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**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-09-441-10-CO01

RODNEY E. FERRELL, JR., Unlicensed Loan
Originator,
Respondent.

CONSENT ORDER

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COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and Rodney E. Ferrell, Jr. (Respondent), and finding that the issues raised in the above-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 Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

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AGREEMENT AND ORDER

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The Department of Financial Institutions, Division of Consumer Services (Department) and Respondent have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-09-441-09-SC01 (Statement of Charges), entered November 24, 2009, (copy attached hereto). Pursuant to chapter 19.146 RCW, the Mortgage Broker Practices Act (MBPA) and RCW 34.05.060 of the Administrative Procedure Act, Respondent hereby agrees to the Department's entry of this Consent Order and further agrees 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 Statement of Charges.

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Based upon the foregoing:

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

1 **B. Waiver of Hearing.** It is AGREED that Respondent has been informed of the right to a hearing
2 before an administrative law judge, and hereby waives his right to a hearing and any and all administrative and
3 judicial review of the issues raised in this matter, or of the resolution reached herein. Accordingly, Respondent,
4 by his signature below, withdraws his appeal to the Office of Administrative Hearings.

5 **C. Prohibition from Industry.** It is AGREED that, for a period of five years from the date of entry of
6 this Consent Order, Respondent is prohibited from participating in the conduct of the affairs of any mortgage
7 broker or consumer lender licensed by the Department or subject to licensure or regulation by the Department
8 under the MBPA or chapter 31.04 RCW, the Consumer Loan Act, in any capacity, including but not limited to:
9 (1) any financial capacity whether active or passive; or (2) as an officer, director, principal, partner, LLC member,
10 designated broker, employee, or loan originator.

11 **D. Application for License.** It is AGREED that, for a period of five years from the date of entry of this
12 Consent Order, Respondent shall not apply to the Department for any license under any name. It is further
13 AGREED that, should Respondent apply to the Department for any license under any name at any time later than
14 five years from the date of entry of this Consent Order, Respondent shall be required to meet any and all
15 application requirements in effect at that time.

16 **E. Rights of Non-Parties.** It is AGREED that the Department does not represent or have the consent of
17 any person or entity not a party to this Consent Order to take any action concerning their personal legal rights. It
18 is further AGREED that for any person or entity not a party to this Consent Order, this Consent Order does not
19 limit or create any private rights or remedies against Respondent, limit or create liability of Respondent, or limit or
20 create defenses of Respondent to any claims.

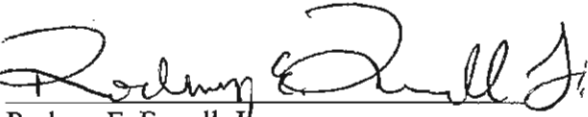
21 **F. Investigation Fee.** It is AGREED that Respondent shall pay to the Department an investigation fee
22 of \$144, in the form of a money order made payable to the "Washington State Treasurer," upon entry of this
23 Consent Order.

1 G. **Non-Compliance with Order.** It is AGREED that Respondent understands that failure to abide
2 by the terms and conditions of this Consent Order may result in further legal action by the Director. In the
3 event of such legal action, Respondent may be responsible to reimburse the Director for the cost incurred in
4 pursuing such action, including but not limited to, attorney fees.

5 H. **Voluntarily Entered.** It is AGREED that the undersigned Respondent has voluntarily entered into
6 this Consent Order, which is effective when signed by the Director's designee.

7 I. **Completely Read, Understood, and Agreed.** It is AGREED that Respondent has read this Consent
8 Order in its entirety and fully understands and agrees to all of the same.

9 **RESPONDENT:**

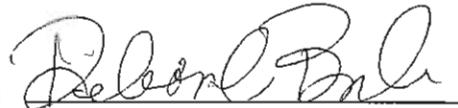
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11 Rodney E. Ferrell, Jr.

12 12-29-2010
Date

13 DO NOT WRITE BELOW THIS LINE


14 THIS ORDER ENTERED THIS 10th DAY OF February, 2011



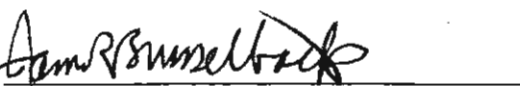
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16 DEBORAH BORTNER
17 Director
18 Division of Consumer Services
19 Department of Financial Institutions

20 Presented by:

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22 MARK T. OLSON
23 Financial Legal Examiner

24 Approved by:

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26 JAMES R. BRUSSELBACK
27 Enforcement Chief

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**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-09-441-09-SC01

RODNEY E. FERRELL, JR., Unlicensed Loan
Originator,

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

Respondent.

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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)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:

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I. FACTUAL ALLEGATIONS

1.1 Respondent Rodney E. Ferrell, Jr. (Respondent) worked for American Lending Corporation, d/b/a American Lending Corporation of Nevada (American)² as a loan originator at all times relevant to this Statement of Charges. Respondent has never applied for a loan originator license with the Department.

1.2 Unlicensed Loan Originator Activity. Respondent assisted at least one borrower in obtaining a residential mortgage loan on property located in the State of Washington (the transaction) from at least April 2007 through at least July 2007. American collected over \$7,700 in mortgage broker fees at the closing of this transaction and paid Respondent over \$2,000 of these fees for originating this loan.

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¹ RCW 19.146 (2006)

² American held a mortgage broker license from the Department from December 2004 until surrender in August 2009. The Department has issued Statement of Charges C-09-437-09-SC01 against American that includes allegations of allowing Respondent to originate a loan for American without holding a loan originator license, and of violations of the Act in the origination of that loan.

1 **1.3 Failure to Comply with State Loan Disclosure Requirements.**

2 **A. Loan Fees and Terms.** Respondent did not, within three business days following receipt of a
3 loan application or any moneys from the borrower, provide the borrower in the transaction with full written
4 disclosures specifying the fees inuring to the benefit of American the borrower was required to pay in
5 connection with obtaining the residential mortgage loan, and containing the circumstances under which the
6 variable rate might increase, any limitation on the increase, the effect of an increase, and an example of the
7 payment terms resulting from an increase.

8 **B. Lock-In Agreement Disclosure.** Respondent did not, within three business days following
9 receipt of a loan application or receipt of any moneys from the borrower or entry of a lock-in agreement with
10 the borrower subsequent to initial disclosures or representation to the borrower that the borrower had entered
11 into a lock-in agreement subsequent to initial disclosures, provide the borrower in the transaction with full
12 written disclosures containing the cost, terms, duration, and conditions of a lock-in agreement and whether a
13 lock-in agreement had been entered, and whether the lock-in agreement was guaranteed by the mortgage broker
14 or lender, and if a lock-in agreement had not been entered, disclosure in a form acceptable to the Director that
15 the disclosed interest rate and terms were subject to change.

16 **1.4 Failure to Comply with Federal Loan Disclosure Requirements.**

17 **A. Truth-in-Lending Act.** Respondent did not provide the borrower in the transaction with a
18 Truth-in-Lending disclosure (TIL) completed in compliance with the Truth-in-Lending Act and Regulation Z.
19 On this TIL, Respondent did not complete the bottom section of the TIL that identifies the existence of a
20 prepayment penalty, security interest, assumption policy, and late fees.

21 **B. Real Estate Settlement Procedures Act.** Respondent did not provide the borrower in the
22 transaction with a Good Faith Estimate disclosure (GFE) completed in compliance with the Real Estate
23 Settlement Procedures Act and Regulation X. Respondent improperly disclosed the Yield Spread Premium
24 (YSP) on the GFE by not describing the fee as a "yield spread premium" and by listing the YSP in an area other
25 than the 800 series of the GFE.

1 **1.5 Failure to Display License Number.** Respondent did not display American's mortgage broker license
2 number on the residential mortgage loan application in the transaction.

3 **1.6 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by
4 Respondent continues to date.

5 II. GROUNDS FOR ENTRY OF ORDER

6 **2.1 Definition of Mortgage Broker.** Pursuant to RCW 19.146.010(12), "Mortgage Broker" means any
7 person who for compensation or gain, or in the expectation of compensation or gain (a) makes a residential
8 mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds
9 himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or
10 applying to obtain a residential mortgage loan.

11 **2.2 Definition of Loan Originator.** Pursuant to RCW 19.146.010(10), "Loan Originator" means a natural
12 person who (a) takes a residential mortgage loan application for a mortgage broker, or (b) offers or negotiates
13 terms of a mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect
14 compensation or gain. "Loan originator" also includes a person who holds themselves out to the public as able
15 to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or
16 clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks"
17 means the receipt, collection, and distribution of information common for the processing of a loan in the
18 mortgage industry and communication with a borrower to obtain information necessary for the processing of a
19 loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing
20 administrative or clerical tasks.

21 **2.3 Definition of Borrower.** Pursuant to RCW 19.146.010(3), "Borrower" means any person who consults
22 with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on
23 obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or
24 herself, regardless of whether the person actually obtains such a loan.

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1 **2.4 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondent is in
2 apparent violation of RCW 19.146.0201:

- 3 • (1) for directly or indirectly employing a scheme, device or artifice to defraud or mislead borrowers or
4 lenders or any person;
- 5 • (2) for engaging in an unfair or deceptive practice toward any person;
- 6 • (3) for obtaining property by fraud or misrepresentation;
- 7 • (6) for failing to make disclosures to loan applicants and noninstitutional investors as required by RCW
8 19.146.030 and any other applicable state or federal law;
- 9 • (7) for making, in any manner, any false or deceptive statement or representation with regard to the
10 rates, points, or other financing terms or conditions for a residential mortgage loan or engaging in bait
11 and switch advertising;
- 12 • (11) for failing to comply with any requirements of the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, and
13 Regulation Z, 12 C.F.R. Sec. 226 and for failing to comply with any requirements of the Real Estate
14 Settlement Procedures Act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec. 3500;
- 15 • (15) for failing to comply with any provision of RCW 19.146.030 through 19.146.080.

16 **2.5 Requirement to Disclose Residential Mortgage Loan Fees and Terms.** Based on the Factual
17 Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.030(1) & (2)(a) for
18 failing, within three business days following receipt of a loan application or any moneys from the borrower, to
19 provide the borrower with full written disclosures specifying the fees inuring to the benefit of ALC the
20 borrower was required to pay in connection with obtaining the residential mortgage loan, and containing the
21 circumstances under which the variable rate might increase, any limitation on the increase, the effect of an
22 increase, and an example of the payment terms resulting from an increase.

23 **2.6 Requirement to Disclose Lock-In Agreement Information.** Based on the Factual Allegations set
24 forth in Section I above, Respondent is in apparent violation of RCW 19.146.030(1), (2)(c), & (3) for failing,
25 within three business days following receipt of a loan application or receipt of any moneys from the borrower or

1 entry of a lock-in agreement with the borrower subsequent to initial disclosures or representation to the
2 borrower that the borrower had entered into a lock-in agreement subsequent to initial disclosures, to provide the
3 borrower with full written disclosures containing the cost, terms, duration, and conditions of a lock-in
4 agreement and whether a lock-in agreement had been entered, and whether the lock-in agreement was
5 guaranteed by the mortgage broker or lender, and if a lock-in agreement had not been entered, disclosure in a
6 form acceptable to the Director that the disclosed interest rate and terms were subject to change.

7 **2.7 Requirement to Provide Complete and Accurate Truth-In-Lending Disclosures.** Based on the
8 Factual Allegations set forth in Section I above, Respondent is in apparent violation of Regulation Z, 12 C.F.R.
9 Sec. 226.18 for failing to provide complete and accurate Truth-In-Lending disclosures to the borrower.

10 **2.8 Requirement to Properly Disclose the Yield Spread Premium.** Based on the Factual Allegations set
11 forth in Section I above, Respondent is in apparent violation of Regulation X, 24 C.F.R. Sec. 3500, Appendix
12 B, and WAC 208-660-430(5) for failing to properly disclose a Yield Spread Premium charged to the borrower
13 on the Good Faith Estimate disclosures provided to the borrower.

14 **2.9 Requirement to Obtain and Maintain Loan Originator License.** Based on the Factual Allegations
15 set forth in Section I above, Respondent is in apparent violation of RCW 19.146.200(1) and WAC 208-660-
16 155(1) for engaging in the business of a loan originator without first obtaining and maintaining a loan originator
17 license under the Act.

18 **2.10 Requirement to Display License Number.** Based on the Factual Allegations set forth in Section I
19 above, Respondent is in apparent violation of WAC 208-660-350(26) for failing to display the name and license
20 number of the mortgage broker the loan originator is associated with when taking a residential mortgage loan
21 application.

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1 **III. AUTHORITY TO IMPOSE SANCTIONS**

2 **3.1 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(5)(a), the Director may issue
3 orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed
4 mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker
5 or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9), RCW
6 19.146.030 through RCW 19.146.080, or RCW 19.146.200.

7 **3.2 Authority to Impose Fine.** Pursuant to RCW 19.146.220(3)(a), the Director may impose fines on an
8 employee, loan originator, independent contractor, or agent of the licensee, or other person subject to the Act
9 for any violation of RCW 19.146.0201(1) through (9), RCW 19.146.030 through RCW 19.146.080, or RCW
10 19.146.200.

11 **3.3 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2)(e), the Director may order restitution
12 against licensees or any other persons subject to the Act for any violation of the Act.

13 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2) and WAC 208-660-550(4)(a),
14 the Department will charge forty-eight dollars per hour for an examiner's time devoted to an investigation of the
15 books and records of a licensee or other person subject to the Act.


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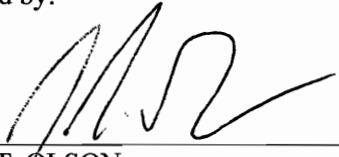
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V. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry, Impose Fine, Order Restitution, and Collect Investigation 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). Respondent 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 24th day of November, 2009.


DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

MARK T. OLSON
Financial Examiner



Approved by:

JAMES R. BRUSSELBACK
Enforcement Chief