

H. It is AGREED that Respondent Klein cooperate fully, truthfully and completely with the Department and provide any and all information known to him relating in any manner to Century Mortgage, Inc. and any and all persons involved or in any way associated with Century Mortgage, Inc., including but not limited to the named Respondents, employees, businesses and persons with whom Century Mortgage, Inc. dealt, communicated, or otherwise related. It is further AGREED that Respondent Klein provide any and all documents, writings or materials, or objects or things of any kind in his possession or under his care, custody, or control relating directly or indirectly to all areas of inquiry and investigation. A failure to cooperate fully, truthfully and completely is a breach of this Consent Order. It is further AGREED that Respondent Klein testify fully, truthfully and completely at any proceeding related to the Department’s investigation and enforcement actions related to this matter, including, but not limited to Century Mortgage, Inc. and the named Respondents.

I. It is AGREED that the undersigned has represented and warranted that he has the full power and right to execute this Consent Order on behalf of the party represented.

J. It is AGREED that the undersigned Respondent Klein has voluntarily entered into this Consent Order, which is effective when signed by the Director’s designee.

K. It is AGREED that Respondent Klein has read this Consent Order in its entirety and fully understands and agrees to all of the same.



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STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES

In the Matter of:

NO. C-02-285-02-SC04  
OLD NO. 2000-115-C01

CENTURY MORTGAGE, INC., RONALD  
L. BURGER, DESIGNATED BROKER AND  
OWNER, DALE SAGE GIBBONS, OWNER,  
DWAINE R. KLEIN, OWNER,  
GENE ARTHUR TAYLOR, MICHAEL  
DEASY, CURTIS ORVICK, JON WEBB,  
SCOTT TOLLEFSON, DAVID BURGER,  
AND MARK HODGE

STATEMENT OF CHARGES AND  
NOTICE OF INTENTION TO  
ENTER AN ORDER TO REVOKE  
LICENSE, PROHIBIT FROM  
PARTICIPATION IN INDUSTRY  
AND ASSESS MONETARY  
PENALTIES

Respondents

**I. STATEMENT OF CHARGES**

1.1 Pursuant to RCW 19.146.220, the Director of the Department of Financial Institutions (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act). After having conducted an investigation, and based upon the facts available as of July 25, 2002, the Director institutes this proceeding and finds as follows:

**II. FACTUAL FINDINGS**

2.1 Century Mortgage Company (Century) is known to hold itself out as a mortgage broker at 3401 Division, Spokane, Washington. Such business has been licensed under the Act by the Department of Financial Institutions (Department) since October 30, 1997.

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2.2 Ronald L. Burger is listed with the Department as a 33 percent owner and Designated Broker of Century.

2.3 Dale (Sage) Gibbons is listed with the Department as a 33 percent owner of Century.

2.4 Dwaine R. Klein (Klein) Gibbons is listed with the Department as a 33 percent owner of Century.

2.5 Gene Arthur Taylor (Taylor) was the former owner of Gene A. Taylor dba Century Mortgage.

2.6 Burger, Kinder, and Klein, Inc. (BKK) was incorporated on December 21, 1995, and later amended its name to Burger, and Klein, Inc. (BK) on June 28, 1996. Burger and Klein had equal ownership in these two extinct companies.

2.7. B&G Properties, LLC (BG), an affiliate of Century, is equally owned by Burger and Gibbons.

2.8 The names of the following loan officers of Century (employees of Century) originated mortgage loans in violation of the Act:

- (1) Michael Deasy
- (2) Curtis Orvick
- (3) Jon Webb
- (4) Scott Tollefson
- (5) Mark Hodge
- (6) David Burger

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2.9 Century makes residential mortgage loans (mortgage loans) or assists borrowers in obtaining or applying to obtain mortgage loans for compensation or gain. Century, Burger, Gibbons, and Century's employees caused the preparation of mortgage loan documents for the purpose of obtaining financing for buyers/borrowers of residential real estate properties (residential properties).

It was the usual practice of Century to broker or sell the mortgage loans to residential mortgage lenders (mortgage lenders) who were located throughout the country and who funded the mortgage loans at loan closing, through mostly electronic transfer of funds to escrow agents.

The mortgage lenders who funded loans for Century's clients included, but were not limited to the following:

- (1) WMC Mortgage Corporation, Woodland Hills, California
- (2) First Franklin Financial Corporation, Bellevue, Washington
- (3) Bank of Yorba Linda, Yorba Linda, California
- (4) Investors Mortgage Company Limited Partnership, Bellevue, Washington
- (5) New Century Mortgage, Irvine, California
- (6) Pinnfund USA, Carlsbad, California
- (7) Meritage Mortgage Corporation, Lake Oswego, Oregon

2.10 Mortgage lenders rely upon compliance by mortgage brokers and loan officers with applicable state and federal rules and regulations, and the truthful and honest representations of loan applicants, buyers/borrowers in loan applications and other documents in order to approve and fund mortgage loans.

2.11 Century, Burger, Gibbons, Klein, Scott Tollefson, Jon Webb, Michael Deasy, Mark Hodge, David Burger and certain third party service providers<sup>1</sup> caused the preparation of false and fraudulent payment instruments such as cashier's checks, personal checks and business checks, which were submitted to mortgage lenders in support of loan applications for buyers of residential properties to obtain financing. In the case of Borrower Chavez, Gibbons falsified his own personal check to make it appear as if a fictional Paul Chavez, purportedly the brother of the borrower, drew it. Gibbons' false check was written for the amount of \$19,299 and was intended as a 'gift' in the form of a down payment on the Chavez mortgage loan. Borrower Chavez confirmed that she was not aware of this scheme, and does not have a brother named Paul Chavez.

Table 1a - Phantom Down Payments or 'Gifts'

| Buyer       | Loan Officer          | Property Address                       | Century =C<br>BG=B<br>O=Other<br>Check Amt | Other Cashier's Check Amount | Loss To Lender |
|-------------|-----------------------|--|--|------------------------------|----------------|
| Hawthorne   | Gibbons/<br>Tollefson | 2427 E. Everett Avenue,<br>Spokane, WA | B: 18,000.00                               | 18,000.00                    | 18,000.00      |
| Christerson | Burger, Ronald        | 1218 N. Altamont St.,<br>Spokane, WA   | O: 22,318.75                               | N/A                          | 22,318.75      |
| Aleman      | Burger, Ronald        | 2221 N Cincinnati St.,<br>Spokane, WA  | C: 17,531.67                               | 17,531.67                    | 17,531.67      |
| Fisher      | Burger, Ronald        | 118 S Thor Street,<br>Spokane, WA      | C: 13,414.94                               | 14,414.94                    | 14,414.94      |
| Buyer       | Loan Officer          | Property Address                       | Century =C<br>BG=B<br>O=Other<br>Check Amt | Other Cashier's Check Amount | Loss To Lender |

<sup>1</sup> Respondents colluded with certain third-party service providers such as real estate appraisers and real estate sales persons. The Department holds no jurisdiction over these third-party service providers and they are not included in the Statement Of Charges.



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| Anderson   | Burger, David   | 1224 W Carlisle Avenue<br>Spokane, WA          | C: 18,022.63 | 18,022.63 | 18,022.63  |
| Triumph    | Burger, Ronald  | 3103 N Lincoln Street,<br>Spokane, WA          | C: 16,000.00 | 16,000.00 | 16,000.00  |
| Mazur      | Burger, Ronald  | 1007 E Baldwin Avenue,<br>Spokane, WA          | C: 19,589.69 | 19,585.69 | 19,585.59  |
| Peterson   | Webb, Jon       | 2627 N Magnolia Street,<br>Spokane, WA         | B: 18,274.08 | 18,274.08 | 18,274.08  |
| Bates      | Burger/Gibbons  | 5410 W Princeton Place,<br>Spokane, WA         | C: 13,584.42 | 13,584.42 | 13,584.42  |
| MashtareII | Deasy/Tollefson | 1218 N Bowman Avenue,<br>Spokane, WA           | O: 16,862.00 | 14,700.00 | 16,862.00+ |
| Salle      | Gibbons, Sage   | 1304 E Baldwin Ave,<br>Spokane, WA             | B: 19,518.93 | 19,518.93 | 19,518.93  |
| Whitacre   | Burger, Ronald  | 1920 E. 1 <sup>st</sup> Avenue,<br>Spokane, WA | B: 17,500.00 | Same      | 17,500.00  |
| Chavez     | Gibbons, Sage   | 1227 East Bridgeport                           | O: 18,142.93 | Same      | 18,142.93  |
| Johnson    | Hodge, Mark     | 2605 W College Avenue,<br>Spokane, WA          | C: 20,559.65 | 20,559.65 | 20,559.65  |

Total Amount of Potential Loss to Lenders: \$250,315.59

2.12 Century, Burger, Gibbons, Klein, Scott Tollefson, Jon Webb, Michael Deasy, Mark Hodge, David Burger, and certain third-party service providers caused the preparation of false and fraudulent loan documentation such as HUD-1 settlement statements, loan application forms, and gift letters in order to misrepresent that buyers/borrowers of residential properties had paid down payments as required by mortgage lenders, when in truth and in fact, buyers/borrowers had not provided the down payments required by the mortgage lenders as presented in Table 1a above.

2.13 Century, Burger, Gibbons, Klein, Curtis Orvick, Michael Deasy, and certain third-party service providers caused the preparation of “phantom” second mortgage deeds of trust that were fraudulently not disclosed to mortgage lenders. In the Sherene Thomas (Thomas) mortgage loan (listed in Table 1b below) Sally Gibson (Gibson), the real estate sales

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person who represented Thomas in the transaction, prepared a false addendum to the original Purchase and Sales Agreement (PSA) misrepresenting that Gibbons was the buyer for the property at 3020 North Regal Street, Spokane, Washington. Gibbons knew from the start that Gibson created the false addendum on his behalf, and on the behalf of Century and Burger to facilitate inflating the purchase price of the property to Thomas. For their “creative financing” a “finders fee” totaling \$2,000 was paid to Burger and Gibbons. Additional costs totaling \$3,050 was also paid to Gibbons and Century. The original PSA dated March 8, 1998, was agreed upon and signed by buyer, Thomas, and seller, Dameyer Jr., but Gibson told Thomas that her offer had been rejected after Gibbons showed interest in the property. Gibson prepared an addendum that was used as an artifice to remove Thomas as the buyer through misrepresentation. Gibson obviously colluded with Gibbons to amend the original PSA, without a meaningful explanation to Thomas. Gibson amended and assigned the purchase of the property to Gibbons who intend sold the property back to Thomas. Gibbons along with Burger was the mortgage broker in the origination of this mortgage loan. Thomas indicated that she signed the addendum assigning the original PSA to Gibbons without knowing because her agent, Gibson, did not explain the documents to her. Thomas indicated it was at closing that she became aware that the loan amount had increased. Gibbons increased the purchase price of the property from the original price of \$59,950 to \$85,000. It is apparent from Gibson’s actions that she worked against Thomas’ interests by colluding with Gibbons. It is illogical that Thomas would forgo the original lower offer price that was assigned to Gibbons to purchase the property from the original owner, and accept Gibbons’ new purchase price at a differential of \$25,050.

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On the HUD 1 settlement statement for this mortgage loan, \$1,000 each, for a total of \$2,000, was paid to Gibbons and Burger for referring the Thomas mortgage loan to Century. The misrepresentation to Thomas and fraud resulted in an additional cost of \$5,050 to Thomas, which includes the \$2,000 “finder’s fee” plus \$3,050 resulting from the increase in the purchase price.

2.14 In the Thomas purchase transaction Gibbons colluded with Gibson to enable him purchase the property at the original price of \$59,950 offered by Thomas, and agreed upon by the seller. Gibbons then resold the property back to Thomas for \$85,000. Gibbons’ scheme misrepresented the loan to the lender through the creation of a phantom second mortgage artifice of \$17,000, which was forgiven after the transaction closed, and an additional \$5,000 phantom “credit given towards closing costs.”

Table 1b - Century and Affiliate BG’s Phantom Second Mortgages

| Buyer           | Loan Officer   | Property Address                          | Second Mortgage Amount | Second Mortgage Status |
|-----------------|----------------|---|------------------------|------------------------|
| Bercier, Donna  | Burger, Ronald | (2) 2227 E Empire Avenue, Spokane, WA     | 16,625                 | Not Recorded – silent. |
| Tinn, Elias     | Gibbons, Sage  | (5) 1026 W Grace Avenue, Spokane, WA      | 24,000                 | Discounted to \$1.00   |
| Thomas, Sherene | Burger, Ronald | (6) 3020 North Regal Street, Spokane, WA  | 17,000                 | Silent - Not Recorded  |
| Gethers, Eric   | Burger, Ronald | (8) 5414 North Monroe Street, Spokane, WA | 22,975                 | Discounted to \$1.00   |
| Harper, Thurman | Burger, Ronald | (9) 9721 North Colfax Road, Spokane, WA   | 26,400                 | Discounted to \$1.00   |
| Buyer           | Loan Officer   | Property Address                          | Second Mortgage Amount | Second Mortgage Status |
| Jacobs, Ronnie  | Orvick, Curtis | (10) 5317 N Maple Street, Spokane, WA     | 21,000                 | Discounted to \$1.00   |

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| Rishar, Logan  | Deasy, Michael | (11) 224 S Green Street, Spokane, WA              | 13,375 | Silent – Not Recorded |
| Haskins, James | Burger, Ronald | (12) 617 East 9 <sup>th</sup> Avenue, Spokane, WA | 19,500 | Forgiven Per PSA      |

Total Amount of Misrepresentation to Lenders: \$160,875

2.15 Century, Burger, Gibbons, Klein, Scott Tollefson, Michael Deasy, Jon Webb, Curtis Orvick, Mark Hodge and David Burger and other third-party service providers employed mortgage broker business practices that created an equity skimming artifice that injured borrowers, seller and lenders in apparent violation of the prohibitions against equity skimming under RCW 61.34.020, which states:

An “act of equity skimming” has occurred when . . . a person purchases a dwelling in a transaction in which all or part of the purchase is financed by the seller and is (A) secured by a lien which is inferior in priority or subordinated to a lien placed on the dwelling by the purchaser, or (B) secured by a lien on other real or personal property, or (C) without any security; and . . .the person obtains a superior loan which either (A) is secured by a lien on the dwelling which is superior in priority to the lien of the seller, but not including a bona fide assumption by the purchaser of a loan existing prior to the time of purchase, or (B) creating any lien or encumbrance on the dwelling when the seller does not hold a lien on the dwelling; and . . . the person fails to make payments or default on the superior priority loan within two years subsequent to the purchase . . . and the person diverts value from the dwelling by applying or authorizing any part of the proceeds from such superior priority loan for the person’s own benefit or use.

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Century's affiliate, BG, and principals, Burger and Gibbons, sold and originated eleven out of the 22 properties securing these mortgage loans that are the subject of this statement of charges. Seven of the mortgage loans originated by Century's affiliate, BG, and principals, Burger and Gibbons went into foreclosure within two years of loan origination. The reason for the high rate of foreclosure appears to be the scheme used by Century to inflate the property values coupled with targeting borrowers with very high delinquencies, bankruptcies and outstanding judgments. Century knew, or should have known, these borrowers with high credit risk would have difficulty meeting their mortgage loan obligations. This is evidenced by false documents created by Century in order to hide the true nature of these mortgage loans, and to induce mortgage lenders to fund them. [See section 2.15].

2.16 Century, Burger, Gibbons, Klein, and certain third-party service providers prepared false and fraudulent documents related to the financial conditions of the buyers/borrowers in order to make the buyers/borrowers appear to qualify for mortgage loans. These false and fraudulent documents included, but were not limited to:

- a. Statements of false assets;
- b. False or fraudulent verifications of deposit
- c. False or fraudulent verifications of rent

2.17 Century, Burger, Gibbons, Scott Tollefson, Jon Webb, Michael Deasy, Mark Hodge, David Burger, Curtis Orvick and other third-party service providers caused to be prepared inflated appraisals on residential properties in order to create phantom equity for the

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purpose of inducing mortgage lenders to provide 100 percent financing for residential properties;

2.18 Gibson admitted to the Department of Licensing (DOL), in a consent order dated March 19, 2002, that she colluded with Burger and Gibbons to inflate the purchase prices of residential properties. Gibson stated in an interview conducted by the Department on January 16, 2002, that she was asked by Burger to change prior listing prices. Gibson admitted in a written response to the Department that:

I am aware and have been a party to listing prices being increased to facilitate an appraisal to coincide with a stated purchase price (oftentimes reflecting an inflated increase [sic]). This was accomplished by either me or Ron Burger (telephonically communicating the required change necessary to the MLS Data Sheet) to be done by the listing agent; I at times was the listing agent . . . .

Gibson stated that if the buyer failed to qualify for a loan, Burger and Gibbons or employees of Century did instruct her to increase the purchase price of the residential property to an amount determined by them. She stated she was then directed to use the inflated amount as the purchase price on the PSA.

2.19 Ernie Aguilar (Aguilar), a former loan officer of Century corroborated the statements made by Gibson. Aguilar told the Department that a pre-determined profit formed the basis for determining the purchase price of the residential property. Aguilar claimed that Burger demonstrated the technique to him and Aguilar subsequently used the technique in originating residential mortgage loans. Aguilar explained that after the required profit was

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2 determined, the variables in the mortgage transaction, such as the purchase price of the property,  
3 loan amount, closing costs and the required down payment or deposit, were manipulated until a  
4 purchase price and loan amount were obtained that met mortgage lenders' required loan-to-  
5 value ratios of 75 percent or 80 percent.

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7 2.20 John Hansen (Hansen), a real estate appraiser, admitted to the Department of  
8 Licensing (DOL), in a consent order dated May 2, 2002, that he colluded with Burger and  
9 Gibbons to inflate the appraised values of residential properties.

10 2.21.1 Ed Morse of Morse & Company (Morse), a member of the Expert Review  
11 Appraiser Roster (ERAR) reviewed Hansen's appraisal reports on the residential properties  
12 listed below:  
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- 14 (1) 1218 Bowman Road
- 15 (2) 5410 West Princeton Place
- 16 (3) 2627 North Magnolia Street
- 17 (4) 5414 North Monroe Street
- 18 (5) 9721 North Colfax Road
- 19 (6) 2607 Altamont Street

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21 2.21.2 Morse questioned the integrity of the appraisal reports produced by Hansen for  
22 Century on these six residential properties. The report stated in part that Hansen's appraisal  
23 reports contain "...reoccurring issues or errors that suggest a pattern of conduct that violates  
24 certain standards of the Uniform Standards of Professional Appraisal Practice (USPAP), and  
25 generally accepted appraisal practice . . ." in the following areas:  
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(1) Appraisals do not comply with the minimum standards for reporting prior sales and listing history . . . In many cases the property was on the market for a certain price and did not sell, yet it was appraised at a higher value.

(2) Many of the properties had overestimated size, and this could significantly increase the value of the property.

(3) Physical condition factors of the properties were not considered, and the properties that should have been reported as in fair to poor condition were reported as average.

(4) Properties that were previously appraised by other appraisers at much lower values were appraised at higher values because of comparable properties used from superior locations.

2.22 Century, Burger, Gibbons, and Klein withheld payments of appraisal fees to Real Estate Appraiser Robert Ryan (Ryan) for the purpose of influencing his independent judgment with respect to the value of the residential properties he appraised for Century. Ryan filed a statement with the DOL on August 28, 2001, alleging that Burger frequently pressured him to give his approval on appraisal reports on residential properties that required additional work to bring them to the values requested by Burger. Ryan stated that he reluctantly agreed to the requests because Burger threatened not to pay him for prior completed appraisals. Ryan confirmed in an interview with the Department on March 6, 2002, that he stood by the statement he made to the DOL on August 28, 2001. Ryan told the Department that Burger always pressured him to inflate property values by up to 20 percent, and on one occasion by as much as 50 percent. Ryan also stated that Burger refused to pay for 16 appraisal reports he had



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completed totaling \$7,000, and he had written-off several previous unpaid appraisals fees owed by Century as bad debt. Ryan stated that Burger agreed to settle for \$5,000 after Ryan's attorney contacted Burger. Burger eventually paid only \$3,000 out of the debt of \$7,000.

Burger's actions to withhold payments were done intentionally to influence the independent judgment of Ryan with respect to the values of the residential properties appraised for Century.

The list below represents 11 appraisal reports out of a total of 96 appraisal reports prepared by Ryan for Century.

Influencing Judgment of Appraiser

| <u>Name</u>  | <u>Address</u>                 | <u>Check Number</u> | <u>Amount</u>  |
|--------------|--------------------------------|---------------------|----------------|
| (1) Jones    | 2524 West College Ave          | 10376               | \$ 400.00      |
| (2) Allgaier | 328 East Hoffman Ave           | 09553               | \$1,600.00     |
| (3) Probert  | 6203 North Stone Street        | 09553               | Included in #2 |
| (4) Rogers   | 659 West Brooks Road           | 09553               | Included in #2 |
| (5) Williams | 5385 Scotts Valley Road        | 09553               | Included in #2 |
| (6) Austin   | 18706 East 4 <sup>th</sup> Ave | 10198               | \$ 400.00      |
| (7) Ward     | 2419 East Rich Ave             | 09947               | \$ 400.00      |
| (8) Campbell | 18306 East Alki Ave            | 09722               | \$ 800.00      |
| (9) Pulatie  | 711 East Princeton Ave         | 09722               | Included in #8 |
| (10) Burger  | 3216 North Maple Street        | 09966               | \$ 600.00      |
| (11) Sanders | 1111 Walnut Street             | 10305               | \$ 600.00      |

2.23 Century, Burger, Gibbons, and Klein failed to pay third-party appraisal service providers within the minimum requirement of 30 days after the recording of the loan closing

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documents or ninety days after completion of the third-party service. There was neither an agreement nor was the third-party appraisal service provider notified in writing that a bona fide dispute existed regarding the performance or quality of the third-party appraisal service. Ryan stated in an interview with the Department that he was “forced” to sign the settlement agreement dated October 31, 2000. Although no written bona fide dispute existed, Ryan stated that he forgave a portion of the amount owed by Century because, Ryan claimed, Burger had threatened not to pay him. In the settlement, Century agreed to pay only \$3,000 out of the total of \$7,000 fees owed on 16 appraisal reports. The agreement required Ryan to cease collection action on “. . . past appraisals . . . including the collection from Hackney, Hamilton, March and Carroll Law Office.” This stipulation in the agreement was an intentional violation of the Act.

2.24 Burger, and Gibbons were signatories on one general business account belonging to Century. Third-party service provider fees paid to Century on behalf of borrowers were paid into this general business bank account. Burger and Gibbons knew or should have known that third-party service provider charges must be deposited into only a trust account. Table 2 lists 13 third-party provider fees paid to Century by closing agents not deposited into a trust account:

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Table 2 – Third Party Service Provider Services Fees Pay to Century

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| Buyer         | Property Address                   | Agent/Check Number                       | Third-party fee Paid                      |
|---------------|------------------------------------|--|---|
| Aleman        | 2221 N Cincinnati St., Spokane, WA | Custom /39836                            | Appraisal: 500.00<br>Credit Report: 40.00 |
| Fisher        | 118 S Thor Street, Spokane         | Custom//33777                            | Credit Report: 30.00                      |
| Anderson      | 1224 W Carlisle Avenue, Spokane    | Custom/33874                             | Appraisal: 400.00<br>Credit Report: 30.00 |
| Triumph       | 3103 N Lincoln Street, Spokane     | Custom/                                  | Appraisal: 400.00<br>Credit Report: 30.00 |
| Jacobs        | 5317 N Maple Street, Spokane       | Nees/Letter: 1/22/98                     | Appraisal 400.00<br>Credit Report 65.00   |
| Rishar        | 224 S Green Street, Spokane        | Custom/32844                             | Appraisal 400.00<br>Credit Report 65.00   |
| Gethers       | 5414 N Monroe Street, Spokane      | Century/5298                             | Appraisal 400.00                          |
| Mazur         | 1007 E Baldwin Avenue, Spokane     | Custom/32599                             | Appraisal 400.00<br>Credit Report 20.00   |
| Thomas        | 3020 N Regal Street, Spokane       | Custom/31286                             | Credit Report 20.00                       |
| Tinn          | 1026 W Grace Avenue, Spokane       | Nees/ Letter: 2/5/1998                   | Appraisal 400.00<br>Credit Report 20.00   |
| Bates         | 5410 W Princeton Place, Spokane    | Custom/CK#37896                          | Appraisal 300.00<br>Credit Report 20.00   |
| Bercier       | 2227 E Empire Avenue, Spokane      | Custom/CK#30430<br>Cent. CK#5902 (\$400) | Appraisal 400.00<br>Credit Report 20.00   |
| Mashtatare II | 1218 N Bowman Avenue, Spokane      | Nees/Letter: 8/4/1998                    | Appraisal: 400.00<br>Credit Report: 30.00 |

2.25 Burger, Gibbons, Klein, and Taylor assisted borrowers in obtaining or applying to obtain mortgage loans for compensation or gain or in expectation of compensation or gain without first seeking and obtaining a mortgage broker license. The Department determined that Burger, Gibbons, Klein, and Taylor have illegally earned, as of the entry of this order, an amount known to be as much as \$22,027.71. [See Table 3]. Potential illegal fees could be found on the remaining 572 mortgage loans that were not reviewed.

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Table 3 – Illegal Mortgage Broker Fees

| Borrower          | Property Address                    | Closing Date | Loan Amount | Loan Fee | Loan Processing | Yield Spread | Total Fees |
|-------------------|-------------------------------------|--------------|-------------|----------|-----------------|--------------|------------|
| Smith, Grandin    | 7122 E. Liberty                     | 3/19/1997    | 65,250      | 1,957.50 | 350.00          | 1,712.81     | 4,020.31   |
| Sanderson, Steven | 332 N. Ridgeview Drive, Pt. Angeles | 6/22/1997    | 405,000     | 6,075.00 | 350.00          | 8,100.00     | 14,525.00  |
| Lindsey, Carroll  | 1218 W. Providence Av               | 7/17/1997    | 79,200      |          |                 | 1,584.00     | 1,584.00   |
| DeWitt, Sandra    | 2222 North Wall Street              | 7/17/1997    | 79,920      | 1,000.00 | 300.00          | 1,598.40     | 2,898.40   |

Total Amount of Illegal Fees Earned: \$22,027.71

2.26 BKK, BK, Burger, Gibbons, Klein and Taylor caused potential significant financial harm to borrowers who obtained mortgage loans through BKK, BK, and Gene Taylor dba Century Mortgage from March 27, 1995, through September 17, 1997. These borrowers were not protected by a surety bond.

2.27 Century, Burger, Gibbons, Curtis Orvick, Scott Tollefson, Jon Webb, Michael Deasy, Mark Hodge and David Burger failed to provide the required “lock-in agreement” disclosure to the borrowers who obtained the 22 mortgage loans investigated. Century was the mortgage loan originator and broker on all the 22 mortgage loans.

2.28 Century, Burger, Gibbons, Klein, Curtis Orvick, Scott Tollefson, Jon Webb, Michael Deasy, Mark Hodge and David Burger failed to provide borrowers with written disclosures that included the statement that if the borrower was unable to obtain a loan for any reason, the mortgage broker would, within five days of a written request by the borrower,

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provide copies of any appraisal, title report, or credit report paid for by the borrower to the borrower in 15 out of the 22 mortgage loans investigated.

2.29 Pursuant to federal Regulation X, 24 CFR §3500.15 a mortgage broker making a referral must provide each person whose business is referred a written Affiliated Business Arrangement Disclosure Statement stating the nature of the relationship, explaining the ownership and financial interest, between the provider of settlement services and the person making the referral. The person making the referral must disclose an estimated charge or range of charges generally made by the affiliated provider receiving the referred business, and the disclosures must be provided on a separate piece of paper no later than the time of each referral. According to §3500.15(c)(2), "An affiliate relationship means the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership." BG and Century are two companies under common control by Burger and Gibbons who have 50% ownership each in BG, and 33% ownership each in Century.

BG was also in a position to refer settlement services. As stated in § 3500.15 (c)(9), "[A] person who is in a position to refer settlement service business means any real estate broker or agent, lender, mortgage broker, builder or developer, attorney, title company, title agent, or other person deriving a significant portion of his or her gross income from providing settlement services."

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Pursuant to §3(7) of the enabling statute, 12 USC 2602(7) the "...term "affiliated business arrangement" means an arrangement in which:

. . . 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 either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider . . . .

BG, as a limited liability company, and Burger and Gibbons, as officers or directors of the two companies, are "in a position to refer" business incident to or a part of a real estate settlement service to Century. The relationship of Burger and Gibbons to BG fall under section (3)8(C) of RESPA<sup>2</sup>, which defines "associate" as ". . . an employer, officer, director, partner...of such person . . . who is in a position to refer business incident to or a part of a real estate settlement service."

BG is affiliated to Century, Burger and Gibbons. Burger and Gibbons influenced the selection of the mortgage broker by requiring the buyers/borrowers to use Century for financing their mortgage transactions. This requirement was stipulated in the PSAs. Century, Burger, Gibbons, Klein, Scott Tollefson, Michael Deasy, and Jon Webb referred mortgage broker business to Century and they benefited financially from the referrals through mortgage broker fees, yield spread premiums, loan origination fees, and commissions earned from brokering these

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<sup>2</sup> Real Estate Settlement Procedures Act, 12 USC 2602.

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loans. They failed to disclose Century's affiliation with Burger, Gibbons, their spouses and BG on the mortgage loans referred to Century.

2.30 Century, Burger, Gibbons and Klein failed to provide Truth in Lending (TIL) disclosures that are clear and conspicuous in a form that the consumer may keep:

(a) Fisher, Brenda 118 South Thor St, Spokane

Several of the items that must be disclosed on the initial TIL statement were left blank, including the creditor's name and mailing address, applicant's name, property address, annual percentage rate, finance charge, amount financed, and total payments. Century essentially required the borrower to sign blank disclosure forms, revealing Century's complete disregard for the Act. Further, Century could not provide documentation proving that it provided the required variable rate disclosures on this mortgage loan.

(b) Mazur, William 1007 East Baldwin Ave, Spokane

The initial was not provided.

(c) Thomas, Sherene 3020 North Regal Street, Spokane

The initial TIL disclosure statement, and the variable rate disclosures were not provided on this loan. Century could not provide the Department with a copy of the initial 1003 application form.

(d) Robert Christerson 2607 North Altamont Street, Spokane

Century failed to provide the variable rate disclosures required by Regulation Z.

(e) Tinn, Elias 1026 West Grace Avenue, Spokane

Century did not provide the required variable rate disclosures on this mortgage loan.

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**III. GROUNDS FOR ENTRY OF ORDER**

3.1 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:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Engage in any unfair or deceptive practice toward any person;
- (3) Obtain property by fraud or misrepresentation.
- (6) Fail to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law;
- (7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising.
- (9) Make any payment directly or indirectly, to any appraiser of a property, for the purpose of influencing the independent judgment of the appraiser with respect to the value of the property
- (11) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party



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service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service.

3.1.1 Century, Burger, Gibbons, Klein, Scott Tollefson, Jon Webb, Michael Deasy, and Mark Hodge were in apparent violation of paragraphs 19.146.0201(1), (2), and (3) when they employed schemes, devices and artifices with certain third-party service providers and caused the preparation of false and fraudulent payment instruments such as cashier's checks, personal checks and business checks, which were submitted to mortgage lenders in support of loan applications for buyers of residential properties to obtain financing. These schemes, devices and artifices resulted in the potential losses presented in Table 1a of Section II of this statement of charges;

3.1.2 Century, Burger, Gibbons, Klein, Scott Tollefson, Curtis Orvick, Jon Webb, Michael Deasy, Mark Hodge, and David Burger were in apparent violation of paragraphs 19.146.0201(1), (2), and (3) when they employed schemes, devices and artifices with other third-party service providers and caused the preparation of false and fraudulent loan documentation such as HUD-1 settlement statement, 1003 loan application forms, and gift letters in order to misrepresent that buyers of residential properties made the down payments required by mortgage lenders, when in truth and in fact, the buyers/borrowers did not make the down payments required by mortgage lenders as noted in Section II of this statement of charges;

3.1.3 Century, Burger, Gibbons, Klein, Curtis Orvick, and Michael Deasy were in apparent violation of paragraphs 19.146.0201(1), (2), and (3) when they employed schemes, devices and artifices with other third-party service providers and caused to be prepared phantom

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second mortgage deeds of trust that were fraudulently not disclosed to the mortgage lenders. These schemes, devices and artifices resulted in the potential loss presented in Table 1b of Section II of this statement of charges;

3.1.4 Century, Burger, Gibbons, and Klein were in apparent violation of paragraphs 19.146.0201(1), (2), and (3) when they employed schemes, devices and artifices to prepare false and fraudulent documents related to the financial conditions of the buyers/borrowers in order to make buyers/borrowers appear to qualify for mortgage loans as noted in the mortgage loans to Christerson and Fisher. These false and fraudulent documents included, but were not limited to:

- (a) Statements of false assets,
- (b) False or fraudulent verification of deposit,
- (c) False or fraudulent verification of rent;

3.1.5 Century, Burger, Gibbons and Klein were in apparent violation of paragraphs 19.146.0201(1), (2), and (3) when they employed schemes, devices and artifices with other third-party service providers and caused \$2,000 in illegal referral fees to be paid to Burger and Gibbons and an additional \$3,050 illegal costs to be paid to Gibbons and Century on the Thomas mortgage loan.

3.1.6 Century, Burger, Gibbons, Klein, Scott Tollefson, Jon Webb, Michael Deasy, Mark Hodge, Curtis Orvick and David Burger were in apparent violation of paragraphs 19.146.0201(1), (2), and (3) when they employed schemes, devices and artifices with other third-party service providers and caused to be prepared inflated appraisals on residential

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2 properties in order to create “phantom” equity for the purpose of inducing mortgage lenders to  
3 provide 100 percent financing or more for residential properties.

4           3.1.7 Century, Burger, Gibbons, Klein, Scott Tollefson, Michael Deasy, Jon Webb,  
5 Curtis Orvick, Mark Hodge and David Burger were in apparent violation of paragraphs  
6 19.146.0201 (6) when they failed to comply with prohibitions against equity skimming under  
7 RCW 61.34.020. Because Century failed to comply with this state law, it violated RCW  
8 19.146.0201(6), which requires mortgage brokers to comply with RCW 19.146.030 and any  
9 other applicable state or federal law.  
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11           3.1.8 Century, Burger, Gibbons, Klein, Scott Tollefson, Michael Deasy, and Jon Webb  
12 were in apparent violation of paragraph 19.146.0201(6) when they failed to comply with the  
13 affiliated business arrangement (AfBA) disclosure requirements under Regulation X, 24 CFR  
14 §3500.15 of the Real Estate Settlement Procedures Act (RESPA).  
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16           3.1.9 Century, Burger, Gibbons, and Klein were in apparent violation of paragraphs  
17 19.146.0201(9) when they directly withheld payments for third-party appraisals fees for the  
18 purposes of influencing the independent judgment of the appraiser.  
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20           3.1.10 Century, Burger, Gibbons and Klein were in apparent violation of paragraph  
21 19.146.0201(11) when they refused to pay Ryan the actual amount of the \$7,000 third-party  
22 appraisals fees owed, and instead paid only \$3,000 to Ryan, as presented in Section II of this  
23 statement of charges.  
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25           3.1.11 Pursuant to RCW 19.146.030(1), within three business days following receipt of  
26 a loan application or any moneys from a borrower, a mortgage broker shall provide to each

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borrower a full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker and other such disclosures as may be required by rule. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable.

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

(1) 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.

Century, Burger, Gibbons, and Klein were in apparent violation of this section when they failed to provide required TIL disclosures.

(c) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been

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entered, disclosure in a form acceptable to the Director that the disclosed interest rate and terms are subject to change.

Century, Burger, Gibbons, Klein, Curtis Orvick, Michael Deasy, Jon Webb, Scott Tollefson, Mark Hodge and David Burger were in apparent violation of this section when they failed to provide the lock-in agreement disclosure.

(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.

Century, Burger, Gibbons, Klein, Curtis Orvick, Michael Deasy, Jon Webb, Scott Tollefson, Mark Hodge and David Burger were in apparent violation of this section when they failed to provide the required third-party disclosures.

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

Century, Burger, Gibbons, Klein, Curtis Orvick, Michael Deasy, Jon Webb, Scott Tollefson, David Burger and Mark Hodge were in apparent violation of this section when they failed to provide the required disclosures on conditions under which lock-in fees are refundable.

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(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.

Century, Burger, Gibbons, Klein, Curtis Orvick, Michael Deasy, Jon Webb, Scott Tollefson, David Burger and Mark Hodge were in apparent violation of this section when they failed to provide the required disclosure statement on trust account funds on all the 22 mortgage loans investigated.

3.1.12 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. 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

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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.

Century, Burger, and Gibbons were in apparent violation of this section when they failed to deposit funds received from borrowers or on behalf of borrowers, for the payment of third-party providers, into a trust account.

3.1.13. 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. However, a person who independently contracts with a licensed mortgage broker need not be licensed if the licensed mortgage broker and the independent contractor have on file with the director a binding written agreement under which the licensed mortgage broker assumes responsibility for the independent contractor's violations of any provision of this chapter or rules adopted under this chapter; and if the licensed mortgage broker's bond or other security required under this chapter runs to the benefit of the state and any person who suffers loss by reason of the independent contractor's violation of any provision of this chapter or rules adopted under this chapter.

Burger, Gibbons, Klein, BK, BKK and Taylor were in apparent violation of this section when they assisted 576 borrowers in obtaining or applying to obtain mortgage loans for

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compensation or gain or expectation of compensation or gain without first seeking and obtaining a mortgage broker license.

Taylor was in apparent violation of these paragraphs when he failed to file with the Department a binding written agreement between the licensed mortgage broker and the independent contractor under which the licensed mortgage broker assumes responsibility for the independent contractor's violations of the Act.

3.1.14 Pursuant to RCW 19.146.205(4)(a), each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount of not greater than sixty thousand dollars nor less than twenty thousand dollars which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety.

Burger, Gibbons, Klein, BK, BKK and Taylor were in apparent violation of this section when they failed to maintain a surety bond prior to making mortgage loans or assisting borrowers in obtaining or applying to obtain mortgage loans, or holding themselves out as being able to make mortgage loans or assisting borrowers in obtaining or applying to obtain mortgage loans.

3.1.15 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.
- (2) The Director may impose the following sanctions:
  - (b) Suspend or revoke licenses for:



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- (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
- (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:
  - (j) 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
  - (i) 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.

3.1.16. Pursuant to RCW 19.146.228(2), the Director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering

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2 this chapter. Pursuant to WAC 208-660-060(4), the investigation charge shall be calculated at  
3 the rate of forty-five dollars per hour that each staff person devoted to the investigation.

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5 3.1.17 Pursuant to WAC 208-660-160, the Director may deny or condition approval of  
6 a license application, or suspend or revoke a license if the applicant or licensee, or any principal  
7 or designated broker of the applicant or licensee:

8 (1) Has violated the provisions of the Mortgage Broker Practices Act, or the  
9 Consumer Protection Act.

10 (2) Has aided or abetted an unlicensed person to practice in violation of the  
11 Mortgage Broker Practices Act

12 (3) Has demonstrated incompetence or negligence that results in injury to a person  
13 or that creates an unreasonable risk that a person may be harmed.

14 (4) Has performed an act of misrepresentation or fraud in any aspect of the conduct  
15 of the mortgage broker business or profession.

16 3.1.18 Pursuant to WAC 208-660-165, each mortgage broker and each of its principals,  
17 designated brokers, officers, employees, independent contractors, and agents shall comply with  
18 the applicable provisions of the Mortgage Broker Practices Act. Each violation of any applicable  
19 provision of the Mortgage Broker Practices Act, or of any order, directive, or requirement of  
20 the Director may, at the discretion of the Director, subject the violator to a fine of up to one  
21 hundred dollars for each offense. Each day's continuance of the violation is a separate and  
22 distinct offense. In addition, the Director in his or her discretion may by order assess other  
23 penalties for a violation of the Mortgage Broker Practices Act.

#### 24 **IV. NOTICE OF INTENTION TO ENTER AN ORDER**

25 The violations of the Act by Burger, Gibbons, Klein, Taylor, Curtis Orvick, Michael  
26 Deasy, Jon Webb, Scott Tollefson, Mark Hodge and David Burger constitute the basis for the  
entry of an order under RCW 19.146.220. Therefore, it is the Director's intention to ORDER:

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4.1 That Century Mortgage, Inc.'s license is revoked for a period of 20 years,

4.2 That Ronald L. Burger, is removed from office and prohibited from participation in the conduct of the affairs of a licensed mortgage broker, or mortgage broker subject to licensing under the Act, as an officer, principal, employee or loan originator for a period of twenty years,

4.3 That Dale (Sage) Gibbons is removed from office and prohibited from participation in the conduct of the affairs of a licensed mortgage broker, or mortgage broker subject to licensing under the Act, as an officer, principal, employee or loan originator for a period of twenty years,

4.4 That Dwaine R. Klein is removed from office and prohibited from participation in the conduct of the affairs of a licensed mortgage broker, or mortgage broker subject to licensing under the Act, as an officer, principal, employee or loan originator for a period of ten years,

4.5 That Gene Arthur Taylor is removed from office and prohibited from participation in the conduct of the affairs of a licensed mortgage broker, or mortgage broker subject to licensing under the Act, as an officer, principal, employee or loan originator for a period of ten years, and

4.6 That the following loan officers be removed from office and prohibited from participation in the conduct of the affairs of a licensed mortgage broker, or mortgage broker subject to licensing under the Act, as officers, principals, employees or loan originators for a period of five years:

- (1) Michael Deasy
- (2) Curtis Orvick
- (3) Jon Webb
- (4) Scott Tollefson
- (5) Mark Hodge

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(6) David Burger

4.7 That Century and/or Burger, Gibbons and Klein shall pay fines in the amount of \$1,456,650 for violations of the Mortgage Broker Practices Act as described below:

4.7.1 68 violations of RCW 19.146.0201(1) calculated at \$100.00 per day for 30 days for each violation for a total of \$204,000 for directly or indirectly employing a scheme, device, or artifice to defraud or mislead in the making of the mortgage loans presented in Section II of this statement of charges.

4.7.2 68 violations of RCW 19.146.0201(2) calculated at \$100.00 per day for 30 days for each violation for a total of \$204,000 for engaging in an unfair or deceptive practice in the making of the mortgage loans presented in Section II of this statement of charges.

4.7.3 68 violation of RCW 19.146.0201(3), calculated at \$100.00 per day for 30 days for a total of \$204,000.00 for obtaining property by fraud and misrepresentation in the making of the mortgage loans.

4.7.4 33 violations of RCW 19.146.0201(6) calculated at \$100.00 per day for 30 days for a total of \$99,000.00 for failing to make Affiliated Business Arrangement disclosures to loan applicants and noninstitutional investors, and failing to comply with prohibitions against Equity Skimming as required by RCW 19.146.030, in the making of the mortgage loans.

4.7.5 96 violations of RCW 19.146.0201(9) calculated at \$100 per day for 30 days for a total of \$288,000 for directly withholding payments for third-party appraisals for the purposes of influencing the independent judgment of the appraiser.

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4.7.6 16 violations of RCW 19.146.0201(11) calculated at \$100 per day for 30 days for a total of \$48,000 for failing to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service.

4.7.7 Four violations of RCW 19.146.030(2)(a) calculated at \$75 for 30 days for a total of \$9,000 for failing to provide the required Truth in Lending disclosure for the mortgage loans presented in Section II of the statement of charges.

4.7.8 Five violations of RCW 19.146.030(2)(a) calculated at \$75 for 30 days for a total of \$11,250 for failing to provide the Variable Rate disclosures required under the Truth in Lending Act as presented in Section II of the statement of charges

4.7.9 22 violations of RCW 19.146.030(2)(c) calculated at \$100 per day for 30 days for a total of \$66,000 for failing to provide the lock-in agreement disclosure required for the mortgage loans presented in Section II of this statement of charges.

4.7.10 22 violations of RCW 19.146.030(2)(d) calculated at \$100 for 30 days for a total of \$66,000 for failing to provide the required third-party disclosures for mortgage loans presented in Section II of the statement of charges.

4.7.11 22 violations of RCW 19.146.030(2)(e) calculated at \$100 for 30 days for a total of \$66,000 for failing to provide the required disclosures on conditions under which lock-in fees are refundable for the mortgage loans noted in Section II of the statement of charges.

4.7.12 22 violations of RCW 19.146.030(2)(f) calculated at \$100 for 30 days for a total of \$66,000 for failing to provide the disclosure required for funds held in the trust account for

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third-party provider services on the 22 mortgage loans analyzed in Section II of the statement of charges.

4.7.13 13 violations of RCW 19.146.050 calculated at \$100 for 30 days for a total of \$39,000 for failing to deposit funds received from borrowers or on behalf of borrowers, for the payment of third-party providers, into a trust account.

4.7.14 576 violations of RCW 19.146.200(1) calculated at \$75 for one day for a total of \$43,200 for engaging in the business of a mortgage broker without first obtaining and maintaining a license under this chapter as presented in Section II of this statement of charges.

4.7.15 576 violations of RCW 19.146.205(4a) calculated at \$75 for one day for a total of \$43,200 for failing to maintain a surety bond prior to making mortgage loans or assisting borrowers in obtaining or applying to obtain mortgage loans, or holding themselves out as being able to make mortgage loans or assisting borrowers in obtaining or applying to obtain mortgage loans as presented in Section II of this statement of charges.

4.8 That Gene A. Taylor dba Century Mortgage and/or Gene Arthur Taylor shall pay fines in the amount of \$28,800 for violations of the Mortgage Broker Practices Act as described below:

4.8.1 576 violations of RCW 19.146.200(1) at \$25 for one day for a total of \$14,400 for failing to file with the Department a binding written agreement between the licensed mortgage broker and the independent contractor under which the licensed mortgage broker assumes responsibility for the independent contractor's violations of the Act. Taylor rather participated

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2 with BKK, BK, Burger, Gibbons, and Klein in the conduct of unlicensed mortgage broker  
3 business in violation of the Mortgage Broker Practices Act.

4 4.8.2 576 violations of RCW 19.146.205(4a) 576 violations of RCW 19.146.205(4a)  
5 calculated at \$25 for one day for a total of \$14,400 for failing to maintain a surety bond in order to  
6 provide sufficient surety bond coverage to protect borrowers who obtained loans through  
7 Burger, Gibbons, Klein, BK, or BKK, either as independent contractors or as employees of  
8 Taylor.  
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10 4.9 That Michael Deasy shall pay fines in the amount of \$90,000 for violations of the  
11 Mortgage Broker Practices Act as described below:

12 4.9.1 6 violations of RCW 19.146.0201(1) calculated at \$100.00 per day for 30 days for  
13 each violation for a total of \$18,000 for directly or indirectly employing a scheme, device, or artifice  
14 to defraud or mislead in the making of the mortgage loans presented in Section II of this statement  
15 of charges.  
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17 4.9.2 6 violations of RCW 19.146.0201(2) calculated at \$100.00 per day for 30 days for  
18 each violation for a total of \$18,000 for engaging in an unfair or deceptive practice in the making of  
19 the mortgage loans presented in Section II of this statement of charges.  
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21 4.9.3 6 violations of RCW 19.146.0201(3), calculated at \$100.00 per day for 30 days for a  
22 total of \$18,000.00 for obtaining property by fraud and misrepresentation in the making of the  
23 mortgage loans presented in Section II of this statement of charges.  
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25 4.9.4 4 violations of RCW 19.146.0201(6) calculated at \$100.00 per day for 30 days for a  
26 total of \$12,000.00 for failing to make Affiliated Business Arrangement disclosures to loan applicants

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2 and noninstitutional investors, and failing to comply with prohibitions against Equity Skimming as  
3 required by RCW 19.146.030, in the making of the loans presented in Section II of this statement of  
4 charges.

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6 4.9.5 2 violations of RCW 19.146.030(2)(c) calculated at \$100 per day for 30 days for a  
7 total of \$6,000 for failing to provide the lock-in agreement disclosure required for the mortgage  
8 loans presented in Section II of this statement of charges.

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10 4.9.6 2 violations of RCW 19.146.030(2)(d) calculated at \$100 for 30 days for a total of  
11 \$6,000 for failing to provide the required third-party disclosures for mortgage loans presented in  
12 Section II of the statement of charges.

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14 4.9.7 2 violations of RCW 19.146.030(2)(e) calculated at \$100 for 30 days for a total of  
15 \$6,000 for failing to provide the required disclosures on conditions under which lock-in fees are  
16 refundable for the mortgage loans noted in Section II of the statement of charges.

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18 4.9.8 2 violations of RCW 19.146.030(2)(f) calculated at \$100 for 30 days for a total of  
19 \$6,000 for failing to provide the disclosure required for funds held in the trust account for third-  
20 party provider services.

21 4.10. That Curtis Orvick shall pay fines in the amount of \$42,000 for violations of the  
22 Mortgage Broker Practices Act as described below:

23 4.10.1 3 violations of RCW 19.146.0201(1) calculated at \$100.00 per day for 30 days for  
24 each violation for a total of \$9,000 for directly or indirectly employing a scheme, device, or artifice to  
25 defraud or mislead in the making of the mortgage loans presented in Section II of this statement of  
26 charges.



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4.10.2 3 violations of RCW 19.146.0201(2) calculated at \$100.00 per day for 30 days for each violation for a total of \$9,000 for engaging in an unfair or deceptive practice in the making of the mortgage loans presented in Section II of this statement of charges.

4.10.3 3 violations of RCW 19.146.0201(3), calculated at \$100.00 per day for 30 days for a total of \$9,000.00 for obtaining property by fraud and misrepresentation in the making of the mortgage loans presented in Section II of this statement of charges.

4.10.4 1 violation of RCW 19.146.0201(6) calculated at \$100.00 per day for 30 days for a total of \$3,000.00 for failing to make Affiliated Business Arrangement disclosures to loan applicants and noninstitutional investors, and failing to comply with prohibitions against Equity Skimming as required by RCW 19.146.030, in the making of the loans presented in Section II of this statement of charges.

4.10.5 1 violation of RCW 19.146.030(2)(c) calculated at \$100 per day for 30 days for a total of \$3,000 for failing to provide the lock-in agreement disclosure required for the mortgage loans presented in Section II of this statement of charges.

4.10.6 1 violation of RCW 19.146.030(2)(d) calculated at \$100 for 30 days for a total of \$3,000 for failing to provide the required third-party disclosures for mortgage loans presented in Section II of the statement of charges.

4.10.7 1 violation of RCW 19.146.030(2)(e) calculated at \$100 for 30 days for a total of \$3,000 for failing to provide the required disclosures on conditions under which lock-in fees are refundable for the mortgage loans noted in Section II of the statement of charges.

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4.10.8 1 violation of RCW 19.146.030(2)(f) calculated at \$100 for 30 days for a total of \$3,000 for failing to provide the disclosure required for funds held in the trust account for third-party provider services.

4.11 That Jon Webb shall pay fines in the amount of \$45,000 for violations of the Mortgage Broker Practices Act as described below:

4.11.1 3 violations of RCW 19.146.0201(1) calculated at \$100.00 per day for 30 days for each violation for a total of \$9,000 for directly or indirectly employing a scheme, device, or artifice to defraud or mislead in the making of the mortgage loans presented in Section II of this statement of charges.

4.11.2 3 violations of RCW 19.146.0201(2) calculated at \$100.00 per day for 30 days for each violation for a total of \$9,000 for engaging in an unfair or deceptive practice in the making of the mortgage loans presented in Section II of this statement of charges.

4.11.3 3 violations of RCW 19.146.0201(3), calculated at \$100.00 per day for 30 days for a total of \$9,000.00 for obtaining property by fraud and misrepresentation in the making of the mortgage loans presented in Section II of this statement of charges.

4.11.4 2 violations of RCW 19.146.0201(6) calculated at \$100.00 per day for 30 days for a total of \$6,000.00 for failing to make Affiliated Business Arrangement disclosures to loan applicants and noninstitutional investors, and failing to comply with prohibitions against Equity Skimming as required by RCW 19.146.030, in the making of the loans presented in Section II of this statement of charges.

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4.11.5 1 violation of RCW 19.146.030(2)(c) calculated at \$100 per day for 30 days for a total of \$3,000 for failing to provide the lock-in agreement disclosure required for the mortgage loans presented in Section II of this statement of charges.

4.11.6 1 violation of RCW 19.146.030(2)(d) calculated at \$100 for 30 days for a total of \$3,000 for failing to provide the required third-party disclosures for mortgage loans presented in Section II of the statement of charges.

4.11.7 1 violation of RCW 19.146.030(2)(e) calculated at \$100 for 30 days for a total of \$3,000 for failing to provide the required disclosures on conditions under which lock-in fees are refundable for the mortgage loans noted in Section II of the statement of charges.

4.11.8 1 violation of RCW 19.146.030(2)(f) calculated at \$100 for 30 days for a total of \$3,000 for failing to provide the disclosure required for funds held in the trust account for third-party provider services.

4.12 That Scott Tollefson shall pay fines in the amount of \$69,000 for violations of the Mortgage Broker Practices Act as described below:

4.12.1 5 violations of RCW 19.146.0201(1) calculated at \$100.00 per day for 30 days for each violation for a total of \$15,000 for directly or indirectly employing a scheme, device, or artifice to defraud or mislead in the making of the mortgage loans presented in Section II of this statement of charges.

4.12.2 3 violations of RCW 19.146.0201(2) calculated at \$100.00 per day for 30 days for each violation for a total of \$15,000 for engaging in an unfair or deceptive practice in the making of the mortgage loans presented in Section II of this statement of charges.

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4.12.3 3 violations of RCW 19.146.0201(3), calculated at \$100.00 per day for 30 days for a total of \$15,000.00 for obtaining property by fraud and misrepresentation in the making of the mortgage loans presented in Section II of this statement of charges.

4.12.4 4 violations of RCW 19.146.0201(6) calculated at \$100.00 per day for 30 days for a total of \$12,000.00 for failing to make Affiliated Business Arrangement disclosures to loan applicants and noninstitutional investors, and failing to comply with prohibitions against Equity Skimming as required by RCW 19.146.030, in the making of the loans presented in Section II of this statement of charges.

4.12.5 1 violation of RCW 19.146.030(2)(c) calculated at \$100 per day for 30 days for a total of \$3,000 for failing to provide the lock-in agreement disclosure required for the mortgage loans presented in Section II of this statement of charges.

4.12.6 1 violation of RCW 19.146.030(2)(d) calculated at \$100 for 30 days for a total of \$3,000 for failing to provide the required third-party disclosures for mortgage loans presented in Section II of the statement of charges.

4.12.7 1 violation of RCW 19.146.030(2)(e) calculated at \$100 for 30 days for a total of \$3,000 for failing to provide the required disclosures on conditions under which lock-in fees are refundable for the mortgage loans noted in Section II of the statement of charges.

4.12.8 1 violation of RCW 19.146.030(2)(f) calculated at \$100 for 30 days for a total of \$3,000 for failing to provide the disclosure required for funds held in the trust account for third-party provider services.

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4.13 That Mark Hodge shall pay fines in the amount of \$42,000 for violations of the Mortgage Broker Practices Act as described below:

4.13.1 3 violations of RCW 19.146.0201(1) calculated at \$100.00 per day for 30 days for each violation for a total of \$9,000 for directly or indirectly employing a scheme, device, or artifice to defraud or mislead in the making of the mortgage loans presented in Section II of this statement of charges.

4.13.2 3 violations of RCW 19.146.0201(2) calculated at \$100.00 per day for 30 days for each violation for a total of \$9,000 for engaging in an unfair or deceptive practice in the making of the mortgage loans presented in Section II of this statement of charges.

4.13.3 3 violations of RCW 19.146.0201(3), calculated at \$100.00 per day for 30 days for a total of \$9,000.00 for obtaining property by fraud and misrepresentation in the making of the mortgage loans presented in Section II of this statement of charges.

4.13.4 1 violation of RCW 19.146.0201(6) calculated at \$100.00 per day for 30 days for a total of \$3,000.00 for failing to make Affiliated Business Arrangement disclosures to loan applicants and noninstitutional investors, and failing to comply with prohibitions against Equity Skimming as required by RCW 19.146.030, in the making of the loans presented in Section II of this statement of charges.

4.13.5 1 violation of RCW 19.146.030(2)(c) calculated at \$100 per day for 30 days for a total of \$3,000 for failing to provide the lock-in agreement disclosure required for the mortgage loans presented in Section II of this statement of charges.

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4.13.6 1 violation of RCW 19.146.030(2)(d) calculated at \$100 for 30 days for a total of \$3,000 for failing to provide the required third-party disclosures for mortgage loans presented in Section II of the statement of charges.

4.13.7 1 violation of RCW 19.146.030(2)(e) calculated at \$100 for 30 days for a total of \$3,000 for failing to provide the required disclosures on conditions under which lock-in fees are refundable for the mortgage loans noted in Section II of the statement of charges.

4.13.8 1 violation of RCW 19.146.030(2)(f) calculated at \$100 for 30 days for a total of \$3,000 for failing to provide the disclosure required for funds held in the trust account for third-party provider services.

4.14 David Burger shall pay fines in the amount of \$33,000 for violations of the Mortgage Broker Practices Act as described below:

4.14.1 2 violations of RCW 19.146.0201(1) calculated at \$100.00 per day for 30 days for each violation for a total of \$6,000 for directly or indirectly employing a scheme, device, or artifice to defraud or mislead in the making of the mortgage loans presented in Section II of this statement of charges.

4.14.2 2 violations of RCW 19.146.0201(2) calculated at \$100.00 per day for 30 days for each violation for a total of \$6,000 for engaging in an unfair or deceptive practice in the making of the mortgage loans presented in Section II of this statement of charges.

4.14.3 2 violations of RCW 19.146.0201(3), calculated at \$100.00 per day for 30 days for a total of \$6,000.00 for obtaining property by fraud and misrepresentation in the making of the mortgage loans presented in Section II of this statement of charges.

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4.14.4 1 violation of RCW 19.146.0201(6) calculated at \$100.00 per day for 30 days for a total of \$3,000.00 for failing to make Affiliated Business Arrangement disclosures to loan applicants and noninstitutional investors, and failing to comply with prohibitions against Equity Skimming as required by RCW 19.146.030, in the making of the loans presented in Section II of this statement of charges.

4.14.5 1 violation of RCW 19.146.030(2)(c) calculated at \$100 per day for 30 days for a total of \$3,000 for failing to provide the lock-in agreement disclosure required for the mortgage loans presented in Section II of this statement of charges.

4.14.6 1 violation of RCW 19.146.030(2)(d) calculated at \$100 for 30 days for a total of \$3,000 for failing to provide the required third-party disclosures for mortgage loans presented in Section II of the statement of charges.

4.14.7 1 violation of RCW 19.146.030(2)(e) calculated at \$100 for 30 days for a total of \$3,000 for failing to provide the required disclosures on conditions under which lock-in fees are refundable for the mortgage loans noted in Section II of the statement of charges.

4.14.8 1 violation of RCW 19.146.030(2)(f) calculated at \$100 for 30 days for a total of \$3,000 for failing to provide the disclosure required for funds held in the trust account for third-party provider services.

4.15 That Ronald L. Burger, Dale (Sage) Gibbons, Dwaine R. Klein and Century Mortgage, Inc. shall pay restitution as follows:

- (1) Sherene Thomas for a total of \$5,050
- (2) Robert Ryan for a total of \$4,000

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- (3) Grandin Smith for a total of \$4,020.31
- (4) Steven Sanderson for a total of \$14,525
- (5) Carroll Lindsey for a total of \$1,584
- (6) Sandra DeWitt for a total of \$2,898.40

4.16 That Century pays investigation/examination fees of \$35,370 calculated at \$45.00 per hour for 786 hours of investigation/examination.

4.17 That Century maintains all books and records in compliance with RCW 19.146.060.

**V. AUTHORITY AND PROCEDURE**

This Statement of Charges and Notice of Intention to Enter an Order to Revoke a License and to Prohibit from Participation in the Mortgage Broker Industry is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.230 and chapter 34.05 RCW. The Respondents may make a written request for a hearing as set forth in the Notice of Opportunity to Defend and Opportunity for Hearing accompanying the Statement of Charges and Notice of Intent to Enter an Order.

DATED at Olympia, Washington this 26th day of August, 2002.

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

Presented by:  
/S/ \_\_\_\_\_  
 W. Kwadwo Boateng  
 Financial Examiner Supervisor

Reviewed by:  
/S/ \_\_\_\_\_  
 Chuck Cross  
 Enforcement Chief