



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

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

NOEL BARTLETT KNAPPETT,

Respondent.

OAH Docket No. 2007-DFI-0029

No. C-07-191-07-FO02

**CORRECTED FINAL DECISION &  
ORDER MODIFYING PROPOSED  
FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND INITIAL ORDER ON MOTION  
FOR SUMMARY JUDGMENT**

THIS MATTER has come before the Director ("hereinafter, "Director") of the Department of Financial Institutions (hereinafter, "Department") in the above-enumerated administrative action in regard to the online Loan Originator License Application of NOEL BARTLETT KNAPPETT dated December 28, 2006 (hereinafter, "License Application") and pursuant to Proposed Findings of Fact, Conclusions of Law and Initial Order on Motion For Summary Judgment (hereinafter, "Initial Order"), based upon a Statement of Charges and Notice of Intention to Enter an Order to Deny License Application and Prohibit from Industry (hereinafter, "Statement of Charges") issued by the Division of Consumer Services (hereinafter, "Division") on or about June 12, 2007, under the authority of the Mortgage Broker Practices Act, Ch. 19.146 RCW (hereinafter, "MBPA").

THIS MATTER is before the Director at this time specifically in regard to a Motion for Clarification dated December 31, 2009, by the Division that is on file with the Department and has now come to the attention of the Director (hereinafter, "Motion for Clarification"). In its previous issuance of the Final Decision and Order on December 23, 2009, the Director inadvertently stated in error, at page 2, line 27, thereof, that neither party filed any petition for review of the Initial Order. On the contrary, the Division did indeed file a Petition for Review

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**CORRECTED FINAL DECISION & ORDER MODIFYING PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND INITIAL ORDER ON MOTION FOR SUMMARY JUDGMENT - 1**

1 with the Director on February 6, 2008 (hereinafter, "Petition for Review"). Thereafter, the  
2 Respondent, NOEL BARTLETT KNAPPETT (hereinafter, "Respondent"), filed a reply to the  
3 Division's Petition for Review on February 21, 2008 ("Respondent's Reply"). Respondent's  
4 Reply was received by the Office of Administrative Hearings (hereinafter, "OAH") on  
5 February 21, 2008, and forwarded to the Department by Administrative Law Judge Leslie A.  
6 Wagner (hereinafter, "Administrative Law Judge") on February 25, 2008.

7  
8 1.0 Procedural History. The Respondent timely requested an Administrative Hearing to  
9 contest the Statement of Charges (hereinafter, "Application for Hearing"), and this matter was  
10 assigned to the OAH, which designated the above-referenced Administrative Law Judge to  
11 hear the case. The Division made a Motion for Summary Judgment (hereinafter, "Summary  
12 Judgment Motion"), by and through its counsel, Assistant Attorney General, Chad Standifer  
13 (hereinafter, "Division Counsel"). Respondent, by and through his then attorney of record,  
14 Brian T. Ritchie (hereinafter, "Respondent's Counsel"), filed a Response to Motion for  
15 Summary Judgment (hereinafter, "Summary Judgment Response"). Division Counsel then  
16 filed on October 19, 2007, the Department's Reply to Respondent's Response to Motion for  
17 Summary Judgment (hereinafter, "Division's Reply"). Respondent's Counsel withdrew on or  
18 about November 20, 2007 (hereinafter, "Withdrawal of Counsel"). This was followed up by a  
19 letter from Stephen W. Lusa, President of Western States Mortgage, dated November 26, 2007,  
20 in which Mr. Lusa purports to be acting as an advocate for the position of Respondent  
21 (hereinafter, "Lusa Letter"), although Lusa never makes an appearance of record. A pre-  
22 hearing conference was held on November 26, 2007, and an order on prehearing conference  
23 was issued on November 29, 2008 (hereinafter, "Prehearing Order"), allowing the parties,  
24 especially Respondent, additional time to submit documents in support of their respective  
25 positions. On or about December 6, 2007, Division Counsel sent a letter to the Administrative  
26 Law Judge requesting that the Lusa Letter be ignored as opinion from an incompetent witness  
27 (hereinafter, "Division Counsel Letter"). Respondent then sent a letter to the Administrative  
28 Law Judge, dated December 14, 2007 (hereinafter, "Respondent's Letter"), by way of further  
29 argument in support of the Summary Judgment Response. On December 18, 2007, the  
30 Division submitted its Witness List and Proposed Exhibit List. Then, after consideration of the  
31 entire OAH record, including the License Application, Statement of Charges, Application for  
32 Hearing, Summary Judgment Motion, Summary Judgment Response, Division Reply,  
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1 Prehearing Order, Lusa Letter and Division Counsel Letter, the Administrative Law Judge  
2 issued the Initial Order on January 17, 2008, containing findings of fact (hereinafter, "FOF")  
3 and conclusions of law (hereinafter, "COL").

4 Thereafter, the Division filed its Petition for Review and Respondent filed  
5 Respondent's Reply, as afore-mentioned.

6 The Director subsequently received and has now considered the entire OAH Record.  
7 This Final Decision and Order are based upon a consideration of the entire record on review,  
8 including, without limitation, the following:  
9

- 10 1. The License Application;
- 11 2. The Statement of Charges;
- 12 3. Application for Hearing;
- 13 4. Summary Judgment Motion;
- 14 5. Summary Judgment Motion;
- 15 6. Declaration of Charles Wood in support of Summary Judgment Motion (hereinafter,  
16 "Wood Declaration");
- 17 7. Summary Judgment Response;
- 18 8. Declaration of Noel Knappett dated September 30, 2007 (hereinafter, "Knappett  
19 Declaration");
- 20 9. Division Reply;
- 21 10. Withdrawal of Counsel;
- 22 11. Prehearing Order;
- 23 12. Lusa Letter;
- 24 13. Division Counsel Letter;
- 25 14. Initial Order;
- 26 15. Petition for Review;
- 27 16. Respondent's Reply; and
- 28 17. Motion for Clarification.

29  
30 1.0 Summary of the Case. This is a case in which it is incontrovertible that Respondent  
31 was convicted on September 26, 2003, of Criminal Trespass in the First Degree – Domestic  
32 Violence and Theft in the Third Degree – Domestic Violence. Both violations disqualify  
33 Respondent from a loan originator license based upon a showing of lack of character and  
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1 fitness pursuant to RCW 19.146.300(1)(b) and WAC 208-660-350(2)(a). The latter violation  
2 automatically disqualifies Respondent from a loan originator license, pursuant to RCW  
3 19.146.310(1)(d), for having been convicted of a gross misdemeanor involving dishonesty or  
4 financial misconduct within seven (7) years of the License Application. In addition, because  
5 Respondent failed to disclose such criminal convictions in his License Application (simply  
6 answering "no" to the question of past criminal conduct), Respondent is also disqualified from  
7 obtaining a loan originator license pursuant to RCW 19.146.300(1)(b) and RCW  
8 19.146.310(1)(b). The sole questions before the Director are: (1) Whether the latent adoption  
9 of "employee" status (as discussed at length herein) may deprive the Director of authority to  
10 discipline Respondent; (2) whether the "withdrawal" of the License Application after  
11 Statement of Charges may render this case non-adjudicable; (3) whether the duration of  
12 industry ban sought by the Division is permissible and appropriate; and (4) whether the scope  
13 of the industry ban may exceed the exact terms of the Statement of Charges and the Initial  
14 Order. For the reasons set forth in detail below, the Director has determined that the latent  
15 establishment of "employee" status with Western States Mortgage as of September 3, 2007 and  
16 after the Statement of Charges was filed on June 12, 2007, does not deprive the Director of the  
17 authority to adjudicate this case. Secondly, the Director has determined that he still has  
18 authority to adjudicate this case despite the "withdrawal" of the License Application after the  
19 Statement of Charges was filed. Thirdly, the Director finds, as set forth below, that the  
20 industry ban sought by the Division in its Statement of Charges is permissible and appropriate.  
21 And finally, the Director also finds that the scope of the industry ban can and must be  
22 broadened to include any future conduct during the period of industry ban as an "independent  
23 contractor" loan originator of an exempt mortgage broker under RCW 19.146.020(1)(b), (c),  
24 (e) and (g).

## 27 2.0 Preliminary Considerations

28 2.1 The Issue of Respondent's "Employer". Respondent argues that the Division's  
29 administrative action is unwarranted on the grounds that, at the time of making his online  
30 application, Respondent was employed by Western States Mortgage Corp., doing business as  
31 Residential Capital Corporation (hereinafter, "Western States Mortgage"), whose president was  
32 Steven W. Lusa (hereinafter, "Lusa") and the author of the above-referenced Lusa Letter.  
33 Respondent argues that Western States Mortgage was an *exempt* mortgage broker and that,  
34

1 since Respondent was not required to be licensed as a loan originator for a consumer loan  
2 company<sup>1</sup> or an exempt mortgage broker,<sup>2</sup> his application ought to be ignored. This argument  
3 is without merit for three reasons:

4           2.1.1 Western States Mortgage "Independent Contractor" Business Model. At  
5 the time of the License Application and up until September 3, 2007,<sup>3</sup> Respondent applied for a  
6 loan originator license while an "independent contractor" of Western States Mortgage<sup>4</sup>  
7 Pursuant to advance notice to all exempt mortgage brokers (hereinafter, "EMBs") under the  
8 Administrative Procedures Act (Ch. 34.05 RCW), EMBs were informed that, effective January  
9 1, 2007, all "independent contractor" loan originators of EMBs exempt under RCW  
10 19.146.020(1)(b), (c), (e) and (g) would be required to obtain *loan originator* licenses under the  
11 MBPA.<sup>5</sup> The MBPA Rule, at WAC 208-660-008(9),<sup>6</sup> which was filed on November 21, 2006,  
12 and made effective as of January 1, 2007, specifically states:

13           **"(9) Are the independent contractors of a mortgage broker exempt under**  
14 **RCW 19.146.020 (1)(b), (c), (e), and (g) themselves exempt?** No. After January  
15 1, 2007, an independent contractor working as a loan originator for a mortgage  
16 broker exempt under RCW 19.146.020 (1)(b), (c), (e), and (g) must hold a loan  
17 originator license."

18 Western States Mortgage was declared an exempt mortgage broker by the Division for one of  
19 the following reasons covered under WAC 208-660-008(9): (1) It was making loans with its  
20 own funds without intent to resell the loans; or (2) it was an approved mortgage broker subject  
21 to auditing by the Federal National Mortgage Association (Fannie Mae) and/or Federal Home  
22

23  
24 <sup>1</sup> Loan originators *employed* by consumer loan companies licensed under the Consumer Loan Act (Ch. 31.04 RCW) are not required to be  
25 licensed under the Consumer Loan Act (hereinafter, "CLA") or the MBPA.

26 <sup>2</sup> Loan originators *employed* by mortgage brokers exempt pursuant to the MBPA, at RCW 19.146.020, are not required to obtain a loan  
27 originator license.

28 <sup>3</sup> The Director takes note of the Employment Agreement purportedly dated September 3, 2007, between Respondent and Western States  
29 Mortgage [see *Exhibit A* of Declaration of Noel Knappett, dated September 30, 2007], which appears on its face to be an employment  
30 agreement rather than an independent contractor agreement. The Director notes, however, that Respondent made a License Application on  
31 December 28, 2006, as an "independent contractor" of Western States Mortgage and that the Statement of Charges by the Division is dated  
32 June 12, 2007. Moreover, Respondent *voluntarily* applied for a loan originator license at a time when he was an "independent contractor," and  
33 the Statement of Charges was pending prior to Respondent purportedly switching from "independent contractor" status to that of "employee."

34 <sup>4</sup> The OAH Record establishes that Western States Mortgage was an exempt mortgage broker when Respondent applied for a loan originator  
license on December 28, 2008.

<sup>5</sup> See Division's Final Rule in question was filed with the Washington State Register under WSR 06-23-137, filed as of November 21, 2006, at  
2:45 P.M.

<sup>6</sup> When filed under WSR 06-23-137 (see *Footnote 4* above), the Division's Final Rule in question was originally codified as WAC 208-660-  
008(12).

1 Loan Mortgage Corporation (Freddie Mac).<sup>7</sup> Therefore, at the time of his filing the License  
2 Application on December 28, 2006, Respondent and his principal/employer, Lusa, were on  
3 notice that the requirements of WAC 208-660-008(9) would apply to Respondent and his  
4 License Application.<sup>8</sup>

5           2.1.2 “Voluntariness” of Respondent’s License Application. Notwithstanding  
6 the requirement that Respondent was required to file a License Application as an “independent  
7 contractor” of Western States Mortgage, this case is also properly before the Director because  
8 of the *voluntary* nature of the License Application itself.<sup>9</sup> RCW 19.146.020(3) specifically  
9 declares:

11           “(3) Any person otherwise exempted from the licensing provisions of this chapter  
12 may voluntarily submit an application to the director for a mortgage broker’s  
13 license.<sup>10</sup> The director shall review such application and may grant or deny  
14 licenses to such applicants upon the same grounds and with the same fees as may  
be applicable to persons required to be licensed under this chapter.”

15 So even assuming *arguendo* that Respondent was not required to file a License Application by  
16 reason of WAC 208-660-008(9), Respondent *voluntarily* filed the License Application and  
17 thereby submitted himself to the jurisdiction of the Division. Moreover, once having done so,  
18 Respondent cannot extricate himself from the injunctive relief sought by the Division in its  
19 Statement of Charges merely by attempting to “withdraw” his License Application when  
20 suddenly faced with summary judgment.<sup>11</sup>

23 \_\_\_\_\_  
24 <sup>7</sup> See RCW 19.146.020(1)(e and (g)). Western States Mortgage had ceased to be a Consumer Loan Company Licensee at the end of 2004 [see  
25 *Footnote 3* above; see also RCW 19.146.020(1)(b)]. Western States Mortgage is not a law firm, and Lusa was not an attorney at law. [See  
RCW 19.146.020(c)]

26 <sup>8</sup> The licensing of loan originators under the auspices of EHB 2340 (Chapter 19, Laws of 2006) was a major step in the evolution of regulation  
27 of the mortgage broker industry, requiring the unprecedented step of requiring licensing of individual loan originators working for licensed  
28 mortgage brokers and “independent contractors” working for exempt mortgage brokers. After the passage of EHB 2340, the Division received  
29 about 13,000 applications for loan originator licenses, of which Respondent’s License Application was one. The Division correctly anticipated  
this unprecedented number of license applications prior to January 1, 2007, in part because a failure to file prior to the effective date of the new  
licensing rules would have left non-exempt loan originators like Respondent operating in blatant violation of the MBPA for failure to even  
apply for a license.

30 <sup>9</sup> The Director has taken judicial notice of the “independent contractor” status of Respondent in *Subsection 2.1.1* (above) of this Final Decision  
31 and Order. The Administrative Law Judge, without making a specific finding, simply uses the words “employee of Residential Capital Corp.”  
32 to refer to Respondent at FOF 5, at p. 2 of the Initial Order. This is because the Administrative Law Judge deferred to the Director on the legal  
issue of Respondent’s exemption from the MBPA, and she thereby never squarely addressed the importance under the MBPA of the distinction  
between “employee” and “independent contractor.”

33 <sup>10</sup> It is the position of the Director, based upon a fair interpretation of the legislative intent of RCW 19.146.020(3), that the reference to  
34 “mortgage broker’s license” contained therein applies equally to a “loan originator’s license” under the same chapter.

<sup>11</sup> See again, *Footnote 3* above.

1           2.1.2 Portability of Loan Originator License. Thirdly, the MBPA's new loan  
2 originator license is a privilege that, if granted by the Division, confers upon Respondent and  
3 other applicants similarly situated a conditional property right belonging specifically to  
4 Respondent. The loan originator license may only be used by a person working for a licensed  
5 mortgage broker *or* an "independent contractor" operating by and through an exempt mortgage  
6 broker under RCW 19.146.020(1)(b), (c), (e) and (g). However, the loan originator license,  
7 once granted and properly maintained, is *portable* and may be used if the person changes  
8 affiliation to another licensed mortgage broker or exempt mortgage broker. Respondent  
9 appears to labor under the mistaken notion that the loan originator license attaches to one's  
10 principal/employer. This was the law prior to the 2006 MBPA amendments, in which a loan  
11 originator brokering mortgage loans would have had to be an employee or qualified  
12 "independent contractor" of a licensed mortgage broker or exempt mortgage broker unless he  
13 or she obtained a full *mortgage broker's license*. Under the new regime, the new loan  
14 originator license is *portable* but also *mandatory* for Respondent and other persons similarly  
15 situated.  
16

17           2.1.3 Standards for Summary Judgment in Administrative Actions. The  
18 Director takes note preliminarily of the following standards which are to be applied to motions  
19 for summary judgment in an administrative action under the Administrative Procedures Act,  
20 Chapter 34.05 RCW (hereinafter, "APA"). The Department has adopted the Model Rules of  
21 Procedure, Chapter 10-08 WAC, except to the extent of any conflict with the Department's  
22 Rules of Procedure.<sup>12</sup> WAC 10-08-135 sets forth the standards to be followed by the  
23 Department and the Administrative Law Judge, as its agent, when considering the Summary  
24 Judgment Motion, Division's Memorandum, Sherman Declaration, Cross-Motion and  
25 Opposition, Respondent's Declaration, and Respondent's Reply, and declares that "[a] motion  
26 for summary judgment may be granted and an order issued [only] if the written record shows  
27 that there is no genuine issue as to any material fact and that the moving party is entitled to  
28 judgment as a matter of law." In evaluating the application of this standard, the Director may  
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33 <sup>12</sup> WAC 208-08-020(1) declares: "The department adopts the model rules of procedure as set forth in WAC 10-08-035 through 10-08-230. If  
34 there is a conflict between the model rules and this chapter, the rules in this chapter shall govern. Wherever the term 'agency' appears in the  
model rules it means the department of financial institutions."

1 rely on applicable law from sources other than WAC 10-08-135 itself and must be respectful of  
2 the constitutional rights of respondents.<sup>13</sup> To that end, the Director is required to weigh on  
3 review all pleadings, evidence and argument in a light most favorable to the non-moving  
4 party.<sup>14</sup> If there is any inference of a triable issue of fact, then summary judgment is  
5 inappropriate.<sup>15</sup> Litigants are entitled to a dispositive hearing on all issues of fact and law.<sup>16</sup>  
6 These principles apply equally to the Administrative Law Judge and to the Director evaluating  
7 the Initial Order.<sup>17</sup>

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9       2.2     Consideration of Length of Industry Ban. It is incontrovertible from the OAH  
10 Record and Respondent's own admissions as late as Respondent's Reply to the Petition for  
11 Review that, in response to Question 5 of the License Application, Respondent indicated that  
12 he had *not* been convicted of a gross misdemeanor involving dishonesty or financial  
13 misconduct within 7 years of the date of application. Such a conviction automatically results in  
14 disqualification for a License.<sup>18</sup> However, the Division has authority to impose an industry ban  
15 beyond the 7 year disqualification period if Respondent *materially* lied on his License  
16 Application, which he clearly did.<sup>19</sup> Pursuant to RCW 19.146.0201(8) and WAC 208-660-  
17 500(3), it is a violation of the MBPA to negligently make any false statement or knowingly and  
18 willfully make any omission of material fact in connection with an investigation conducted by  
19 the Department. Pursuant to RCW 19.146.310(1)(d), Respondent is automatically disqualified  
20 from a loan originator license for having been convicted of a gross misdemeanor involving  
21 dishonesty or financial misconduct within seven (7) years of the License Application. For  
22 these violations of RCW 19.146.0201(8) and RCW 19.146.310(1)(d), it is the view of the  
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24  
25 <sup>13</sup> WAC 10-08-220 declares: "Nothing in chapter 10-08 WAC is intended to diminish the constitutional rights of any person or to limit or  
26 modify additional requirements imposed by statute, including the Administrative Procedure Act."

27 <sup>14</sup> Reid v. Pierce County, 136 Wn.2d 195, 201, 961 P.2d 333 (1998).

28 <sup>15</sup> Davis v. W. One Auto. Group, 140 Wn. App. 449, 456 (2007).

29 <sup>16</sup> Jones v. Allstate Ins. Co., 146 Wn.2d 291, 300-01, 45 P.3d 1068 (2002), citing Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124  
30 (2000).

31 <sup>17</sup> Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

32 <sup>18</sup> RCW 19.146.310(1)(d).

33 <sup>19</sup> The Director notes with particular displeasure the argument made on behalf of Respondent in the Lusa Letter that Respondent's conduct was  
34 a "simple misrepresentation." No misrepresentation made to a governmental agency charged with protecting the public is "simple." Every  
material misrepresentation made to a public agency, for which no reasonable mind could differ, is *egregious* in nature and intolerable.



1 Director that the MBPA, at RCW 19.146.220(5)(a), (b) and (c), authorizes the Director to issue  
2 an order prohibiting Respondent from participation in the conduct of a licensed mortgage  
3 broker or even acting as an "independent contractor" for an exempt mortgage broker under  
4 RCW 19.146.020(1)(b), (c), (e) and (g), by reason of the Department's fair interpretation of the  
5 intent of the Legislature in enacting EHB 2340 (Chapter 19, Laws of 2006) so as to require the  
6 licensing of loan originators.<sup>20</sup> In addition, the Director has authority to deny a license to  
7 Respondent based upon evidence of lack of character and general fitness.<sup>21</sup> In examining and  
8 evaluating the record on review, the Director finds no mitigating factors on behalf of  
9 Respondent which would cause the Director to modify the length of ban prayed for by the  
10 Division in its Statement of Charges – an industry ban until December 28, 2013.<sup>22</sup>

12       2.3     Appropriateness of Summary Judgment.     The Director concurs with the  
13 Administrative Law Judge that there is no genuine issue of material fact as to Respondent's  
14 criminal convictions, willfully or negligently lying on his License Application, and  
15 demonstrating a lack of character and fitness for a loan originator license. Each of the  
16 remaining questions is one of law. In this regard, the Director has determined, first of all, that  
17 the latent establishment of "employee" status with Western States Mortgage as of September 3,  
18 2007, and after the Statement of Charges was filed on June 12, 2007, does not deprive the  
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20  
21 <sup>20</sup> EHB 2340 (Chapter 19, Laws of 2006) was Department-sponsored legislation made with the concurrence of the mortgage brokerage  
22 industry in Washington State. The Department has the power and broad administrative discretion to administer and interpret the provisions of  
23 the MBPA. See RCW 19.146.223. Deference should be given to an agency's own interpretation, as adopted by rule, of the statutes it  
24 administers and which it has sponsored. See *Waggoner v. Ace Hardware Co.*, 134 Wash. 2d 784, 754-55, 953 P.2d 88, 91 (1998); *Dep't of*  
25 *Fisheries v. Chelan County PUD No. 1*, 91 Wash. 2d 378, 383, 588 P.2d 1146, 1149 (1976); *State v. Roth*, 78 Wash. 2d 711, 715, 479 P.2d 55,  
26 57-58 (1971). It is inconceivable to this Director that the Legislature would have intended to license loan originators of mortgage brokers  
27 subject to licensure, while giving safe-harbor to "independent contractors" of exempt mortgage brokers under RCW 19.146.020(1)(b), (c), (e)  
28 and (g).

29 <sup>21</sup> See RCW 19.146.300(1)(b), which also authorizes rulemaking by the Department. In WAC 208-660-350(2)(a), the MBPA Rules state:  
30 "The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the  
31 confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act." By his  
32 admitted criminal acts against the person and property of the female victim in question (to which he pled guilty and was convicted) and his  
33 attempt to conceal such conduct by lying on his License Application, it is incontrovertible that Respondent has demonstrated a patent lack of  
34 character and general fitness that (1) would command the confidence of the community or (2) create a belief that he would conduct business  
honestly and fairly within the purposes of the MBPA. It does not matter that he worked as a loan originator for several year prior to his  
License Application. The Legislature enacted the 2006 MBPA Amendments so as to place mortgage loan originators (rather than merely their  
employers and principals) under greater scrutiny by authorizing standards of character, fitness and conduct which would protect the public and  
inspire the public's confidence. Respondent is now properly under the scrutiny of this new regime. And there is no genuine issue of material  
fact that Respondent's character and fitness has been found deficient.

32 <sup>22</sup> The Director notes that the Administrative Law Judge, in making "proposals" under her Initial Order, was somewhat equivocal as to the  
33 length of ban, noting that the industry ban should be "through at least September 2010, seven years from conviction." See *Initial Order*, at p.  
34 10. With due respect for the Administrative Law Judge, it is the position of the Director that an Administrative Law Judge, as agent for the  
Department, lacks jurisdiction to fashion an order modifying the *duration* of prohibition, so long as such a ban has been prayed for in the  
Statement of Charges and is also permissible under the governing statute and/or rule. In this regard, Respondent's arguments in Respondent's  
Reply are without merit.

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1 Director of the authority to adjudicate this case.<sup>23</sup> Secondly, the Director has determined that  
2 this case is still adjudicable despite Respondent's latent "withdrawal" of the License  
3 Application after the Statement of Charges.<sup>24</sup> Thirdly, the duration of the industry ban sought  
4 by the Division in its Statement of Charges is permissible and appropriate.<sup>25</sup> And finally, the  
5 Director further finds that the scope of the industry ban can and must be broadened to include  
6 any future conduct during the period of industry ban as an "independent contractor" of an  
7 exempt mortgage broker under RCW 19.146.020(1)(b), (c), (e) and (g).<sup>26</sup>

8  
9 3.0 Final Order. The Director, therefore, reaffirms FOF 1 through 5, inclusive, at pages 1-2  
10 of the Initial Order *except* insofar as the Director finds that the Respondent was an  
11 "independent contractor" (and not an "employee") of Western States Mortgage up until  
12 September 3, 2007, which was nearly 3 months after the issuance of the Statement of Charges  
13 on June 12, 2007. The Director further re-affirms COL 1 through 8, inclusive, and COL 10, at  
14 pages 2-9 of the Initial Order, *except* to the extent that the Director concludes that the duration  
15 of industry ban (until December 28, 2013) prayed for in the Statement of Charges and  
16 reiterated in the Summary Judgment Motion should be imposed. Finally, the Director affirms  
17 each of the conclusions of law set forth above in this Final Decision and Order.

18 **IT IS HEREBY ORDERED AS FOLLOWS:**

19 3.1 Denial of License. The application of Respondent, NOEL BARTLETT  
20 KNAPPETT, for a Loan Originator License is denied.

21 3.2 Prohibition. Respondent NOEL BARTLETT KNAPPETT is further prohibited  
22 until December 28, 2013, from (1) participation in the conduct of the affairs of any mortgage  
23 broker subject to licensure by the Director, and (2) acting as a loan originator (or the  
24  
25  
26

27 <sup>23</sup> WAC 208-660-008(9). See Subsection 2.1.1 above.

28 <sup>24</sup> Respondent's License Application was wholly *voluntary* in nature. Therefore, even if Respondent had been an "employee" of an exempt  
29 mortgage broker as of the date of License Application, he would still have submitted himself to the authority of the Division by making such a  
30 voluntary application. See RCW 19.146.020(3). However, at the time of License Application (December 28, 2006) up until September 3,  
31 2007, Respondent's own declaration confirms that Respondent remained an "independent contractor" of Western States Mortgage. There is no  
governing legal authority for permitting Respondent to "withdraw" his License Application after a Statement of Charges has been filed at  
a time when as of June 12, 2007, Respondent was still an "independent contractor" required as a matter of law to have a loan originator license  
pursuant to WAC 208-660-008(9).

32 <sup>25</sup> RCW 19.146.220(5)(a), (b) and (c).

33 <sup>26</sup> WAC 208-660-008(9) [see thorough discussion at Subsection 2.1.1 above] requires a loan originator license for any "independent  
34 contractor" loan officer of an exempt mortgage broker under RCW 19.146.020(1)(b), (c), (e) and (g). [See also Subsection 2.3 above.]

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1 equivalent) in Washington State for any mortgage broker claiming exemption from licensure  
2 under RCW 19.146.020(1)(b), (c), (e) and (g).

3       3.3     Reconsideration.     Pursuant to RCW 34.05.470, Respondent has the right to  
4 file a Petition for Reconsideration stating the specific grounds upon which relief is requested.  
5 The Petition must be filed in the Office of the Director of the Department of Financial  
6 Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail  
7 at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of this  
8 Final Order upon Respondent. The Petition for Reconsideration shall not stay the effectiveness  
9 of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in  
10 this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days  
11 from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the  
12 parties with a written notice specifying the date by which it will act on a petition.

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14       3.4     Stay of Order.       The Director has determined not to consider a Petition to  
15 Stay the effectiveness of this order. Any such requests should be made in connection with a  
16 Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

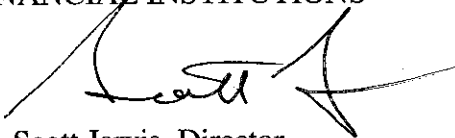
17       3.5     Judicial Review.     Respondent has the right to petition the superior court for  
18 judicial review of this agency action under the provisions of chapter 34.05 RCW. For the  
19 requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

20       3.6     Service.       For purposes of filing a Petition for Reconsideration or a Petition  
21 for Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of  
22 service attached hereto.

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24       3.7     Effectiveness and Enforcement of Final Order. Pursuant to the Administrative  
25 Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective  
26 immediately upon deposit in the United States Mail.

27       Dated at Tumwater, Washington, on this 20<sup>th</sup> day of June, 2009.

28  
29 WASHINGTON STATE DEPARTMENT  
30 OF FINANCIAL INSTITUTIONS

31 By:   
32 Scott Jarvis, Director  
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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:

NOEL BARTLETT KNAPPETT,  
  
Respondent.

NO. C-07-191-07-SC01

STATEMENT OF CHARGES and  
NOTICE OF INTENTION TO ENTER  
AN ORDER TO DENY LICENSE APPLICATION  
AND PROHIBIT FROM INDUSTRY

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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)<sup>1</sup>. 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:

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**I. FACTUAL ALLEGATIONS**

**1.1 Respondent Noel Bartlett Knappett (Respondent Knappett)** submitted an application to the Department of Financial Institutions of the State of Washington (Department) for a loan originator license under Western State Mortgage Corp, dba Residential Capital Corp, 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.**

**A.** On or about August 26, 2003, Respondent Knappett pled guilty in King County Superior Court, Cause No. 03-1-07443-4 SEA, to the charge of Theft in the Third Degree, a misdemeanor pursuant to RCW 9A.52.050.

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<sup>1</sup> RCW 19.146 (Amended 2006; Effective January 1, 2007)

1 **1.3 Responses to Application Questions.** The "Criminal Disclosure" section of the loan originator license  
2 application consists of eight questions, and includes the following instruction:

3 "If the answer to any of the following is "YES", provide complete details of all events or proceedings"

4 Respondent Knappett answered "no" to the following question on the "Criminal Disclosure" section of his loan  
5 originator license application:

- 6 • 5-Have you ever been convicted of or plead guilty or nolo contendere ("no contest") in a  
7 domestic, foreign, or military court to [a] misdemeanor involving: financial services or a  
8 financial services-related business or any fraud, false statements or omissions, theft or any  
9 wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a  
10 conspiracy to commit any of these offenses?

11 Respondent Knappett was obligated by statute to answer questions on the loan originator license application  
12 truthfully and to provide the Department with complete details of all events or proceedings.

## 13 **II. GROUNDS FOR ENTRY OF ORDER**

14 **2.1 Prohibited Practices.** Based on the Factual Allegations set forth in Section I above, Respondent  
15 Knappett is in apparent violation of RCW 19.146.0201(8) and WAC 208-660-500(3)(i) for negligently making  
16 any false statement or willfully making any omission of material fact in connection with any application or any  
17 information filed by a licensee in connection with any application, examination or investigation conducted by  
18 the Department.

19 **2.2 Requirement to Provide Information on License Application.** Based on the Factual Allegations set  
20 forth in Section I above, Respondent Knappett fails to meet the requirements of RCW 19.146.300(1) and (2)  
21 and RCW 19.146.310(1)(b) by failing to provide an accurate and complete license application in the form  
22 prescribed by the Director.

23 **2.3 Requirement to Demonstrate Character and General Fitness.** Based on the Factual Allegations set  
24 forth in Section I above, Respondent Knappett fails to meet the requirements of RCW 19.146.310(1)(g) and  
25 WAC 208-660-350(2)(a) by failing to demonstrate character and general fitness such as to command the

1 confidence of the community and to warrant a belief that the business will be operated honestly and fairly  
2 within the purposes of the Act.

### 3 III. AUTHORITY TO IMPOSE SANCTIONS

4 **3.1 Authority to Deny Application for Loan Originator License.** Pursuant to RCW 19.146.220(1), the  
5 Director may deny licenses to loan originators. Pursuant to RCW 19.146.310(2) and WAC 208-660-350(7), the  
6 Director shall not issue a loan originator license if the conditions of RCW 19.146.310(1) have not been met by  
7 the applicant, and shall notify the loan originator applicant and any mortgage brokers listed on the application  
8 of the denial.

9 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 19.146.220(5)(a), the Director may issue  
10 orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed  
11 mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker  
12 or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through December  
13 28, 2013.

### 14 IV. NOTICE OF INTENTION TO ENTER ORDER

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

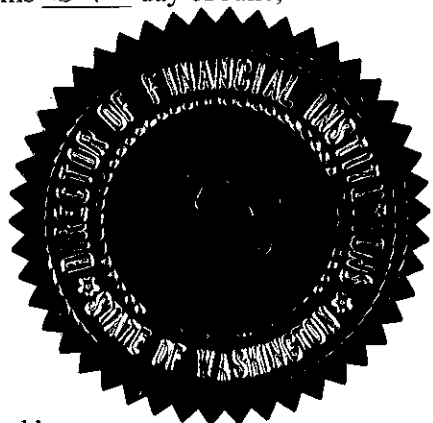
19 **4.1** Respondent Noel Bartlett Knappett's application for a loan originator license be denied.

20 **4.2** Respondent Noel Bartlett Knappett be prohibited from participation in the conduct of the affairs of any  
21 mortgage broker subject to licensure by the Director, in any manner, through December 28, 2013.  
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1 **V. AUTHORITY AND PROCEDURE**

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

8 Dated this 12<sup>th</sup> day of June, 2007



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A handwritten signature in black ink, appearing to read "Deborah Bortner".

18 **DEBORAH BORTNER**  
19 Director  
20 Division of Consumer Services  
21 Department of Financial Institutions

22 Presented by:

23  
24

A handwritten signature in black ink, appearing to read "Charles E. Woode".

25 **CHARLES E. WOODE**  
Financial Legal Examiner

Approved by:

26  
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A handwritten signature in black ink, appearing to read "Fatima Batie".

28 **FATIMA BATIE**  
29 Financial Legal Examiner Supervisor

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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:

NOEL BARTLETT KNAPPETT,  
Respondent.

C-07-191-07-SC01

NOTICE OF OPPORTUNITY TO DEFEND  
AND OPPORTUNITY FOR HEARING

THE STATE OF WASHINGTON TO:

NOEL BARTLETT KNAPPETT

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 Batic  
17                            PO Box 41200  
18                            Olympia, Washington 98504-1200

19            Dated this 12<sup>th</sup> day of June 2007.



20                            *Deborah Bortner*

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