

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

IN THE MATTER OF INVESTIGATING
the Loan Originator License Application under the
Mortgage Broker Practices Act of Washington by:

NO. C-07-118-07-FO01

BRIAN JOHN KIRKLAND,

FINAL ORDER

Respondent.

I. DIRECTOR'S CONSIDERATION

A. Default. This matter has come before the Director of the Department of Financial Institutions of the State of Washington (Director), through his designee, Consumer Services Division Director Deborah Bortner, pursuant to RCW 34.05.440(1). On April 25, 2007, the Director, through Consumer Services Division Director Deborah Bortner, entered a Statement of Charges and Notice of Intention to Enter an Order to Deny License Application (Statement of Charges). A copy of the Statement of Charges is attached and incorporated into this order by this reference. The Statement of Charges was accompanied by a cover letter dated April 27, 2007, a Notice of Opportunity to Defend and Opportunity for Hearing, and a blank Application for Adjudicative Hearing. The Department served the Statement of Charges, cover letter dated April 24, 2007, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Application for Adjudicative Hearing on Respondent on May 1, 2007, by first class mail and Federal Express overnight delivery. On May 17, 2007, Respondent returned the Application for Adjudicative Hearing, but Respondent failed to designate on the document that Respondent was requesting a hearing.¹ Subsequently, on May 18, 2007, the Department returned the Application for Adjudicative Hearing to the Respondent by first class mail with a cover letter of the same date informing the Respondent that he needed to circle the word "REQUEST" if he was requesting a

¹ The Application for Adjudicative Hearing requires a Respondent to circle the word "REQUEST" or the words "DO NOT REQUEST" depending upon the Respondent's choice.

FINAL ORDER -
BRIAN JOHN KIRKLAND
C-07-118-07-FO01

DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

1 hearing, or circle the words "DO NOT REQUEST" if he was not requesting a hearing. Respondent was further
 2 instructed that if he did not return the form within fifteen (15) days, the Department would presume that he did
 3 not request a hearing. The Application for Adjudicative Hearing was not returned to the Department by the
 4 United States Postal Service as undeliverable and was not returned to the Department by Respondent.
 5 Consequently, Respondent did not request an adjudicative hearing within twenty calendar days after the
 6 Department served him with the Notice of Opportunity to Defend and Opportunity for Hearing, as provided for
 7 in WAC 208-08-050(2).

8 B. Record Presented. The record presented to the Director's designee for her review and
 9 for entry of a final decision included the Statement of Charges, cover letter dated April 27, 2007, Notice
 10 of Opportunity to Defend and Opportunity for Hearing, incomplete Application for Adjudicative Hearing
 11 and cover letter dated May 18, 2007, and documentation of service.

12 C. Factual Findings and Grounds For Order. Pursuant to RCW 34.05.440(1), the
 13 Director's designee hereby adopts the Statement of Charges, which is attached hereto.
 14

15 II. FINAL ORDER

16 Based upon the foregoing, and the Director's designee having considered the record and
 17 being otherwise fully advised, NOW, THEREFORE:

18 A. IT IS HEREBY ORDERED, That:

19 1. Respondent Brian John Kirkland's application for a loan originator license is denied.

20 B. Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to file a
 21 Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition
 22 must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150
 23 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia,
 24 Washington 98504-1200, within ten (10) days of service of the Final Order upon Respondent. The
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1 Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for
2 Reconsideration a prerequisite for seeking judicial review in this matter.

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

6 C. Stay of Order. The Director's designee has determined not to consider a Petition
7 to Stay the effectiveness of this order. Any such requests should be made in connection with a Petition
8 for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

9 D. Judicial Review. Respondent has the right to petition the superior court for judicial
10 review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing
11 a Petition for Judicial Review, see RCW 34.05.510 and sections following.

12 E. Service. For purposes of filing a Petition for Reconsideration or a Petition for
13 Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service
14 attached hereto.
15

16 DATED this 6th day of June, 2007.



18 STATE OF WASHINGTON
19 DEPARTMENT OF FINANCIAL INSTITUTIONS

20 *Deborah Bortner*

21 DEBORAH BORTNER
22 DIRECTOR
23 DIVISION OF CONSUMER SERVICES

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

IN THE MATTER OF INVESTIGATING
the Loan Originator License Application under the
Mortgage Broker Practices Act of Washington by:

BRIAN JOHN KIRKLAND,

Respondent.

NO. C-07-118-07-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO DENY LICENSE APPLICATION

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)¹. After having conducted an investigation pursuant to RCW 19.146.310, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondent Brian John Kirkland (Respondent Kirkland) submitted an application to the Department of Financial Institutions of the State of Washington (Department) for a loan originator license under Integrity Home Mortgage, Inc., a mortgage broker licensed under the Act. The on-line application was received by the Department on or about December 28, 2006.

1.2 Prior Criminal Acts. On March 8, 2005, Respondent Kirkland was convicted in the Pierce County District Court under cause number 4YC011010 of Theft in the Third Degree, a gross-misdemeanor crime of dishonesty pursuant to RCW 9A.56.050.

¹ RCW 19.146 (Amended 2006; Effective January 1, 2007)

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

2 **2.1 Requirement of No Prior Convictions.** Based on the Factual Allegations set forth in Section I above,
3 Respondent Kirkland fails to meet the requirements of RCW 19.146.310(1)(d) and WAC 208-660-350(2)(c) by
4 having been convicted of a gross misdemeanor involving dishonesty within seven years of the filing of the
5 present application.

6 **III. AUTHORITY TO IMPOSE SANCTIONS**

7 **3.1 Authority to Deny Application for Loan Originator License.** Pursuant to RCW 19.146.220(1), the
8 Director may deny licenses to loan originators. Pursuant to RCW 19.146.310(2) and WAC 208-660-350(7), the
9 Director shall not issue a loan originator license if the conditions of RCW 19.146.310(1) have not been met by
10 the applicant, and shall notify the loan originator applicant and any mortgage brokers listed on the application
11 of the denial.

12 **IV. NOTICE OF INTENTION TO ENTER ORDER**

13 Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth
14 in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis
15 for the entry of an Order under RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.310.
16 Therefore, it is the Director's intention to ORDER that:

17 **4.1** Respondent Brian John Kirkland's application for a loan originator license be denied.

18 **V. AUTHORITY AND PROCEDURE**

19 This Statement of Charges and Notice of Intention to Enter an Order to Deny License Application
20 (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW
21 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative
22 Procedure Act). Respondent may make a written request for a hearing as set forth in the NOTICE OF
23 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of
24 Charges.
25

1 Dated this 25th day of April, 2007.

Deborah Bortner

DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

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5 Presented by:

Steven C. Sherman

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8 STEVEN C. SHERMAN
Financial Legal Examiner



9
10 Approved by:

James R. Brusselback

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12 JAMES R. BRUSSELBACK
Enforcement Chief

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IN THE MATTER OF INVESTIGATING
the Loan Originator License Application under the
Mortgage Broker Practices Act of Washington by:

C-07-118-07-SC01

BRIAN JOHN KIRKLAND,
Respondent.

**NOTICE OF OPPORTUNITY TO DEFEND
AND OPPORTUNITY FOR HEARING**

THE STATE OF WASHINGTON TO: BRIAN JOHN KIRKLAND

YOU ARE HEREBY NOTIFIED that a STATEMENT OF CHARGES has been filed by the Department of Financial Institutions, a true and correct copy of which is attached and made a part hereof.

YOU ARE HEREBY NOTIFIED that you may file an application for an adjudicative hearing before the Washington State Department of Financial Institutions on the Statement of Charges. Service of this notice is deemed complete upon deposit in the United States mail. YOUR APPLICATION MUST BE RECEIVED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS WITHIN TWENTY (20) DAYS FROM THE DATE YOU RECEIVED THIS NOTICE. If you demand a hearing, you will be notified of the time and place for the hearing at least seven (7) days in advance of the hearing date.

At the hearing, you may appear personally, and by counsel, if you desire. The hearing will be as informal as is practical within the requirements of the Administrative Procedure Act (see chapter 34.05 RCW). The hearing will be recorded. The primary concern will be getting to the truth of the matter insofar as the Statement of Charges is concerned. Technical rules of evidence will not be binding at the hearing except for the rules of privilege recognized by law. You have the right to present evidence and witnesses in your own behalf, and to cross-examine those witnesses presented in support of the Statement of Charges. You may require the attendance of witnesses by subpoena. If you are limited English-speaking or hearing impaired, you have the right to have an interpreter appointed at no cost to you, as discussed below.

1 INTERPRETER AVAILABILITY. If you or a witness for you is a person who, because of non-English-
2 speaking cultural background, cannot readily speak or understand the English language, or if you or a witness for
3 you is a person who, because of a hearing impairment or speech defect, cannot readily understand or communicate
4 in spoken language, including persons who are deaf, deaf and blind, or hard of hearing, AND YOU NEED AN
5 INTERPRETER, then a qualified interpreter will be appointed at no cost to you or to the witness. You may request
6 the appointment of a qualified interpreter by indicating your request on the attached Application for Adjudicative
7 Hearing form.

8 YOU ARE FURTHER NOTIFIED that if the Department of Financial Institutions does not RECEIVE the
9 Application for Adjudicative Hearing form within twenty (20) days from the date you received this notice, this will
10 constitute a waiver of your right to a hearing and the Director will find that you do not contest the allegations of the
11 Statement of Charges. Upon such a finding by the Director a final order will be immediately entered disposing of
12 this matter as described in the Statement of Charges. If you desire a hearing in this matter, please return the
13 attached Application for Adjudicative Hearing to:

14 Department of Financial Institutions
15 Division of Consumer Services
16 Attn: Fatima Batie
17 PO Box 41200
18 Olympia, Washington 98504-1200

19 Dated this 25th day of April 2007.



20 *Deborah Bortner*

21 DEBORAH BORTNER
22 Director
23 Division of Consumer Services
24 Department of Financial Institutions