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4 **STATE OF WASHINGTON**  
5 **DEPARTMENT OF FINANCIAL INSTITUTIONS**

6 IN THE MATTER OF DETERMINING whether  
7 there has been a violation of the Mortgage Broker  
8 Practices Act of Washington by:

NO. C-08-293-11-FO01

8 EXCEL FUNDING, INC., Licensee, and  
9 BRETT THOMAS LAWRENCE, Designated  
10 broker, President, and Owner,

FINAL ORDER

11 Respondents.

12 I. DIRECTOR'S CONSIDERATION

13 A. Procedural History. This matter has come before the Director of the  
14 Department of Financial Institutions of the State of Washington (Director) pursuant to RCW  
15 34.05.464. On March 18, 2010, the Director, through Consumer Services Division Director Deborah  
16 Bortner, entered a Statement of Charges and Notice of Intention to Enter an Order to Revoke or  
17 Suspend License, Prohibit from Industry, Impose Fine, Order Restitution, and Collect Investigation  
18 Fee (Statement of Charges). The Statement of Charges was accompanied by a cover letter dated  
19 March 19, 2010, a Notice of Opportunity to Defend and Opportunity for Hearing, and blank  
20 Applications for Adjudicative Hearing for Excel Funding, Inc. and Brett Thomas Lawrence. The  
21 Department served the Statement of Charges, cover letter dated March 19, 2010, Notice of  
22 Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing  
23 for Excel Funding, Inc. and Brett Thomas Lawrence on Respondents on March 19, 2010, by First-  
24 Class mail and Federal Express overnight delivery.  
25

1 On April 9, 2010, Respondents filed an Application for Adjudicative Hearing. On June 29,  
2 2010, the Department made a request to the Office of Administrative Hearings (OAH) to assign an  
3 Administrative Law Judge (ALJ) to schedule and conduct a hearing on the Statement of Charges. On  
4 or about July 13, 2010, ALJ Gina L. Hale issued a Notice of Prehearing Conference by Telephone  
5 scheduling a prehearing conference on August 25, 2010, at 8:15 a.m. On or about August 25, 2010,  
6 ALJ Hale issued a Second Notice of Prehearing Conference scheduling a prehearing conference for  
7 October 12, 2010, at 8:15 a.m.

8  
9 On October 12, 2010, all parties attended a telephonic prehearing conference. On or about  
10 October 18, 2010, ALJ Hale issued a Prehearing Conference Order and Notice of Hearing scheduling a  
11 hearing on April 11, 2011. On or about November 2, 2010, ALJ Hale issued an Amended Prehearing  
12 Conference Order and Notice of Hearing extending the discovery cut off date but retaining the hearing  
13 date of April 11, 2011. On or about April 11, 2011, ALJ Hale issued a Notice of Hearing  
14 (Continuance) rescheduling the hearing for July 7, 2011.

15 On April 19, 2011, the Director, through Consumer Services Division Director Deborah  
16 Bortner, entered an Amended Statement of Charges and Notice of Intention to Enter an Order to  
17 Revoke Licenses, Prohibit from Industry, Impose Fine, Order Restitution, and Collect Investigation  
18 Fee (Amended Statement of Charges). A copy of the Amended Statement of Charges is attached and  
19 incorporated herein by reference. On April 21, 2011, the Amended Statement of Charges was served  
20 on Respondents by First-Class mail and Federal Express overnight delivery.  
21

22 On July 7, 2011, all parties attended the hearing. On or about September 2, 2011, ALJ Hale  
23 issued an Initial Order affirming the Amended Statement of Charges in its entirety. This Initial Order

- 24
- revoked Excel Funding, Inc.'s license to conduct the business of a mortgage broker;
  - revoked Brett Thomas Lawrence's license to conduct business as a loan originator;
- 25

- 1 • prohibited Excel Funding, Inc. and Brett Thomas Lawrence from participation in the
- 2 conduct of the affairs of any mortgage broker subject to licensure by the Director, in any
- 3 manner, for a period of five years;
- 4 • ordered Excel Funding, Inc. and Brett Thomas Lawrence to jointly and severally pay a fine
- 5 of \$20,000;
- 6 • ordered Excel Funding, Inc. and Brett Thomas Lawrence to jointly and severally pay
- 7 restitution to borrower M.C. of \$3,493;
- 8 • ordered Excel Funding, Inc. and Brett Thomas Lawrence to jointly and severally pay an
- 9 investigation fee of \$3,072; and
- 10 • ordered Excel Funding, Inc. and Brett Thomas Lawrence to maintain records in compliance
- 11 with the Act and provide the Department with the location of the books, records, and other
- 12 information relating to Respondent Excel's mortgage broker business, and the name,
- 13 address and telephone number of the individual responsible for maintenance of such
- 14 records in compliance with the Act.

15 On September 2, 2011, ALJ Hale mailed the Initial Order to Respondents and Respondents' attorney at  
16 the addresses Respondents previously provided.

17 Pursuant to RCW 34.05.464 and WAC 10-08-211, Respondents had 20 days from the date of  
18 service of the Initial Order to file a Petition for Review of the Initial Order. Respondents did not file a  
19 Petition for Review during the statutory period.

20 B. Record Presented. The record presented to the Director for his review and for entry of a  
21 final decision included the following:

- 22 1. Statement of Charges, cover letter dated March 18, 2010, and Notice of Opportunity
- 23 to Defend and Opportunity for Hearing, with documentation of service;
- 24 2. Application for Adjudicative Hearing for Excel Funding, Inc. and Brett Thomas
- 25 Lawrence;<sup>1</sup>
- 26 3. Notice of Prehearing Conference by Telephone dated July 13, 2010, with
- 27 documentation of service;
- 28 4. Second Notice of Prehearing Conference by Telephone dated August 25, 2010, with
- 29 documentation of service;

30 <sup>1</sup> Although only the Application for Adjudicative Hearing for Excel Funding, Inc. was filed, the parties subsequently  
31 agreed that it would apply to Respondent Lawrence as well.

- 1 5. Prehearing Conference Order and Notice of Hearing dated October 18, 2010, with  
2 documentation of service;
- 3 6. Amended Prehearing Conference Order and Notice of Hearing dated November 2,  
4 2010, with documentation of service;
- 5 7. Notice of Hearing (Continuance) dated April 11, 2011, with documentation of service;
- 6 8. Amended Statement of Charges dated April 19, 2011; and
- 7 9. Initial Order dated September 2, 2011, with documentation of service;

8 C. Factual Findings and Grounds For Order. Pursuant to RCW 34.05.461, the Director  
9 hereby adopts the Initial Order, which is attached hereto.

## 10 II. FINAL ORDER

11 Based upon the foregoing, and the Director having considered the record and being  
12 otherwise fully advised, NOW, THEREFORE:

13 A. IT IS HEREBY ORDERED, that:

- 14 1. The license of Respondent EXCEL FUNDING, INC. to conduct the business of a  
15 mortgage broker is revoked;
- 16 2. The license of Respondent BRETT THOMAS LAWRENCE to conduct the business of a  
17 loan originator is revoked;
- 18 3. Respondents EXCEL FUNDING INC. and BRETT THOMAS LAWRENCE are prohibited  
19 from participation in the conduct of the affairs of any mortgage broker subject to licensure by  
20 the Director, in any manner, for a period of 5 years;
- 21 4. Respondents EXCEL FUNDING INC. and BRETT THOMAS LAWRENCE shall jointly  
22 and severally pay a fine of \$20,000;
- 23 5. Respondents EXCEL FUNDING INC. and BRETT THOMAS LAWRENCE shall jointly  
24 and severally pay restitution to borrower M.C. of \$3,493;
- 25 6. Respondents EXCEL FUNDING INC. and BRETT THOMAS LAWRENCE shall jointly  
and severally pay to Washington State Department of Financial Institutions an investigation  
fee of \$3,072; and
7. Respondents EXCEL FUNDING INC. and BRETT THOMAS LAWRENCE shall maintain  
records in compliance with the Act and provide the Department with the location of the

1 books, records and other information relating to Respondent Excel's mortgage broker  
2 business, and the name, address and telephone number of the individual responsible for  
maintenance of such records in compliance with the Act.

3 B. Reconsideration. Pursuant to RCW 34.05.470, Respondents have the right to file a  
4 Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition  
5 must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150  
6 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia,  
7 Washington 98504-1200, within ten days of service of the Final Order upon Respondents. The Petition  
8 for Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a  
9 prerequisite for seeking judicial review in this matter.  
10

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

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

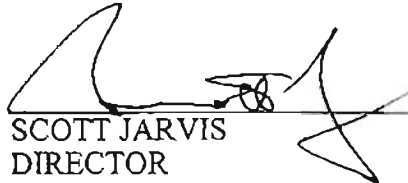
17 D. Judicial Review. Respondents have the right to petition the superior court for judicial  
18 review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing  
19 a Petition for Judicial Review, see RCW 34.05.510 and sections following.

20 E. Service. For purposes of filing a Petition for Reconsideration or a Petition for Judicial  
21 Review, service is effective upon deposit of this order in the U.S. mail, declaration of service attached  
22 thereto.  
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1 DATED this 21st day of December 2011.



3 STATE OF WASHINGTON  
4 DEPARTMENT OF FINANCIAL INSTITUTIONS

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7 SCOTT JARVIS  
8 DIRECTOR

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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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EXCEL FUNDING INC., Licensee,  
BRETT THOMAS LAWRENCE, Designated  
Broker, President, and Owner,

Respondents.

NO. C-08-293-08-SC01

STATEMENT OF CHARGES and NOTICE OF  
INTENTION TO ENTER AN ORDER TO  
REVOKE OR SUSPEND LICENSE, PROHIBIT  
FROM INDUSTRY, IMPOSE FINE, ORDER  
RESTITUTION, 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)<sup>1</sup>. 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. **Excel Funding Inc. (Respondent Excel)** was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage broker on June 16, 1999, and has continued to be licensed to date.

B. **Brett Thomas Lawrence (Respondent Lawrence)** is Designated Broker and Owner of Respondent Excel. Respondent Lawrence was named Designated Broker of Respondent Excel on June 16, 1999, and has continued as Designated Broker to date. On November 15, 2006, Respondent Lawrence was issued a loan originator license and continues to be licensed to date.

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<sup>1</sup> RCW 19.146 (1994).

1 **1.2 Department's Investigation.** The Department received information that Respondents had provided  
2 an incapacitated borrower a personal loan that was secured by the borrower's residence. After conducting an  
3 investigation, the Department discovered Respondent Lawrence had provided a residential mortgage loan to  
4 an 81-year old woman (Borrower M.C.) who was incapacitated and who was eventually (after the loan)  
5 removed from her home by Washington State Adult Protective Services.

6 Respondent Lawrence conducted his mortgage broker business, Respondent Excel, from a building  
7 that overlooks Borrower M.C.'s residence (located in the city of Vancouver, Washington) and is less than 150  
8 feet away. Borrower M.C.'s residence was on a city block that was zoned for commercial purposes and was  
9 surrounded by two office buildings and a parking lot. The condition of Borrower M.C.'s residence was poor  
10 with mold on the interior and a leaking roof. At the end of 2006, Respondent Lawrence left a letter on  
11 Borrower M.C.'s front door indicating he was interested in buying her home. This offer was rejected. During  
12 all times relevant to this Statement of Charges, Borrower M.C. had granted a Power of Attorney (P.O.A.) to a  
13 family friend to handle her financial transactions.

14 In October 2006, Borrower M.C. had obtained a proposal and contract to have her roof fixed for the  
15 sum of \$9,000 plus tax. In December of 2006, Borrower M.C., through her P.O.A., made contact with  
16 Respondents Lawrence and Excel for the purpose of obtaining a loan because the "roof is leaking"(per the  
17 loan application). Respondent Lawrence took an application from Borrower M.C. and ran her credit on  
18 December 29, 2006. Borrower M.C. did not have any encumbrances upon her residence at the time she  
19 applied for the loan and her home was valued at roughly \$189,000.

20 Respondents Lawrence and Excel did not provide Borrower M.C. with any disclosures such as a  
21 Truth-In-Lending statement (TIL) or Good Faith Estimate (GFE), despite a request for the documents from  
22 the title company handling the loan. The final loan documents were signed by Borrower M.C. on January 19,  
23 2007. The P.O.A. did not sign the loan documents even though Respondents Lawrence and Excel were aware  
24 the P.O.A. existed.

25 Respondents Lawrence and Excel drafted a Promissory Note that included, among other things, the  
following terms:



- 1 - \$40,000 loan amount
- 2 - Monthly payments beginning March 1, 2007
- 3 - 12% interest per annum
- 4 - 5 year prepayment penalty with a penalty equal to 6 months worth of interest unless the loan is refinanced through Excel Funding
- 5 - Balloon payment (full amount of principal plus interest) due February 1, 2009, with a late penalty of \$2,000 if not paid in full and timely
- 6 - The Promissory Note was secured by a Deed of Trust

As a result of the loan, Respondents Lawrence and Excel received the following fees:

7	Loan Origination Fee	\$2,000 (5% of the loan amount)
8	Credit Report	\$25
9	Processing	\$295
10	Underwriting	\$500
	Flood Certification	\$19
	Tax Service	\$59
	<u>Doc. Prep</u>	<u>\$595</u>
	Total Fees	\$3,493

11 Respondents Lawrence and Excel took advantage of an incapacitated borrower by, among other  
 12 things, loaning her \$40,000 for a \$9,000 expense, charging her a 5% loan origination fee, trapping her in a  
 13 prepayment penalty that was for 5 years and at the same time requiring her to make a balloon payment within  
 14 the 5 years resulting in a penalty if she paid the loan early or paid the loan timely, and not providing her with  
 15 all the required disclosures and only some disclosures on the day she signed the final loan documents.

16 **1.3 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by  
 17 Respondents continues to date.

## 18 II. GROUNDS FOR ENTRY OF ORDER

19 **2.1 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondents are in  
 20 apparent violation of RCW 19.146.0201(1), (2), (3), (6), (11), (13) and (15) for directly or indirectly  
 21 employing a scheme, device or artifice to defraud or mislead borrowers or lenders or any person, engaging in  
 22 an unfair or deceptive practice toward any person, obtaining property by fraud or misrepresentation, failing to  
 23 make disclosures to loan applicants and non-institutional investors as required by RCW 19.146.030 and any  
 24 other applicable state or federal law, failing to comply with any requirement of the Truth-In-Lending Act, 15,  
 25 U.S.C. Sec 1601 and Regulation Z, 12 C.F.R. Sec. 226, and the Real Estate Settlement Procedures Act, 12

1 U.S.C. Sec. 2601 and Regulation X, 24 C.F.R. Sec. 3500, collecting, charging, attempting to collect or charge  
2 or using or proposing any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030  
3 or RCW 19.146.070, and failing to comply with any provision of RCW 19.146.030 through 19.146.080 or  
4 any rule adopted under those sections

5 **2.2 Requirement to Disclose Residential Mortgage Loan Fees.** Based on the Factual Allegations set  
6 forth in Section I above, Respondents are in apparent violation of RCW 19.146.030(1) and (2) for failing to  
7 provide borrowers with full written disclosures, containing an itemization and explanation of all fees and  
8 costs that the borrowers were required to pay in connection with obtaining a residential mortgage loan, within  
9 three days following receipt of a loan application or any moneys from the borrowers.

10 **2.3 Prohibited Fees.** Based on the Factual Allegations set forth in Section I above, Respondents are in  
11 apparent violation of RCW 19.146.030(4) for charging fees inuring to the benefit of a mortgage broker in  
12 excess of the fees disclosed on the initial written disclosures where the fees were reasonably foreseeable by  
13 the mortgage broker at the time the initial written disclosures were provided to borrowers, and/or where the  
14 mortgage broker failed to provide the borrowers, no less than three business days prior to the signing of the  
15 loan closing documents, a clear written explanation of the fees and the reason for charging fees exceeding  
16 those which were previously disclosed.

### 17 **III. AUTHORITY TO IMPOSE SANCTIONS**

18 **3.1 Authority to Revoke or Suspend License.** Pursuant to RCW 19.146.220(2)(b)(iv), and WAC 208-  
19 660-160, the Director may revoke or suspend a license for any violation of RCW 19.146.050, RCW  
20 19.146.060(3), RCW 19.146.0201(1) through (9) or (12), RCW 19.146.205(4), or RCW 19.146.265.

21 **3.2 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(2)(e)(i), the Director may  
22 issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed  
23 mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker  
24 or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9) or (12),  
25 RCW 19.146.030 through RCW 19.146.080, RCW 19.146.200, RCW 19.146.205(4), or RCW 19.146.265.

1 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(c)(i) and WAC 208-660-165, the Director  
2 may impose fines on a licensee, employee or loan originator of the licensee, or other person subject to the Act  
3 for any violations of RCW 19.146.0201(1) through (9) or (12), RCW 19.146.030 through RCW 19.146.080,  
4 RCW 19.146.200, RCW 19.146.205(4), or RCW 19.146.265.

5 **3.4 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2)(ii), the Director may issue orders  
6 directing a licensee, its employee or loan originator, or other person subject to the Act to pay restitution to an  
7 injured borrower.

8 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-060(4) and  
9 WAC 208-660-061, upon completion of any investigation of the books and records of a licensee or other person  
10 subject to the Act, the Department will furnish to the licensee or other person subject to the Act a billing to cover  
11 the cost of the investigation. The investigation charge will be calculated at the rate of forty-seven dollars and  
12 seventy-eight cents (\$47.78) per hour that each staff person devoted to the investigation.

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

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

- 6 **4.1** Respondent Excel Funding Inc.'s license to conduct the business of a mortgage broker be revoked or  
7 suspended;
- 8 **4.2** Respondent Brett Thomas Lawrence's license to conduct the business of a loan originator be revoked  
9 or suspended;
- 10 **4.3** Respondents Excel Funding Inc. and Brett Thomas Lawrence, be prohibited from participation in the  
11 conduct of the affairs of any mortgage broker subject to licensure by the Director, in any manner, for a  
12 period of 5 years;
- 13 **4.4** Respondents Excel Funding Inc. and Brett Thomas Lawrence jointly and severally pay a fine of \$20,000;
- 14 **4.5** Respondents Excel Funding Inc. and Brett Thomas Lawrence jointly and severally pay restitution to all  
15 borrowers injured by Respondents;
- 16 **4.6** Respondents Excel Funding Inc. and Brett Thomas Lawrence jointly and severally pay an investigation  
17 fee which, as of the date of these charges, totals \$1,433.40 calculated at \$47.78 per hour for the 30 staff  
18 hours devoted to the investigation;
- 19 **4.7** Respondents Excel Funding Inc. and Brett Thomas Lawrence maintain records in compliance with the  
20 Act and provide the Department with the location of the books, records and other information relating to  
21 Respondent Excel's mortgage broker business, and the name, address and telephone number of the  
22 individual responsible for maintenance of such records in compliance with the Act.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intention to Enter an to Revoke or Suspend Licenses,  
3 Prohibit from Industry, Impose Fine, Order Restitution, Collect Investigation Fee, and Maintain Records  
4 (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW  
5 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The  
6 Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in the  
7 NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this  
8 Statement of Charges.

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10 Dated this 18<sup>th</sup> day of March, 2010.



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DEBORAH BORTNER  
Director  
Division of Consumer Services  
Department of Financial Institutions

Presented by:

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WILLIAM HALSTEAD  
Financial Legal Examiner

Approved by:

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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:

EXCEL FUNDING, INC. and  
BRETT THOMAS LAWRENCE,  
Designated Broker, President, and Owner,

Respondents.

NO. C-08-293-11-SC02

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

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**INTRODUCTION**

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act)<sup>1</sup>. After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as of March 18, 2010, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, issued Statement of Charges C-08-293-08-SC01. Now, having conducted further investigation pursuant to RCW 19.146.235, and based upon the facts available as of the date of this Amended 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. **Excel Funding, Inc. (Respondent Excel)** was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage broker on or about June 16, 1999, and was licensed at all times relevant to these charges.

B. **Brett Thomas Lawrence (Respondent Lawrence)** is known to be Designated Broker and Owner of Respondent Excel. Respondent Lawrence was named Designated Broker of Respondent Excel on or about June 16, 1999, and was Designated Broker at all times relevant to these charges. On or about

<sup>1</sup> All references to the Act are to the version that went into effect January 1, 2007, unless specifically stated otherwise.

1 November 15, 2006, Respondent Lawrence was issued a loan originator license, which has not been renewed  
2 pending revocation.

3 **1.2 Prohibited Acts.** The Department received information that Respondents had provided an elderly  
4 borrower with a personal loan that was secured by the borrower's residence. After conducting an  
5 investigation, the Department confirmed that Respondent Lawrence had provided a residential mortgage loan  
6 to an 81-year old woman (Borrower M.C.) who suffered from dementia. The Department further discovered  
7 that an adult guardianship petition was filed on behalf of Borrower M.C. on July 27, 2007, that she was  
8 removed from her home by Washington State Adult Protective Services on August 8, 2007, and that a court  
9 order finding Borrower M.C. mentally incapacitated as a matter of law was entered on September 7, 2007.

10 Respondent Lawrence conducted his mortgage broker business, Respondent Excel, from a building  
11 that overlooks Borrower M.C.'s residence (located in the city of Vancouver, Washington) and is less than 150  
12 feet away. Borrower M.C.'s residence was on a city block that was zoned for commercial purposes and was  
13 surrounded by two office buildings and a parking lot. The condition of Borrower M.C.'s residence was poor  
14 with mold on the interior and a leaking roof.

15 Respondent Lawrence took an application from Borrower M.C. and ran her credit on or about  
16 December 29, 2006. Borrower M.C. did not have any encumbrances upon her residence at the time she  
17 applied for the loan and her home was valued at roughly \$189,000.

18 Respondents Lawrence and Excel did not provide Borrower M.C. with any disclosures such as a  
19 Truth-In-Lending statement (TIL) or Good Faith Estimate (GFE), despite a request for the documents from  
20 the title company handling the loan. The final loan documents were signed by Borrower M.C. on or about  
21 January 19, 2007. The P.O.A. did not sign the loan documents even though Respondents Lawrence and Excel  
22 were aware the P.O.A. existed.

23 Respondents Lawrence and Excel drafted a Promissory Note that included, among other things, the  
24 following terms:

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- \$40,000 loan amount
  - Monthly payments beginning March 1, 2007
  - 12% interest per annum

- 1 - 5 year prepayment penalty with a penalty equal to 6 months worth of interest unless the loan is refinanced through Excel Funding
- 2 - Balloon payment (full amount of principal plus interest) due February 1, 2009, with a late penalty of \$2,000 if not paid in full and timely
- 3 - The Promissory Note was secured by a Deed of Trust

4 As a result of the loan, Respondents Lawrence and Excel received the following fees:

5	Loan Origination Fee	\$2,000 (5% of the loan amount)
	Credit Report	\$25
6	Processing	\$295
	Underwriting	\$500
7	Flood Certification	\$19
	Tax Service	\$59
8	<u>Doc. Prep</u>	<u>\$595</u>
	Total Fees	\$3,493

9 Respondents Lawrence and Excel took advantage of the borrower by, among other things, loaning her  
 10 \$40,000 for a \$9,000 expense, charging her a 5% loan origination fee, trapping her in a prepayment penalty  
 11 that was for 5 years and at the same time requiring her to make a balloon payment within the 5 years resulting  
 12 in a penalty if she paid the loan early or paid the loan timely, and not providing her with all the required  
 13 disclosures and only some disclosures on the day she signed the final loan documents.

14 **1.3 Failure to Provide Mandatory Disclosures.** Respondents were required to provide, at a minimum, a  
 15 TIL and GFE within three business days of accepting the loan application from M.C. Respondents accepted  
 16 a loan application from M.C. on or about December 29, 2006, but Respondents' loan file did not contain any  
 17 evidence that Respondents had provided a TIL or GFE on or before January 2, 2007.

18 **1.4 Charging Unlawful Fees.** Respondents were prohibited from charging any fee benefitting  
 19 Respondents which were not disclosed on the GFE. As stated above, Respondents did not provide a GFE  
 20 and, thereby, did not disclose any fees benefitting Respondents. As a result, Respondents were prohibited  
 21 from charging any fees for their benefit.

22 **1.5 Charging Unearned Fees.** The Final HUD-1 for the loan to M.C. shows that Respondents received  
 23 \$25 for the borrower's credit report. The credit report in Respondent's file, however, indicates that the fee  
 24 charged by the credit bureau was only \$5.51.  
 25



1 **1.6 Failure to Deposit Fees for Third-Party Services into Trust Account.** The Act requires all money  
2 received for payment of third-party services to be placed into a trust account within three business days of  
3 receipt. As indicated above, Respondents received \$25 as payment for a credit report; a third-party service.  
4 The Department's records, however, indicate that Respondents had no trust account; and there is no evidence  
5 in Respondents' loan file that the credit report fee was deposited into any trust account.

6 **1.7 Failure to Timely Comply with Director's Authority.** On or about June 4, 2008, the Department  
7 issued a Directive to Respondents requiring them to provide the "entire loan file" for M.C. on or before June  
8 19, 2008. Respondents did not provide the records as directed. On or about July 9, 2008, the Department  
9 issued a Subpoena to Respondents, requiring them to provide the loan file for M.C. on or before July 19,  
10 2008. Respondents again did not provide the records as directed. The Department finally received the loan  
11 file on or about July 28, 2008.

12 **1.8 Failure to Properly Maintain Records.** As stated above, the Department directed Respondents to  
13 provide a copy of the entire loan file for the loan made to M.C. and received the file on or about July 28,  
14 2008. Upon review, however, the file did not contain a TIL or GFE.

15 **1.9 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by  
16 Respondents continues to date.

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

18 **2.1 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondents are in  
19 apparent violation of RCW 19.146.0201(1), (2), and (3) for directly or indirectly employing a scheme, device  
20 or artifice to defraud or mislead any person, engaging in an unfair or deceptive practice toward any person,  
21 and obtaining property by fraud or misrepresentation.

22 **2.2 Requirement to Provide Disclosures.** Based on the Factual Allegations set forth in Section I above,  
23 Respondents are in apparent violation of RCW 19.146.0201(2) and (6)(1994 and 2006), (10)(1994), (11),  
24 (14)(1994), and (15) and RCW 19.146.030(1) and (2)(1994 and 2006) for failing to provide the borrower with  
25 full written disclosures, containing an itemization and explanation of all fees and costs that the borrowers

1 were required to pay in connection with obtaining a residential mortgage loan, within three days following  
2 receipt of a loan application from the borrower.

3 **2.3 Prohibition Against Charging Unlawful Fees.** Based on the Factual Allegations set forth in Section  
4 I above, Respondents are in apparent violation of RCW 19.146.0201(2), (3), (11), (13), and (15) and RCW  
5 19.146.030(4) for charging fees inuring to the benefit of a mortgage broker in excess of the fees disclosed on  
6 the initial written disclosures where the fees were reasonably foreseeable by the mortgage broker at the time  
7 the initial written disclosures were provided to borrowers, and/or where the mortgage broker failed to provide  
8 the borrowers, no less than three business days prior to the signing of the loan closing documents, a clear  
9 written explanation of the fees and the reason for charging fees exceeding those which were previously  
10 disclosed.

11 **2.4 Prohibition Against Charging Unearned Fees.** Based on the Factual Allegations set forth in  
12 Section I above, Respondents are in apparent violation of RCW 19.146.0201(2), (3), (11), (13), and (15) and  
13 RCW 19.146.070(2)(b) for charging fees for third-party services in excess of the actual amount paid.

14 **2.5 Requirement to Deposit Fees for Third-Party Services into Trust Account.** Based on the Factual  
15 Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.0201(2) and  
16 RCW 19.146.050 for failing to deposit money received for payment of third-party services into a trust account  
17 within three business days of receipt.

18 **2.6 Requirement to Timely Comply with Director's Authority.** Based on the Factual Allegations set  
19 forth in Section I above, Respondents are in apparent violation of RCW 19.146.235 for failing to timely  
20 comply with a Directive and a Subpoena from the Director.

21 **2.7 Requirement to Properly Maintain Records.** Based on the Factual Allegations set forth in Section I  
22 above, Respondents are in apparent violation of RCW 19.146.060 for failing to make records "readily  
23 available" until at least 25-months have elapsed following the effective period to which the records relate.

### 24 III. AUTHORITY TO IMPOSE SANCTIONS

25 **3.1 Authority to Revoke License.** Pursuant to RCW 19.146.220(2)(b)(i) and (iv) (1994), the Director  
may revoke a license for any violation of RCW 19.146.050 and RCW 19.146.0201(1) through (9) and for

1 failure to comply with any directive or order of the Director. Pursuant to RCW 19.146.220(2)(e), the  
2 Director may revoke a license for any violation of the Act committed on or after January 1, 2007.

3 **3.2 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(2)(e)(i) and (iv)(1994), the  
4 Director may issue orders removing from office or prohibiting from participation in the conduct of the affairs  
5 of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed  
6 mortgage broker or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1)  
7 through (9) and for failure to comply with any directive or order of the Director. Pursuant to RCW  
8 19.146.220(5)(a) and (d), the Director may issue orders removing from office or prohibiting from  
9 participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal,  
10 employee, or loan originator of any licensed mortgage broker or any person subject to licensing under the Act  
11 for any violation of RCW 19.146.0201(1) through (9) or (13) and RCW 19.146.030 through RCW  
12 19.146.080, and for failing to comply with any order or directive of the Director committed on or after  
13 January 1, 2007.

14 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(c)(i) and (ii)(1994) and former WAC 208-  
15 660-165, the Director may impose fines on a licensee, employee or loan originator of the licensee, or other  
16 person subject to the Act for any violations of RCW 19.146.0201(1) through (9) and RCW 19.146.030  
17 through RCW 19.146.080, and for failure to comply with a directive or order of the Director. Pursuant to  
18 RCW 19.146.220(2)(e), the Director may impose a fine for any violation of the Act committed on or after January  
19 1, 2007.

20 **3.4 Authority to Order Restitution.** Pursuant to RCW 19.146.220(d)(ii)(1994), the Director may issue  
21 orders directing a licensee, its employee or loan originator, or other person subject to the Act to pay restitution to  
22 an injured borrower. Pursuant to RCW 19.146.220(e), the Director may issue orders directing a licensee or other  
23 person subject to the Act to pay restitution for any violation of the Act committed on or after January 1, 2007.

24 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2) and WAC 208-660-550(5)(a),  
25 the Department may collect the costs of investigation. The investigation charge will be calculated at the rate of  
\$48 per hour that each examiner devoted to the investigation.

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

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

- 6 4.1 Respondent Excel Funding Inc.'s license to conduct the business of a mortgage broker be revoked;
- 7 4.2 Respondent Brett Thomas Lawrence's license to conduct the business of a loan originator be revoked;
- 8 4.3 Respondents Excel Funding Inc. and Brett Thomas Lawrence be prohibited from participation in the  
9 conduct of the affairs of any mortgage broker subject to licensure by the Director, in any manner, for a  
10 period of 5 years;
- 11 4.4 Respondents Excel Funding Inc. and Brett Thomas Lawrence jointly and severally pay a fine which as of  
12 the date of these charges totals \$20,000;
- 13 4.5 Respondents Excel Funding Inc. and Brett Thomas Lawrence jointly and severally pay restitution to  
14 borrower M.C. which as of the date of these charges totals \$3,493;
- 15 4.6 Respondents Excel Funding Inc. and Brett Thomas Lawrence jointly and severally pay an investigation  
16 fee which as of the date of these charges totals \$3,072, calculated at \$48 per hour for the 64 examiner  
17 hours devoted to the investigation to date; and
- 18 4.7 Respondents Excel Funding Inc. and Brett Thomas Lawrence maintain records in compliance with the  
19 Act and provide the Department with the location of the books, records and other information relating to  
20 Respondent Excel's mortgage broker business, and the name, address and telephone number of the  
21 individual responsible for maintenance of such records in compliance with the Act.

22 //  
23 //  
24 //  
25 //

V. AUTHORITY AND PROCEDURE

This Amended Statement of Charges and Notice of Intention to Enter an to Revoke Licenses, Prohibit from Industry, Impose Fine, Order Restitution, and Collect Investigation Fee (Amended 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). This Amended Statement of Charges does not change the hearings previously scheduled under the original Statement of Charges, C-08-293-08-SC01.

Dated this 19<sup>th</sup> day of April, 2011.



*Deborah Bortner*

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Director  
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Department of Financial Institutions

Presented by:

*Steven C. Sherman*

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Approved by:

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