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ENFORCEMENT UNIT
DIVISION OF CONSUMER SERVICES
DEPT OF FINANCIAL INSTITUTIONS

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

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

NO. C-07-413-08-CO01

CONSENT ORDER

VAN GALDER FINANCIAL and
JERRY DEAN VAN GALDER, Owner,

Respondents.

COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and Van Galder Financial and Jerry Dean Van Galder, (hereinafter Respondents), 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 the Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

AGREEMENT AND ORDER

The Department of Financial Institutions, Division of Consumer Services (Department) and Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-07-413-07-SC01 (Statement of Charges), entered December 7, 2007, (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, Respondents hereby agree to the Department's entry of this Consent Order and further agree that the issues raised in the above captioned matter may be economically and efficiently settled by entry of this Consent Order. The parties intend this Consent Order to fully resolve the

CONSENT ORDER
C-07-413-08-CO01
Van Galder Financial and
Jerry Dean Van Galder

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

1 Statement of Charges. Respondents are agreeing not to contest the Statement of Charges in consideration
2 of the terms of this Consent Order.

3 Based upon the foregoing:

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

6 B. **Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a
7 hearing before an administrative law judge, and that they have waived their right to a hearing and any and
8 all administrative and judicial review of the issues raised in this matter, or of the resolution reached
9 herein. Accordingly, Respondents agree to withdraw their appeal and to inform the Office of
10 Administrative Hearings in writing of their withdrawal.

11 C. **Suspended (Stayed) Fine.** It is AGREED that Respondents shall jointly and severally pay to
12 the Department a fine of \$10,000, which shall be suspended (stayed) for a period of fifteen years from the
13 date of entry of this Consent Order. If upon expiration of said fifteen year period the stay has not been
14 previously lifted, and the \$10,000 fine has not been previously imposed, and if a notification to lift the
15 stay or a proceeding to lift the stay is not then pending by the Director to impose the \$10,000 fine,
16 then, in such events, this Consent Order shall be considered fully performed by Respondents and
17 completed. If on the expiration of fifteen years from the date of entry of this Consent Order a
18 notification to lift the stay or a proceeding to lift the stay is pending by the Director to impose the
19 \$10,000 fine, then those proceedings shall continue according to the terms of this Consent Order.
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22 D. **Suspended (Stayed) Investigation Fee.** It is AGREED that Respondents shall jointly and
23 severally pay to the Department an investigation fee of \$1,433.40, which shall be suspended (stayed) for a
24 period of fifteen years from the date of entry of this Consent Order. If upon expiration of said fifteen
25

1 year period, the stay has not been previously lifted, and the \$1,433.40 investigation fee has not been
2 previously imposed, and if a notification to lift the stay or a proceeding to lift the stay is not then
3 pending by the Director to impose the \$1,433.40 investigation fee, then, in such events, this Consent
4 Order shall be considered fully performed by Respondents and completed. If on the expiration of
5 fifteen years from the date of entry of this Consent Order a notification to lift the stay or a proceeding
6 to lift the stay is pending by the Director to impose the \$1,433.40 investigation fee, then those
7 proceedings shall continue according to the terms of this Consent Order.
8

9 **E. Prohibition from Industry.** It is AGREED that Respondents shall be prohibited from
10 participating in the conduct of the affairs of any mortgage broker licensed by the Department or any
11 mortgage broker exempt from Washington law under RCW 19.146.020(1)(e) or (g) for fifteen years from
12 the date of entry of this Consent Order in any capacity, including but not limited to: (1) any financial
13 capacity whether active or passive or (2) as an officer, director, principal, designated broker, employee,
14 processor, or loan originator or (3) any management, control, oversight, or maintenance of any trust
15 account(s) in any way related to any residential mortgage transaction or (4) receiving, disbursing,
16 managing, or controlling in any way, consumer trust funds in any way related to any residential mortgage
17 transaction.
18

19 **F. Change of Address.** It is AGREED that Respondents will notify the Department in writing
20 of any changes of their physical address and mailing address while this Consent Order is in effect. Such
21 written notice shall be provided within thirty calendar days of the change of address.

22 **G. Lifting of Stay and Imposing Prohibition.** It is AGREED that:

23 1. If the Department determines that Respondents are in violation of any of the terms and
24 conditions of this Consent Order, and the Department accordingly seeks to lift the stay and impose the
25

1 \$10,000 fine and \$1,433.40 investigation fee, the Department first will notify Respondents in writing
2 of its determination at the address most recently provided by Respondents pursuant to this Consent
3 Order.

4 2. The Department's notification will include:

- 5 a. A description of the alleged noncompliance;
6 b. A statement that because of the noncompliance, the Department seeks to lift the
7 stay and impose the \$10,000 fine and \$1,433.40 investigation fee;
8 c. The opportunity for Respondents to contest the Department's determination of
9 noncompliance in an administrative hearing before an ALJ of OAH; and
10 d. A copy of this Consent Order.

11 3. Respondents will be afforded 10 business days from the date of mailing of the
12 Department's notification to request in writing an administrative hearing to be held before an
13 Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH). Respondents'
14 request for hearing must be sent to the Department and received by the Department within 10 business
15 days of the date of the mailing of the Department's notice.
16

17 4. Respondents, in addition to their request for hearing, may provide a written response to
18 include any information pertaining to the alleged noncompliance.

19 5. The administrative hearing shall be expedited and follow the timing and processes
20 described in this Consent Order.

21 6. If Respondents do not request the hearing within the stated time, the Department
22 immediately will impose the \$10,000 fine and \$1,433.40 investigation fee and pursue whatever action
23 it deems necessary to collect the \$10,000 fine and \$1,433.40 investigation fee.
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1 7. If requested, the hearing will be held within fifteen business days (or as soon as the
2 schedule of the ALJ permits) from the date of receipt of Respondents' timely request for hearing. The
3 parties will accommodate the prompt scheduling of the hearing.

4 8. The scope and issues of the hearing will be limited solely to whether or not
5 Respondents are in violation of any of the terms and conditions of this Consent Order.

6 9. At the conclusion of the hearing, the ALJ will issue an initial decision. Either party
7 may file a Petition for Review with the Director of the Department.

8 10. The notification and hearing process provided in this Consent Order applies only to
9 this Consent Order. It is solely provided in the event Respondents choose to contest the Department's
10 determination of noncompliance.

11
12 **H. Non-Compliance with Order.** It is AGREED that Respondents understand that failure to
13 abide by the terms and conditions of this Consent Order may result in further legal action by the
14 Director. In the event of such legal action, Respondents may be responsible to reimburse the Director
15 for the cost incurred in pursuing such action, including but not limited to, attorney fees.

16 **I. Voluntarily Entered.** It is AGREED that the undersigned Respondents have voluntarily
17 entered into this Consent Order, which is effective when signed by the Director's designee.

18 **J. Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read
19 this Consent Order in its entirety and fully understand and agree to all of the same.

20
21 **RESPONDENTS:**

22 **Van Galder Financial**

23 By: _____

24 Jerry Dean Van Galder
Owner

12/5/08
Date

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[Handwritten signature]

Jerry Dean Van Galder
Individually

12/5/08
Date

DO NOT WRITE BELOW THIS LINE

THIS ORDER ENTERED THIS 14th DAY OF December, 2008.

[Handwritten signature]

DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

[Handwritten signature]

STEVEN C. SHERMAN
Financial Legal Examiner



Approved by:

[Handwritten signature]

JAMES R. BRUSSELBACK
Enforcement Chief

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

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

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VAN GALDER FINANCIAL and
JERRY DEAN VAN GALDER, Owner,

Respondents.

NO. C-07-413-07-SC01

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

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 19.146.235, 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 Respondents.

A. **Van Galder Financial** is a Washington company registered with the Department of Revenue of the State of Washington since October 17, 2005. Respondent Van Galder Financial has never been licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage broker or a consumer lender.

B. **Jerry Dean Van Galder (Jerry Van Galder)** is the sole owner of Respondent Van Galder Financial. Respondent Jerry Van Galder has never been licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage broker, loan originator, or a consumer lender. Respondent Jerry Van Galder submitted an application to the Department of Financial Institutions of

¹ RCW 19.146 (1994) and (2006)

1 Institutions of the State of Washington (Department) for a license to conduct business as a loan originator on
2 January 8, 2007. The application was incomplete, however, and was administratively withdrawn by the
3 Department on October 22, 2007.

4 **1.2 Unlicensed Locations.** Respondents Van Galder Financial and Jerry Van Galder are known to have
5 conducted the business of a mortgage broker from the following locations:

6 A. 15935 NE 8th Street, Ste A103, Bellevue, Washington

7 B. 14510 NE 20th St., Ste. 205, Bellevue, Washington.

8 To date, Respondents have never applied for, or received, a license from the Department to conduct the
9 business of a mortgage broker from either of these locations. To date, the Department has not issued a license
10 to any person to conduct the business of a mortgage broker from either of these locations.

11 **1.3 Unlicensed Activity.** Between August 9, 2005, and May 16, 2006, Respondent Jerry Van Galder was
12 employed as an independent contractor loan originator by Mortgage Works, Inc., a mortgage broker licensee.
13 Beginning on or about October 17, 2005, Respondent Jerry Van Galder opened Van Galder Financial at 15935
14 NE 8th Street, Ste. A103, Bellevue, Washington, and began holding out Van Galder Financial as being licensed
15 through Mortgage Works, Inc. At no time, however, was Van Galder Financial licensed as a branch of
16 Mortgage Works, Inc.

17 Respondent Jerry Van Galder also began to hire employees, including other loan originators referred to
18 as "mortgage consultants," to work for Van Galder Financial as independent contractors. These "mortgage
19 consultants," on behalf of Van Galder Financial, actively assisted Washington consumers in obtaining or
20 applying to obtain a residential mortgage loan. At least nineteen (19) completed loans were originated by Van
21 Galder Financial employees and submitted through Mortgage Works, Inc., in the name of Respondent Jerry Van
22 Galder.

23 Respondent Jerry Van Galder's relationship with Mortgage Works, Inc., was terminated on or about
24 May 16, 2006. At some time shortly before or after that date, Respondents Jerry Van Galder and Van Galder
25 Financial began submitting Washington residential mortgage loans through Financial Capital, Inc., a consumer

1 loan licensee. Respondent Jerry Van Galder was paid by Financial Capital, Inc., as a 1099 independent
2 contractor, but there was no related employment contract and at no time was any other employee of Van Galder
3 Financial employed by Financial Capital, Inc., in any capacity. Additionally, Respondent Jerry Van Galder
4 Financial was never licensed as a branch of Financial Capital, Inc. Respondent Jerry Van Galder and the
5 employees of Van Galder Financial assisted at least eighteen (18) of these borrowers in obtaining residential
6 mortgage loans, seven (7) of which included both first and second lien mortgage loans. Respondents received
7 \$113,471.06 in compensation from Financial Capital, Inc., for these loans.

8 **1.4 Prohibited Acts.**

9 A. On or about May 17, 2007, Respondents Jerry Van Galder and Van Galder Financial were
10 evicted from their office located at 14510 NE 20th St., Ste. 205, Bellevue, Washington. On May 18, 2007, a
11 representative from Respondents' landlord (hereinafter "Representative") contacted the Department and
12 reported that Respondents had left behind six to eight boxes of loan files when they moved out. The
13 Representative further reported that he had placed the materials into an on-site storage area. On or about June
14 6, 2007, the Representative notified the Department that Respondents had not attempted to retrieve the files
15 they had left behind. Consequently, the Department took control of the materials. Upon review, the
16 Department found that the materials abandoned by Respondents included over fifty (50) loan files in various
17 stages. Each file contained one or more of the following type of financial information for the borrower: social
18 security numbers, income records, tax records, bank account numbers, and credit reports. Additionally, the
19 date of each file was within the 25-month statutory retention period.

20 B. As stated above, beginning on or about September 1, 2005, Respondent Jerry Van Galder
21 opened Van Galder Financial at 15935 NE 8th Street, Ste. A103, Bellevue, Washington, and began holding out
22 Van Galder Financial as being licensed through Mortgage Works, Inc. At no time, however, was Van Galder
23 Financial licensed as a branch of Mortgage Works, Inc.

24 **1.5 Failure to Maintain Records.** As indicated above, the Department found over fifty (50) loan files in
25 various stages that had been abandoned by Respondents. Each file was within the 25-month statutory retention

1 period. Respondent Jerry Van Galder admitted that Respondents had not maintained any records related to the
2 residential mortgage loans originated by Respondent Van Galder Financial or any of its employees.

3 **1.6 Failure to Respond Timely and Completely to Directive.** On April 26, 2007, the Department issued
4 a Directive to Respondent Jerry Van Galder directing production of the following:

5 1. A list of all employees of Van Galder Financial for the period of
6 October 17, 2005, through April 25, 2007; including name, last known home
7 address and telephone number, social security number, period of employment,
8 and position held.

9 2. A list of all residential mortgage loans originated by Jerry Van Galder
10 and any employee of Van Galder Financial for the period of October 17, 2005,
11 through April 25, 2007; including the name and address for each borrower. This
12 includes any residential mortgage loan originated on behalf of any other
13 mortgage broker, consumer loan company, or lender.

14 3. A copy of the Final HUD 1 for any and all residential mortgage loans
15 referenced in #2, above.

16 4. An explanation for the apparent unlicensed residential mortgage loan
17 activity at Van Galder Financial and/or 15935 NE 8th Street, Ste. A103, Bellevue,
18 WA.

19 Respondent Jerry Van Galder's deadline for producing these materials was May 22, 2007, but
20 nothing was received on or before that date. On May 30, 2007, the Department received a letter
21 from Respondent Jerry Van Galder claiming that Van Galder Financial was no longer in business,
22 identifying three "licensed brokers" which Van Galder Financial had used to conduct business,
23 and stating that "all documentation, equipment and facilities have unfortunately been sold or
24 discarded." On May 31, 2007, the Department was compelled to issue a subpoena to Respondent
25 Jerry Van Galder requiring production of the above-stated materials. Thereafter, Respondent
Jerry Van Galder provided some, but not all of the required documents.

1.7 On-Going Investigation. The Department's investigation into the alleged violations of the Act by
Respondents continues to date.

II. GROUNDS FOR ENTRY OF ORDER

2.1 Definition of Mortgage Broker. Pursuant to RCW 19.146.010(12) and WAC 208-660-010(29),
"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

1 mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a
2 person in obtaining or applying to obtain a residential mortgage loan.

3 **2.2 Definition of Borrower.** Pursuant to RCW 19.146.010(2), a "Borrower" is defined as any person who
4 consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information
5 on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself
6 or herself, regardless of whether the person actually obtains such a loan.

7 **2.3 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondents are in
8 apparent violation of RCW 19.146.0201(1) and (2) for directly or indirectly employing a scheme, device or
9 artifice to defraud or mislead borrowers or lenders or any person and engaging in an unfair or deceptive practice
10 toward any person.

11 **2.4 Requirement to Maintain Accurate and Current Books and Records.** Based on the Factual
12 Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.060(2) and
13 WAC 208-660-140 for failing to maintain accurate and current books and records which shall be readily
14 available to the Department until at least twenty-five months have elapsed following the effective period to
15 which the books and records relate.

16 **2.5 Requirement to Obtain and Maintain License or Branch License.** Based on the Factual Allegations
17 set forth in Section I above, Respondents are in apparent violation of RCW 19.146.200 and/or RCW 19.146.265
18 for engaging in the business of a mortgage broker without first obtaining and maintaining a license under the
19 Act, and/or for engaging in the business of a mortgage broker from a fixed physical location without first
20 obtaining and maintaining a branch license for that fixed physical location under the Act.

21 **2.6 Requirement to Comply with Directives.** Based on the Factual Allegations set forth in Section I
22 above, Respondents are in apparent violation of RCW 19.146.235 for failing to timely and completely comply
23 with a Directive of the Director of the Department of Financial Institutions or any designee.

1 **III. AUTHORITY TO IMPOSE SANCTIONS**

2 **3.1 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(2)(e)(i) and (iv), the Director
3 may issue orders prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, any
4 person subject to licensing under the Act for any violation of RCW 19.146.0201(1) or (2), RCW 19.146.200,
5 RCW 19.146.265, or failure to comply with a directive or order of the Director.

6 **3.2 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(c)(i) and (ii) and WAC 208-660-165, the
7 Director may impose fines on any person subject to the Act for any violations of RCW 19.146.0201(1) or (2),
8 RCW 19.146.200, RCW 19.146.265, or failure to comply with a directive or order of the Director.

9 **3.3 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-060(4), and
10 WAC 208-660-061, upon completion of any investigation of the books and records of a licensee or other person
11 subject to the Act, the Department may collect the cost of the investigation. The investigation charge will be
12 calculated at the rate of forty-seven dollars and seventy-eight cents (\$47.78) per hour that each staff person devoted
13 to the investigation.

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

15 Respondents' 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, and RCW 19.146.223. Therefore, it is the
18 Director's intention to ORDER that:


- 19 **4.1** Respondent Van Galder Financial be prohibited from participation in the conduct of the affairs of any
20 mortgage broker subject to licensure by the Director, in any manner, for a period of five (5) years; and
21 **4.2** Respondent Jerry Dean Van Galder be prohibited from participation in the conduct of the affairs of any
22 mortgage broker subject to licensure by the Director, in any manner, for a period of five (5) years; and
23 **4.3** Respondents Van Galder Financial and Jerry Dean Van Galder jointly and severally pay a fine of \$12,000;
24 and
25 **4.4** Respondents Van Galder Financial and Jerry Dean Van Galder jointly and severally pay an investigation
fee in the amount of \$1,433.40 calculated at \$47.78 per hour for the thirty (30) staff hours devoted to the
investigation.

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V. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry, Impose Fine, and Collect Investigative Fee (Statement of Charges) 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). Respondents 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.

Dated this 7th day of December, 2007.



DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:



STEVEN C. SHERMAN
Financial Legal Examiner



Approved by:



JAMES R. BRUSSELBACK
Enforcement Chief