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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

Devin M. Hughes,

Respondent.

NO. C-04-069-05-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO PROHIBIT FROM INDUSTRY
AND COLLECT INVESTIGATION FEE

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INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as of July 29, 2005, the Director institutes this proceeding and alleges as follows:

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I. FACTUAL ALLEGATIONS

1.1 Respondent: Devin M. Hughes (Hughes) was an employee of Allied Mortgage Capital, Inc. (Allied), a licensed mortgage broker, on or about April 2000 through December 2001. Hughes is known to have conducted business at the following location:

Allied Mortgage Capital
12019 E. Sprague, Ste A
Spokane, WA 98206

1.2 Investigation: The Department received information in January 2002 that Hughes had embezzled funds from Allied and misappropriated money given to him by consumers. The Department of Financial Institutions initiated an investigation to review the allegations against Hughes. According to information provided to the Department, the Spokane County Prosecutor's Office had charged Hughes with multiple counts

1 of theft related to his conduct as an employee of Allied. The Department then monitored the progress of the
2 Spokane County action.

3 **1.3 Criminal Conviction of Felonies:** On September 17, 2004, in the Superior Court of Spokane County,
4 Washington, Cause No. 03-1-01057-1, Hughes was sentenced to ten felony counts and one misdemeanor count:

5 **A. Theft in the Second Degree** – RCW 9A.56.020(1)(a) and RCW 9A.56.040(1)(a) six counts:

6 Hughes pled guilty to stealing consumer’s money while acting as a loan officer for Allied.

7 **B. Money Laundering** – RCW 9A.83.020(1)(f) two counts: Hughes pled guilty to laundering the
8 proceeds of the thefts.

9 **C. Fraudulent Transfer of Trust Funds** – RCW 19.146.050 two counts: Hughes pled guilty to
10 misappropriating consumer’s funds that should have been placed in a dedicated trust account while
11 acting as a loan officer for Allied.

12 **D. Theft Third Degree** – RCW 9A.56.050(1)(a) one count: Hughes pled guilty to one misdemeanor
13 count of stealing a consumer’s money.

14 **1.4 Sentence:** As a result of Hughes’ conviction of the ten felonies and one misdemeanor described in
15 Paragraph 1.3 above, a Judgment and Sentence was ordered against Hughes as follows:

16 **A. Restitution, Fees and Fines:** Hughes was ordered to pay to the Clerk of the Court \$175,000 in
17 restitution to Allied. Hughes was also ordered to pay \$710.00 in other fees and fines.

18 **B. No Contact:** Hughes was ordered not to have contact for five years with all victims and witnesses
19 named in the police reports.

20 **C. Confinement:** Hughes was ordered to 27 months confinement with credit for 170 days served.

21 **D. Prohibition From The Industry:** Hughes was ordered not to seek or secure employment in the
22 mortgage or real estate industry. Hughes was also ordered to disclose this conviction to any current or
23 potential employer.

1 **II. GROUNDS FOR ENTRY OF ORDER**

2 **2.1 Authority to Prohibit from the Industry:** Pursuant to RCW 19.146.220(2)(e)(iii), the Director may
3 prohibit from participation in the conduct of the affairs of a licensed mortgage broker, any officer, principal,
4 employee, or loan originator of any licensed mortgage broker or any person subject to licensing under the Act
5 for conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining
6 a license.

7 **2.2 Authority to Charge Investigation Fee:** Pursuant to RCW 19.146.228(2), WAC 208-660-060(4) and
8 WAC 208-660-061, upon completion of any investigation of the books and records of a licensee or other person
9 subject to the Act, the Department will furnish to the licensee or other person subject to the Act a billing to cover
10 the cost of the investigation. The investigation charge will be calculated at the rate of forty-seven dollars and
11 seventy-eight cents (\$47.78) per hour that each staff person devoted to the investigation.

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13 **III. NOTICE OF INTENTION TO ENTER ORDER**

14 Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth
15 in the above Factual Allegations and Grounds for Entry of Order, constitute a basis for the entry of an Order under
16 RCW 19.146.220, RCW 19.146.221 and RCW 19.146.223. Therefore, it is the Director's intention to ORDER
17 that:

18 3.1 Respondent Devin M. Hughes be prohibited from participation in the conduct of the affairs of any
19 licensed mortgage broker, in any manner, for a period of ten (10) years; and

20 3.2 Respondent Devin M. Hughes pay an investigation fee in the amount of \$226.95 calculated at \$47.78
per hour 4.75 staff hours devoted to the investigation.

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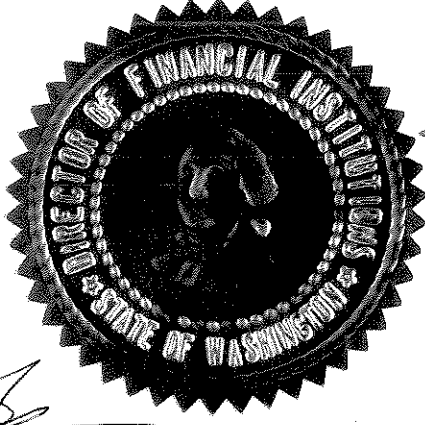
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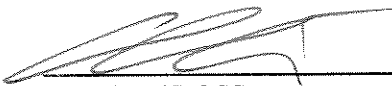
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IV. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry and Collect Investigation Fee is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondent may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry and Collect Investigation Fee.

Dated this 29th day of July 2005.





CHUCK CROSS
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:



Ned Jursek
Financial Legal Examiner

1 **RCW 19.146.010 Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

2 ...
3 (12) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan.

4 ...
5 (14) A person is "convicted" of a crime, irrespective of the pronouncement or suspension of sentence, if the person:
6 •Is convicted of the crime in any jurisdiction;
7 •Is convicted of a crime which, if committed within this state would constitute such a crime under the laws of this state;
8 •Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or
9 •Has been found guilty of such a crime by the decision or judgment of a court or federal magistrate or by the verdict of a jury.

10 (15) "Department" means the department of financial institutions.

11 ...
12 (17) "Director" means the director of financial institutions.

13 ...
14 (22) "Independent contractor" or person who independently contracts" means any person that:
15 • Expressly or impliedly contracts to perform mortgage broker activities for a licensee;
16 • With respect to its manner or means of performing the activities, is not subject to the licensee's right of control; and
17 • Is not treated as an employee by the licensee for the purposes of compliance with federal income tax laws.

18 ...
19 (24) "License" means a license issued by the director to engage in the mortgage broker business.

20 (25) "Licensee" or "licensed mortgage broker" means:
21 •A mortgage broker licensed by the director; and
22 •Any person required to be licensed pursuant to RCW 19.146.200 and 19.146.020.

23 (26) "Loan originator" means a natural person:
24 •Who is a mortgage broker employee who performs any mortgage broker activities; or
25 •Who is retained as an independent contractor by a mortgage broker, or represents a mortgage broker, in the performance of any mortgage broker activities.

...
[1997 c 106 § 1; 1994 c 33 § 3; 1993 c 468 § 2; 1987 c 391 § 3.]

17 **RCW 19.146.220 Director -- Powers and duties -- Violations as separate violations -- Rules.**

18 (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.

19 (2) The director may impose the following sanctions:
20 (a) Deny applications for licenses for: (i) Violations of orders, including cease and desist orders issued under this chapter; or (ii) any violation of RCW 19.146.050 or 19.146.0201 (1) through (9);
21 (b) Suspend or revoke licenses for:
22 (i) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;
23 (ii) Failure to pay a fee required by the director or maintain the required bond;
24 (iii) Failure to comply with any directive or order of the director; or
25 (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:

- 1 (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
2 (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:
3 (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
4 (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:
5 (i) Any violation of 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4),
or 19.146.265; or
6 (ii) False statements or omission of material information on the application that, if known, would have allowed the
director to deny the application for the original license;
7 (iii) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a
license; or
8 (iv) Failure to comply with any directive or order of the director.

9 (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.

10 (4) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions.

11 (5) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW
74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a
*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the
12 suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the
department of social and health services stating that the licensee is in compliance with the order.

13 [1997 c 106 § 12; 1997 c 58 § 879; 1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

14 **RCW 19.146.221 Action by director -- Hearing -- Sanction.**

15 The director may, at his or her discretion and as provided for in *RCW 19.146.220(2), take any action specified in RCW
19.146.220(1). If the person subject to such action does not appear in person or by counsel at the time and place designated
for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If
16 the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any
grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.

17 [1994 c 33 § 13.]

18 **RCW 19.146.223 Director -- Administration and interpretation.**

19 The director shall have the power and broad administrative discretion to administer and interpret the provisions of this
chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005.

20 [1994 c 33 § 2.]

21 **RCW 19.146.228 Fees -- Rules -- Exception.**

The director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of
administering this chapter. These fees may include:

- 22 (1) An annual assessment paid by each licensee on or before a date specified by rule;
23 (2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person
subject to this chapter; and
24 (3) An application fee to cover the costs of processing applications made to the director under this chapter.

1 Mortgage brokers shall not be charged investigation fees for the processing of complaints when the investigation
2 determines that no violation of this chapter occurred or when the mortgage broker provides a remedy satisfactory to the
3 complainant and the director and no order of the director is issued. All moneys, fees, and penalties collected under the
4 authority of this chapter shall be deposited into the financial services regulation fund, unless the consumer services account
5 is created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under this
6 chapter shall be deposited in the consumer services account.

7 [2001 c 177 § 5; 1997 c 106 § 13; 1994 c 33 § 9.]

8 **RCW 19.146.230 Administrative procedure act application.**

9 The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and
10 imposing civil penalties or other remedies issued pursuant to this chapter and any appeal therefrom or review thereof shall
11 be governed by the provisions of the administrative procedure act, chapter 34.05 RCW.

12 [1994 c 33 § 16; 1993 c 468 § 10.]

13 **RCW 19.146.235 Director -- Investigation powers -- Duties of person subject to examination or investigation.**

14 For the purposes of investigating complaints arising under this chapter, the director may at any time, either personally or by
15 a designee, examine the business, including but not limited to the books, accounts, records, and files used therein, of every
16 licensee and of every person engaged in the business of mortgage brokering, whether such a person shall act or claim to act
17 under or without the authority of this chapter. For that purpose the director and designated representatives shall have access
18 during regular business hours to the offices and places of business, books, accounts, papers, records, files, safes, and vaults
19 of all such persons.

20 The director or designated person may direct or order the attendance of and examine under oath all persons whose
21 testimony may be required about the loans or the business or subject matter of any such examination or investigation, and
22 may direct or order such person to produce books, accounts, records, files, and any other documents the director or
23 designated person deems relevant to the inquiry. If a person who receives such a directive or order does not attend and
24 testify, or does not produce the requested books, records, files, or other documents within the time period established in the
25 directive or order, then the director or designated person may issue a subpoena requiring attendance or compelling
production of books, records, files, or other documents. No person subject to examination or investigation under this
chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other
information.

Once during the first two years of licensing, the director may visit, either personally or by designee, the licensee's place or
places of business to conduct a compliance examination. The director may examine, either personally or by designee, a
sample of the licensee's loan files, interview the licensee or other designated employee or independent contractor, and
undertake such other activities as necessary to ensure that the licensee is in compliance with the provisions of this chapter.
For those licensees issued licenses prior to March 21, 1994, the cost of such an examination shall be considered to have
been prepaid in their license fee. After this one visit within the two-year period subsequent to issuance of a license, the
director or a designee may visit the licensee's place or places of business only to ensure that corrective action has been
taken or to investigate a complaint.

[1997 c 106 § 14; 1994 c 33 § 17; 1993 c 468 § 11.]

1 **WAC 208-660-060 Department's fees and assessments.**

2 (1) Upon completion of processing and reviewing an application for a license or branch office certificate, the department
3 will prepare a billing, regardless of whether a license or certificate has been issued, calculated at the rate of \$35.98 per hour
4 that each staff person devoted to processing and reviewing the application. The application deposit will be applied against
5 this bill. Any amount left owing to the department will be billed to and paid promptly by the applicant, while any balance
6 remaining from the deposit will be refunded promptly to the applicant.

7 (2) Upon completion of any examination of the books and records of a licensee, the department will furnish to the licensee
8 a billing to cover the cost of the examination. The examination charge will be calculated at the rate of \$46.26 per hour that
9 each staff person devoted to the examination. The examination billing will be paid by the licensee promptly upon receipt.
10 Licensees that were issued licenses prior to March 21, 1994, have prepaid in their initial license fee the cost of the first
11 compliance examination of the licensee conducted by the department during the first two years after the date of issuance of
12 the license.

13 (3) Each licensee shall pay to the director an annual assessment of \$513.95 for each license, and \$513.95 for each branch
14 office certificate. The annual assessment(s) will be due no later than the last business day of the month in which the
15 anniversary date of the issuance of the broker's license occurs.

16 (4) Upon completion of any investigation of the books and records of a mortgage broker other than a licensee, the
17 department will furnish to the broker a billing to cover the cost of the investigation. The investigation charge will be
18 calculated at the rate of \$46.26 per hour that each staff person devoted to the investigation. The investigation billing will be
19 paid by the mortgage broker promptly upon receipt.

20 [Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200, 01-12-029, § 208-660-
21 060, filed 5/29/01, effective 7/1/01; 96-04-028, recodified as § 208-660-060, filed 2/1/96, effective 4/1/96. Statutory
22 Authority: RCW 19.146.225, 95-13-091, § 50-60-060, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-060, filed
23 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9, 94-03-009, § 50-60-060, filed 1/7/94, effective 2/7/94.]

24 **WAC 208-660-061 Fee increase.**

25 The division intends to increase its fee and assessment rates each year for several bienniums. The division intends to
initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees
and assessments each fiscal year during the 2001-03 biennium.

(1) On July 1, 2002, the fee and assessment rates under WAC 208-660-060, as increased in the prior fiscal year, will
increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal
growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed
the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately
following July 1.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200, 01-12-029, § 208-660-
061, filed 5/29/01, effective 7/1/01.]