

TERMS COMPLETE

ORDER SUMMARY – Case Number: C-08-147

Name(s): Precision Mortgage Inc.
Edward Mortimer Jr.

Order Number: C-08-147-12-FO01

Effective Date: May 17, 2012

License Number: DFI: 27788 [NMLS: 110065]- Precision

Or NMLS Identifier [U/L] DFI: 27789 { NMLS: 112693} Mortimer

(Revoked, suspended, stayed, application denied or withdrawn)
 If applicable, you must specifically note the ending dates of terms.

License Effect: None

Not Apply Until: _____

Not Eligible Until: _____

Prohibition/Ban Until: _____

Investigation Costs	\$2,880	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 12/17/2012
Fine	\$4,500	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 12/17/2012
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$4,177	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 12/17/2012
Judgment	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N		
No. of Victims:				

Comments: _____



State of Washington
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

PRECISION MORTGAGE, INC., and
EDWARD MORTIMER, JR., President and
Designated Broker,

Respondents.

OAH No. 2011-DFI-0019

DFI NO. C-08-147-12-FO01

FINAL DECISION & ORDER

THIS MATTER comes now before SCOTT JARVIS, Director (“Director”) of the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS (“Department”), pursuant to the Findings of Fact, Conclusions of Law, and Initial Order dated March 2, 2012, (“Initial Order”), against Respondents, PRECISION MORTGAGE, INC., and EDWARD MORTIMER, JR., President and Designated Broker (“Respondents”), on the Division’s Petition for Review of Initial Order, dated March 22, 2012 (“Petition for Review”), brought by Lisa K. Elley, Assistant Attorney General and counsel of record for the Department’s Division of Consumer Services (“Division”), from the Initial Order by Administrative Law Judge Terry A. Schuh (“ALJ Schuh”) of the Office of Administrative Hearings (“OAH”); and the Director having taken into consideration the entire record on review, including, without limitation, the Initial Order and the Petition for Review, the latter of which is uncontested (collectively, the “Record on Review”);

NOW, THEREFORE, the Director issues the following Final Decision and Order:

1.0 REFERENCES

References herein to ALJ Schuh's Findings of Fact and Conclusions of Law are denoted "FOF" and "COL," respectively. References herein to ALJ Schuh's preliminary *findings* or *conclusions*, styled in the Initial Order as "Order Summary," are denoted as "OS." [See, however, Subsection 2.1 below.]

2.0 DIRECTOR'S CONSIDERATIONS

2.1 "Order Summary" Disfavored. The Administrative Procedures Act, at RCW 34.05.461(3), requires that all "Initial and final orders . . . include a statement of findings and conclusions, and the reasons and basis therefore, on all the material issues of fact, law, or discretion presented on the record" Nowhere in the Administrative Procedures Act does it require (or even suggest) that an initial or final order contain an "Order Summary," which by the nature of its language, as employed by ALJ Schuh in the Initial Order, is separated out as its own set of findings and conclusions. Rather, it is the view of the Director that all findings of fact of an initial order should be set forth in one location as "Findings of Fact," and all conclusions of law of an initial order should be set forth in one location as "Conclusions of Law." It is appropriate for the Director, in a *Final* Decision and Order and by way of review of an Initial Order, to discuss and deliberate in writing the relative merits of a petition for review and any reply to it. However, the Director believes that an "Order Summary," like the one employed by ALJ Schuh in the Initial Order is either redundant of the Findings of Fact and Conclusions of Law or potentially confusing, to the extent that it could vary in language from the portions of the Initial Order actually entitled "Findings of Fact" and "Conclusions of Law." Moreover, the addition of an "Order Summary" creates more (unnecessary) work for the Director on a petition for review, as is the case here (see below). Therefore, the "Order Summary" employed by ALJ

Schuh in the Initial Order is disfavored, and the Director requests that, in the future, all Initial Orders from the OAH involving Department cases be written so that (1) all *findings of fact* be contained in a single “Findings of Fact,” and (2) all *conclusions of law* be contained in a single “Conclusions of Law.”

2.2 No Reply to the Petition for Review. Respondents appeared at the hearing before ALJ Schuh and contested the Statement of Charges. Respondents had twenty (20) days from the date of the Initial Order to file their own petition for review and ten (10) days from the Division filing the Petition for Review to file a Reply. However, Respondents never filed a Petition for Review in this matter. In addition, more than ten (10) days has expired since the filing of the Division’s Petition for Review, and Respondents have not filed a Reply. Therefore, in the absence of a Reply or a Petition for Review from Respondents, this matter is uncontested on appeal. Therefore, only the Record on Review and the Division’s Petition for Review may be considered.

2.3 Errors in Findings of Fact. The Petition for Review contends that the Findings of Fact of the Initial Order are in error in the following respects:

2.3.1 Underwriting Fee and Funding Fee Not the Same. The Petition for Review contends that ALJ Schuh incorrectly found that the underwriting fee and the funding fee, as referenced in FOF 4.33, are the same fee. The Division contends that ALJ Schuh’s finding to this effect is an overly broad statement not supported by any evidence of record (citing Exhibits 4, 5 and 43). The Division contends that these two fees are not the same.

2.3.2 Investigation Fee. The Petition for Review contends that FOF 4.61 should be modified to reflect the actual testimony of Anthony Carter, Financial Legal Examiner for the Division.

2.3.3 Nature of Two Investigations. The Petition for Review contends that FOF 4.65 should be modified to accurately reflect the two types of investigations that were conducted in this case and the broad scope of the formal investigation as Anthony Carter testified at the hearing.

2.3.4 Nature and Scope of Investigation, Etc. The Petition for Review contends that FOF 4.66 should be modified to more accurately reflect the testimony of Anthony Carter in his description of the scope of the investigation, how the investigation hours were calculated, and how the enforcement unit determined the appropriate violations to be included in the Statement of Charges. The Petition for Review further contends, in this regard, that the Statement of Charges appropriately states that the investigation fees are sought under the broad authority of the Washington Mortgage Broker Practices Act, at RCW 19.146.228(2).

The Division's contentions in regard to FOF 4.33, 4.61, 4.65, and 4.66 are, in the view of the Director, supported by substantial evidence contained in the Record on Review. The Director concurs in the Division's proposed modifications to FOF 4.33, 4.61, 4.65, and 4.66, as hereinafter set forth.

2.4 Proper Application of the Inclusive Disjunctive. In regard to the Petition for Review's exception to COL 5.35, 5.36, 5.37, and 5.38, the Director takes notice of his own Final Decision and Order in a recent case, *In re Stephen L. Burns & Associates, P.C.*, DFI No. C-09-393-11-F01 [OAH No. 2011-DFI-0024], in which the Director found error in an Initial Order by Administrative Law Judge Thomas P. Rack for precisely the same reason: the failure to correctly perceive that the use of "or" in the language of the Act, at RCW 19.146.220(2), must be read as being in the *inclusive* disjunctive (not the exclusive disjunctive). The Director is hopeful that by reiterating below the correct principle of statutory construction, as previously declared in *In re*

Stephen L. Burns & Associates, P.C., supra, that future initial orders from the OAH will not perpetuate this error of law.

In reviewing the Initial Order, the Director finds that ALJ Schuh properly noted that the use of “or” is presumed to be disjunctive. However, it appears as if ALJ Schuh also assumed that the *least probable type* of disjunctive, the “exclusive disjunctive,” was intended by the Legislature in its enactment of RCW 19.146.220(2), even though the context makes it plain that the *inclusive* disjunctive form of “or” was meant.

We agree with the Division in its Petition for Review that ALJ Schuh’s use of “or” would be entirely inconsistent with the reasonable meaning of the statute. It is fitting to declare here – once again – the reasons why the Act (and other statutes administered by the Department) – which employ the word “or” in the *inclusive* disjunctive sense – should not be interpreted in the manner ALJ Schuh did in his Initial Order.

When used to combine two or more clauses, the word “or” can be disjunctive in either its inclusive or exclusive sense, depending on the context. If two or more options do not exclude each other, it is always understood that “or” is used in the logical disjunctive, or inclusive disjunctive sense – it allows for one or more options or choices to be selected.¹ For example, as the Petition for Review wisely observes, an actor may say, “I will consider my career a success if I win an Oscar, a Golden Globe, or a Tony.” But it is obvious that an actor whose ambition is to win one of those awards will not consider himself a failure if he ends up winning two, or even all three awards! The context in this example makes it clear that the meaning of “or” can include

¹ “The word ‘or’ has two different senses, one of which is clearly intended in the statement, ‘Premiums will be waived in the event of sickness or unemployment.’ The intention here is obviously that premiums are waived not only for sick persons and for unemployed persons, but also for persons who are both sick and unemployed. This sense of the word ‘or’ is called weak or inclusive.” Irving Copi, *Symbolic Logic Fifth Edition*, New York, Macmillan Publishing Co., Inc. 1979.

selection of not only one, but one or more options. This is a common usage of “or” in the English language. Alternatively, as the Petition for Review also observes, when the items in a list necessarily exclude each other, then “or” in its exclusive disjunctive meaning is the only one that makes sense. For example, as the Petition for Review has noted, if you are asked whether you want to see the eight o’clock performance of “Cats” or “Phantom of the Opera” that evening, you can pick one show or the other, but not both, because you can only be in one place at one time.²

In this case, imposing a regulatory fine is not mutually exclusive with the act of ordering that restitution be made to victimized consumers. Since the remedies are not mutually exclusive, the use of “or” is *contextually* unambiguous — it is used in its inclusive disjunctive sense: one, or the other, or both. Therefore, as used in RCW 19.146.220(2), the Director determines that “or” clearly allows for a fine, or restitution, *or* both a fine *and* restitution to be imposed. The Director may choose to impose a fine, and, if, as here, there are victimized consumers who suffered an actual loss, the Director may also elect to order that restitution be made to those consumers in addition to the fine. This is the same standard that was required of ALJ Schuh in fashioning an Initial Order.

The Division’s *inclusive disjunctive* (or *logical disjunctive*) interpretation of “or” in RCW 19.146.220(2) is consistent not just with common English usage; it is also in harmony with the legislative intent of the Act. Application of well-settled principles of statutory construction requires that RCW 19.146.220(2) must be construed by reading it in its entirety and considered in relation with its fellow statutes.³ The Act is both remedial in purpose and intended to protect

² “A different sense of ‘or’ is intended when a restaurant lists ‘tea or coffee’ on its table d’hôte menu, meaning that for the stated price of the meal the customer can have one or the other, but not both. This second sense of ‘or’ is called strong or exclusive. Where precision is at a premium and the exclusive sense of ‘or’ is intended, the phrase ‘but not both’ is often added.” *Id.*

³ *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

consumers.⁴ Therefore, any ambiguity must be construed in light of its curative and consumer protection purpose.⁵

Based upon the above, the Director finds that ALJ Schuh erred when he ended his legal analysis with the observation that “or” is disjunctive, and assumed, *sub silencio*, that “disjunctive” always meant “exclusive disjunction.” The *inclusive disjunctive (logical disjunctive)* usage of “or” in RCW 19.146.220(2) is unambiguous and clearly reflects the plain language of the statute. It is also consistent with the overall legislative intent and remedial purpose of the Act.

Under ALJ Schuh’s strained interpretation of RCW 19.146.220(2), one can easily imagine situations where the Division would have to forgo \$100,000 in fines to impose an order of \$500 in restitution to a single consumer. Such an interpretation would either harm the consumer, or alternatively, provide a windfall to the offending company for causing harm to the consumer because the Division would have to forgo a substantial fine to help the consumer. In this case, such an interpretation of “or” would be incompatible with the Legislature’s remedial intent (1) to bar residential mortgage transactions by unlicensed brokers, (2) to preserve public confidence in the system, and (3) to promote honesty towards and fair dealing with Washington citizens.

2.5 The Department’s Interpretation of Its Own Agency-Sponsored Legislation Entitled to Deference. In COL 5.35, ALJ Schuh noted that, unlike the language in RCW

⁴ The Act, at RCW 19.146.005, declares: “It is the intent of the legislature to establish a state system of licensure in addition to rules of practice and conduct of mortgage brokers and loan originators to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community.”

⁵ *Carlsen v. Global Client Solutions, L.L.C.*, 171 Wn.2d 486, 497-8, 256 P.3d 321 (2011) (a remedial statute enacted to stem unfair and deceptive practices should be construed liberally in favor of protecting consumers).

19.146.220(2), the text of RCW 19.146.220(5) expressly empowers “the Department with the authority to take two different actions “or both.” Accordingly, ALJ Schuh confers upon this minor distinction a general rule of legislative intent to the effect that the absence of the words “or both” in RCW 19.146.220(2) necessarily means that the Legislature did not intend that the Department be able to impose both a fine *and* restitution for the same violation. In the Director’s view, this is a strained comparison susceptible (as here) of absurd results.

The legislative purpose of the use of the words “or both” in RCW 19.146.220(5) is to make it clear that the Department has the authority not just to revoke the license of a mortgage broker or mortgage loan originator, but also to further prohibit such person from participation in the industry for a specific period of time. When RCW 19.146.220(5) was proposed for enactment, it was done so at the specific request of the agency. Since its enactment, the relevant language of RCW 19.146.220(5) has been interpreted by the Director to permit simultaneous revocation of a license and a ban from the mortgage brokerage industry for a period of years. That is the true import of the use of the words “or both” as used in RCW 19.146.220(5).

We cannot infer, however, from the use of the word “or” and the absence of the words “or both” in RCW 19.146.220(2) that one has the option of imposing a “fine” or “restitution,” but *not* both. When RCW 19.146.220(2) was proposed for enactment, it was also done at the specific request of the agency. Since its enactment, the relevant language of RCW 19.146.220(2) – “may impose fines or order restitution” – has always been interpreted by the Director with the word “or” being used in the *inclusive* disjunctive sense, as discussed above in Subsection 2.4. The Department’s consistent and unwavering interpretation of RCW 19.146.220(2) would, under

the circumstances and in the view of the Director, be viewed as reasonable by the Washington courts and entitled to deference.⁶

2.6 The Propriety of the Division's Investigation Fee. The investigation fee sought by the Division is permissible under relevant statute and rule and is supported by substantial evidence. Mr. Carter testified at length about the broad scope of the investigation that resulted in the issuance of the Statement of Charges. *See* Testimony of Carter. Mr. Carter testified that initially this was a limited complaint investigation which was later converted to a formal investigation. The Hayses' complaint was only part of the investigation which also included a number of other complaints and examination findings. It appears that ultimately the Division chose to charge only the violations related to the Hayses' complaint in the Statement of Charges while the examination findings of violations were referred back to the examinations unit.

Pursuant to a formal investigation, the Division has broad authority to charge 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. RCW 19.146.228(2) and WAC 208-660-520(9). This broad authority based on a formal investigation does not limit the Division to only collect an investigation fee for the parts that are ultimately charged in the Statement of Charges. The Division could not realistically evaluate each case in a vacuum and determine an appropriate course of action without reviewing and considering all of the complaints and referrals related to Respondents.

Respondents argued that pursuant to WAC 208-660-520(10), the Division's investigation fee should be limited to the time spent investigating the Hayses' complaint. However, WAC 208-

⁶ *Waggoner v. Ace Hardware Co.*, 134 Wash. 2d 784, 754-55, 953 P.2d 88, 91 (1998); *Dep't of 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, 57-58 (1971).

660-520(10) relates to a limited complaint investigation as opposed to a formal books and records investigation authorized by RCW 19.146.228(2). As previously stated, in this case the initial limited complaint investigation was converted to a formal books and records investigation which was broad in scope and encompassed more than just the Hayses' complaint. All of the Division's time spent on this investigation, including time spent reviewing the other complaints and referrals from examinations, can be collected pursuant to statute. *See* RCW 19.146.228(2). The fact that the Division ultimately decided to charge only the violations related to one of the complaints does not preclude the Division from recovering all of its investigation time on all of the complaints and referrals.

The Director is of the view that ALJ Schuh incorrectly concluded that the Division failed to present evidence of the staff hours expended by the Division related to the investigation. To the contrary, Anthony Carter testified that the Division spent sixty (60) hours on the investigation up until the time that the Statement of Charges was issued. *See* Testimony of Carter. He testified about whose time is tracked and how the time is calculated. His testimony provided all the evidence necessary to make a proper finding, based upon a preponderance of the evidence, that the Division had established the number of hours spent on the investigation.

By rule, the Division may charge forty-eight dollars (\$48) per hour for the time spent on an investigation. *See* WAC 208-660-550(5)(a). Applying that rule to this case, the Division is entitled to collect \$2,880 in investigation fees ($\$48 \times 60 \text{ hours} = \$2,880$).

3.0 FINDINGS OF FACT & CONCLUSIONS OF LAW

For all of the reasons set forth in Section 2.0 above, it is incumbent upon the Director to modify the language in the Initial Order to conform with the plain language of RCW 19.146.220(2) and the legislative intent of the Act.

NOW, THEREFORE, the Director makes the following Findings of Fact and Conclusions of Law, as follows:

3.1 FOF 4.3 of the Initial Order is modified by the Director to read, as follows:

“4.33 On line 811 of the initial Good Faith Estimate, Precision Mortgage disclosed an underwriting fee of \$530 but failed to disclose that the underwriting fee would inure to the benefit of Precision Mortgage. Ex. 4; Testimony of Carter. On line 811 of the revised Good Faith Estimate, Precision Mortgage disclosed an underwriting fee of \$725 but failed to disclose that the underwriting fee would inure to the benefit of Precision Mortgage. Ex. 5; Testimony of Carter. The HUD-1 Settlement Statement does not include a reference to an underwriting fee. However, on line 811 of the HUD-1 Settlement Statement, the settlement agent disclosed a funding fee of \$760 that inured to the benefit of the lender. Ex. 43; Testimony of Carter. Furthermore, underwriting fees are typically fees that inure to the lender and not to the mortgage broker. Testimony of Carter. Accordingly, I find that no underwriting fee was charged and the funding fee did not inure to the benefit of Precision Mortgage.”

3.2 FOF 4.61 of the Initial Order is modified by the Director to read, as follows:

“4.61 The Department charges an investigation fee only if the investigation reveals violations. The Department always seeks recovery of 100% of the investigation fees incurred upon issuance of a Statement of Charges. Testimony of Carter.”

3.3 FOF 4.65 of the Initial Order is modified by the Director to read, as follows:

“4.65 Here, the 60 investigation hours requested by the Department included an initial complaint investigation conducted by Mr. Carter and an extensive formal investigation after Respondents failed to pay the refund as requested by the Division in the Resolution and Request for Action. Testimony of Carter. As part of the formal investigation, all complaints, referrals and alleged violations against the Respondents were reviewed by Mr. Carter. Testimony of Carter.”

3.4 FOF 4.66 of the Initial Order is modified by the Director to read, as follows:

“4.66 Although Mr. Carter contemporaneously investigated several complaints and referrals from the examination unit regarding

Precision Mortgage and Mr. Mortimer. Testimony of Carter. The examination referrals were initial findings and were not considered significant violations, therefore, the enforcement unit chose to refer those violations back to the examination unit per Division policy at the time. The enforcement unit chose to issue a Statement of Charges for the violations related to the Hayses' transaction. The formal investigation which led to the issuance of the Statement of Charges necessarily included all of the hours spent on all of the complaints and referrals related to Precision Mortgage and Mr. Mortimer. Testimony of Carter.”

3.5 COL 5.35 of the Initial Order is modified by the Director to read, as follows:

“5.35 The statute is inclusive disjunctive (sometimes called logical disjunctive). The Department may impose fines and order restitution under the unambiguous language of RCW 19.146.220(2).”

3.6 COL 5.36 of the Initial Order is modified by the Director to read, as follows:

“5.36 Initially, before filing the Statement of Charges, the Department sought restitution. I am not persuaded that this initial selection, or the Respondents' partial performance regarding it, proscribed the Department from selecting different remedies pursuant to the Statement of Charges. To hold otherwise would interfere with the Department's opportunity to employ a progressive element to seeking resolution and might inspire respondents to seek to “lock in” to a penalty by partial performance, believing that they had at that point nothing further to lose by challenging the Department. Therefore, I am not persuaded by the argument from Precision Mortgage and Mr. Mortimer that the settlement they arranged with the Hayses satisfied the Department's request for restitution.”

3.7 COL 5.37 of the Initial Order is modified by the Director to read, as follows:

“5.37 Thus, Precision Mortgage and Mr. Mortimer are liable for further restitution of \$1,447 for a total of \$4,177 in restitution. Additionally, Precision Mortgage and Mr. Mortimer are liable for a fine of \$4500 as calculated in Conclusion of Law 5.33.”

3.8 COL 5.38 of the Initial Order is modified by the Director to read, as follows:

“5.38 Restitution in the amount of \$4177 was properly calculated to include a \$2707 broker fee, a \$995 processing fee, a \$60 courier fee and \$415 for the amount of the Yield Spread Premium that exceeded the amount recited on the Good Faith Estimates. Testimony of Carter; Exhibits 43 and 52. Respondents will receive credit for \$2700 paid to consumer Charity Hays, prior to the issuance of the Statement of Charges. Testimony of Carter; Testimony of Charity Hays; Ex. 44.”

3.9 COL 5.44 of the Initial Order is modified by the Director to read, as follows:

“5.44 The Mortgage Broker Practices Act provides the Director with broad authority to conduct investigations related to violations and complaints under the Act. Here, the Department discovered violations when investigating multiple complaints and referrals related to Precision Mortgage, Inc. and Edward Mortimer, Jr. The Statement of Charges alleged violations related to the Hayses’ complaint, and other violations were referred back to the examination unit to be handled through the examination process. The Department provided evidence through Mr. Carter’s testimony that it spent 60 hours on the entire investigation up to the point that the Statement of Charges was issued. The Department is entitled to collect \$48 per hour for the time spent on the entire investigation. Accordingly, Precision Mortgage and Mr. Mortimer are liable for payment of investigation fees in the amount of \$2,880.”

3.10 OS 2.2 of the Initial Order is modified by the Director to read, as follows:

“2.2 The failure to properly disclose the mortgage broker fee and the processing fee violated RCW 19.146.0201(6) and (15). The failure to properly disclose the compensation in the form of the yield spread premium violated WAC 208-660-439(4) and thus RCW 19.146.0201(15). The disclosure regarding the underwriting fee did not violate RCW 19.146.030(1) or WAC 208-660-430(2).”

3.11 OS 2.3 of the Initial Order is modified by the Director to read, as follows:

“2.3 Precision Mortgage, Inc. and Edward Mortimer, Jr. are jointly and severally liable for further restitution in the amount of \$1,477 for a total of \$4,177 in restitution. Precision Mortgage, Inc., and Edward Mortimer, Jr. are jointly and severally liable for an investigation fee in the amount of \$2,880. Precision Mortgage, Inc.

and Edward Mortimer, Jr. are jointly and severally liable for a fine in the amount of \$4,500.”

3.12 Except as set forth in Subsections 3.1 through 3.11 above, all Findings of Fact and Conclusions of Law of the Initial Order (including such findings and conclusions that were styled by ALJ Schuh as “Order Summary”) are hereby affirmed by the Director and incorporated herein by this reference.

3.11 The Director hereby adopts Subsections 3.1 through 3.12 above as the Findings of Fact and Conclusions of Law of this Final Decision and Order.

4.0 FINAL DECISION & ORDER

WHEREFORE, based upon the Findings of Fact and Conclusions of Law set forth in Section 3.0 above, and as the Final Decision of the Department with respect to this matter, IT IS HEREBY ORDERED:

4.1 Pleadings Amended to Conform to Proof. The Statement of Charges is modified to be consistent with this Final Decision and Order.

4.2 Improper Disclosures. Randy Szabo, on behalf of Precision Mortgage, Inc., failed to disclose to Consumers JH and CH⁷ on the Initial Good Faith Estimate dated September 5, 2007, and on the Revised Good Faith Estimate dated November 1, 2007, that the Mortgage Broker Fee and the Processing Fee each inured to the benefit of Precision Mortgage, Inc., and failed to properly disclose the Yield Spread Premium to Consumers JH and CH on these same documents. Respondents, PRECISION MORTGAGE, INC., and EDWARD MORTIMER, JR., are jointly and severally responsible for those improper disclosures, as hereinafter set forth.

⁷ The identities of Consumers JH and CH are known to the parties and are documented in the Record on Review.

4.3 Liability for Improper Disclosures. The failure to properly disclose the Mortgage Broker Fee and the Processing Fee violated RCW 19.146.030 and thus RCW 19.146.0201(6) and (15). The failure to properly disclose the compensation in the form of the Yield Spread Premium violated WAC 208-660-439(4) and thus RCW 19.146.0201(15).

4.4 Restitution. Respondents, PRECISION MORTGAGE, INC., and EDWARD MORTIMER, JR., are jointly and severally liable for and shall pay to Consumers JH and CH a total of Four Thousand One Hundred Seventy-Seven Dollars (\$4,177.00) in restitution.

4.5 Investigation Fee. Respondents, PRECISION MORTGAGE, INC., and EDWARD MORTIMER, JR., are jointly and severally liable for and shall pay to the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS an investigation fee in the amount of Two Thousand Eight Hundred Eighty Dollars (\$2,880.00).

4.6 Fine. Respondents, PRECISION MORTGAGE, INC., and EDWARD MORTIMER, JR., are jointly and severally liable for and shall pay to the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS a fine in the amount of Four Thousand Five Hundred Dollars (\$4,500.00).

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

the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on a petition.

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

4.9 Judicial Review. Respondents have the right to petition the superior court for judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

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

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

Dated at Tumwater, Washington, on this 17th day of May, 2012

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By:



Scott Jarvis, Director

1 STATE OF WASHINGTON
2 DEPARTMENT OF FINANCIAL INSTITUTIONS
3 DIVISION OF CONSUMER SERVICES

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

5 PRECISION MORTGAGE, INC.,
6 EDWARD P. MORTIMER, JR., President and
Designated Broker,

7 Respondents.

NO. C-08-147-10-SC01

STATEMENT OF CHARGES and NOTICE OF INTENT
TO ENTER AN ORDER TO PAY RESTITUTION,
IMPOSE FINES, and COLLECT INVESTIGATION
FEES

8 INTRODUCTION

9 Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions
10 of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage
11 Broker Practices Act (Act).¹ After having conducted an investigation pursuant to RCW 19.146.235, and based upon
12 the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of
13 Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

14 I. FACTUAL ALLEGATIONS

15 1.1 Respondents.

16 A. **Precision Mortgage, Inc.** (Respondent Precision) was licensed by the Department of Financial
17 Institutions of the State of Washington (Department) to conduct business as a mortgage broker on or about March
18 30, 2005, and has continued to be licensed to date. Respondent Precision is licensed to conduct the business of a
19 mortgage broker only from its main location in Newcastle, Washington.

20 B. **Edward P. Mortimer, Jr.** (Respondent Mortimer) is the President and Designated Broker of
21 Respondent Precision. Respondent Mortimer was licensed by the Department as the Designated Broker of
22 Respondent Precision on or about March 30, 2005, and has continued to be licensed as the Designated Broker to
23 date.

24 //

25 ¹ Effective January 1, 2007.

1 **1.2 Inaccurate Disclosures.** On or about February 10, 2009, the Department received a complaint concerning
2 a transaction with Respondent Precision. On or about September 5, 2007, Borrowers JH and CH applied to
3 Respondent Precision to refinance their existing mortgage. Respondent Precision provided Borrowers JH and CH
4 with an initial Good Faith Estimated (GFE) dated September 5, 2007, and a revised GFE dated November 1,
5 2007. The GFEs did not specify that the mortgage broker, processing, and underwriting fees inured to the benefit
6 of Respondent Precision; did not disclose the Yield Spread Premium on line 808-811 of the GFE; and did not
7 accurately disclose the Yield Spread Premium using the term "Yield Spread Premium" spelled out in full.

8 On or about January 5, 2010, the Department mailed a letter to Respondents requesting that Respondent
9 Precision refund \$9,177 to Borrowers JH and CH. Respondents requested the Department reconsider the refund
10 request as it related to the YSP. After reviewing the YSP disclosure, the Department reduced the refund amount
11 requested by the YSP charged, and asked that Respondents refund \$3,762 to Borrowers JH and CH. Respondents
12 again requested the Department reconsider the refund request, arguing, among other things, that borrowers JH and
13 CH were not confused by Respondents' inaccurate disclosures. The Department denied Respondents' request,
14 increased the requested refund amount based on a third review of the loan file, and asked that Respondents refund
15 \$4,213¹ to Borrowers JH and CH no later than February 9, 2010. On or about February 12, 2010, Respondents
16 paid restitution in the amount of \$2,700 to borrowers JH and CH.

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

18 **2.1 Liability for Actions by Others.** Pursuant to RCW 19.146.245 and WAC 208-660-155(3)², Respondent
19 Precision is liable for and responsible for any conduct which violates the Act by designated brokers and loan
20 originators while employed or engaged by Respondent Precision. Pursuant to WAC 208-660-155(4) and WAC
21 208-660-530(6), Respondent Mortimer is liable for and responsible for any conduct which violates the Act.
22 Furthermore, pursuant to RCW 19.146.200(4)(b) and WAC 208-660-530(7), Respondent Mortimer is liable for
23 any conduct which violates the Act by employees, independent contractors, or other licensees if he directed or

24 ¹ The initial refund request included the YSP charge in the amount of \$5,415. The second refund request eliminated the entire YSP charge. The third
25 review revealed that Respondents had disclosed a YSP charge of up to \$5,000, but had charged \$5,415. The \$415 overcharge should have been included in
the second request for refund. Due to a transposition error, the third refund request was increased by \$451, instead of \$415. The amount that should have
been requested was \$4,177. The Department is now seeking restitution of \$1,477, deducting the \$2,700 paid from the \$4,177 due.

² WAC 208-660 has recently been amended. Citations to the WAC refer to the provision that were in effect during 2006 and 2007.

1 instructed the conduct that was in violation of the Act, or had knowledge of the specific conduct, and approved or
2 allowed the conduct; or if he knew, or by the exercise of reasonable care and inquiry should have known, of the
3 conduct in time to prevent it, or minimize the consequences, and did not take reasonable remedial action.

4 **2.2 Requirement to Make Disclosures.** Based on the Factual Allegations set forth in Section I above,
5 Respondents are in apparent violation of RCW 19.146.0201(6), (11), and (15) for not making disclosures to loan
6 applicants as required by RCW 19.146.030 and any other applicable state or federal law, including the Truth in
7 Lending Act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226; the Real Estate Settlement Procedures Act,
8 12 U.S.C. Sec. 2601 and Regulation X, 24 C.F.R. Sec. 3500; the Gramm-Leach-Bliley Act, 12 U.S.C. Sections 6801-
9 6809 and Regulation P, 12 C.F.R. Sec. 216; and the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).

10 III. AUTHORITY TO IMPOSE SANCTIONS

11 **3.1 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2)(e) the Director may issue an order directing
12 a licensee or other person subject to the Act to pay restitution for any violation of the Act.

13 **3.2 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(e) the Director may impose fines on a licensee
14 or other person subject to the Act for any violation of the Act.

15 **3.3 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-520, and
16 WAC 208-660-550(4) the Department may collect the costs of any investigation of alleged violations of the Act.

17 IV. NOTICE OF INTENT TO ENTER ORDER

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

22 **4.1** Respondents Precision Mortgage, Inc. and Edward P. Mortimer, Jr., jointly and severally pay restitution to
23 borrowers for Respondents' illegal practices of making inaccurate disclosures, including payment of at least
\$1,477 in restitution to the borrowers identified in paragraph 1.3; and

24 **4.2** Respondents Precision Mortgage, Inc. and Edward P. Mortimer, Jr. jointly and severally pay a fine that as of
25 the date of this Statement of Charges totals \$6,000; and

1 4.3 Respondents Precision Mortgage, Inc. and Edward P. Mortimer, Jr. jointly and severally pay an investigation
2 fee that as of the date of this Statement of Charges totals \$2,880, representing 60 staff hours at \$48.00 per hour.

3 **V. AUTHORITY AND PROCEDURE**

4 This Statement of Charges and Notice of Intent to Enter an to Pay Restitution, Impose Fines, and Collect
5 Investigation Fees (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220,
6 RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW
7 (The Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in the
8 NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this
9 Statement of Charges.

10
11 Dated this 21st day of December, 2010.

12 [Redacted Signature]
13 DEBORAH BORTNER
14 Director
15 Division of Consumer Services
16 Department of Financial Institutions

17 Presented by:

18 [Redacted Signature]
19 ANTHONY W. CARTER
20 Enforcement Attorney

21 Approved by:

22 [Redacted Signature]
23 JAMES R. BRUSSELBACK
24 Enforcement Chief

