

Terms Complete

CONSENT ORDER SUMMARY – Case Number C-15-1731

Respondent Name:	Tracy Michael Howett
NMLS Number:	5703
Order Number:	C-15-1731-16-CO01.
Effective Date:	June 21, 2016
License Effect:	

Not Apply Until:	June 22, 2021
Not Eligible Until:	N/A
Prohibition/Ban Until:	N/A

Investigation Costs	\$500	Due:	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date:
Fine	\$500	Due:	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date:
Assessment(s)	\$0	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$0	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	\$0	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date

Comments:

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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
Consumer Loan Act of Washington by:

No: C-15-1731-16-CO01

CONSENT ORDER

TRACY M. HOWETT, NMLS No. 5703,

Respondent.

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COME NOW the Director of the Department of Financial Institutions (Director), through his designee Charles E. Clark, Division Director, Division of Consumer Services, and Tracy M. Howett (Respondent Howett), by and through his attorney, J. Steven Lovejoy, 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 31.04 of the 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 Howett have agreed upon a basis for resolution of the matters alleged in the attached Statement of Charges No. C-15-1731-16-SC01 (Statement of Charges), entered February 17, 2016. Pursuant to chapter 31.04 RCW, the Consumer Loan Act (Act), and RCW 34.05.060 of the Administrative Procedure Act, Respondent Howett hereby agrees to the Department's 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.

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B. Waiver of Hearing. It is AGREED that Respondent Howett has been informed of the right to a hearing before an administrative law judge, and hereby waives his right to a hearing and all administrative and judicial review of the issues raised in this matter, or of the resolution reached herein. Accordingly, by his

1 signature below, and by the signature of his authorized representative below, Respondent Howett withdraws
2 his appeal to the Office of Administrative Hearings.

3 **C. Cooperation.** The Department acknowledges that Respondent Howett cooperated with the
4 authorities who conducted the investigation of New Day, advising them that New Day employees in the
5 compliance department had been completing continuing education courses and related tests on behalf of New
6 Day's mortgage loan originators, and explaining to the investigators that some continuing education courses
7 and related tests were completed on his behalf. Based in part on that investigation, the Department entered
8 into a multi-state settlement with New Day on April 13, 2015.

9 **D. No Admission or Denial of Violations.** Respondent Howett neither admits nor denies the Factual
10 Allegations in the Statement of Charges.

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

16 **F. Fine.** It is AGREED that Respondent Howett shall pay a fine to the Department in the amount of
17 \$500.00 upon entry of this Consent Order.

18 **G. Investigation Fee.** It is AGREED that Respondent Howett shall pay to the Department an
19 investigation fee of \$500 upon entry of this Consent Order. The Fine and Investigation Fee shall be paid
20 together in one \$1,000 cashier's check made payable to the "Washington State Treasurer."

21 **H. Non-Compliance with Order.** It is AGREED that Respondent Howett understands that failure to
22 abide by the terms and conditions of this Consent Order may result in further legal action by the Director. In
23 the event of such legal action, Respondent Howett may be responsible to reimburse the Director for the cost
24 incurred in pursuing such action, including attorney fees.

25 **I. Voluntarily Entered.** It is AGREED that Respondent Howett has voluntarily entered into this
Consent Order, which is effective when signed by the Director's designee.

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

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4 **BY RESPONDENT:**

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6 /s/ 6/8/2016
7 Tracy Michael Howett, NMLS No. 5703

8 **Approved for Entry:**

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10 /s/ 6/10/2016
11 J. Steven Lovejoy, Esq.
12 Shumaker & Williams, P.C.
13 Attorneys for Respondent Tracy Michael Howett

13 **DO NOT WRITE BELOW THIS LINE**

14 THIS ORDER ENTERED THIS 21st DAY OF June, 2016.

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16 /s/
17 CHARLES E. CLARK
18 Director, Division of Consumer Services
19 Department of Financial Institutions

20 Presented by:

20 Approved by:

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22 /s/
23 ANTHONY W. CARTER
24 Senior Financial Legal Examiner

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22 /s/
23 STEVEN C. SHERMAN
24 Chief of Enforcement

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

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

TRACY M. HOWETT, NMLS No. 5703,
Respondent.

No. C-15-1731-16-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENT TO ENTER AN
ORDER TO PROHIBIT FROM INDUSTRY,
COLLECT INVESTIGATION FEES, and
RECOVER COSTS and EXPENSES

INTRODUCTION

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). Having conducted an investigation pursuant to RCW 31.04.145, 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 Charles E. Clark, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondent Tracy Michael Howett (Respondent Howett) was licensed by the Washington State Department of Financial Institutions (Department) to conduct business as a mortgage loan originator (MLO) on October 29, 2010. Respondent Howett's license as a MLO was renewed annually until November 26, 2013, when his licensing status was changed to Approved – Inactive. On March 1, 2014, after he failed to renew his MLO license in 2013, Respondent Howett's MLO licensing status was changed again to Terminated – Expired effective January 1, 2014.

1.2 Employment with New Day Financial, LLC. In October 2004, Respondent Howett was employed as a Branch Manager for New Day Financial, LLC (New Day), a Department-licensed consumer loan company headquartered in Fulton, Maryland. In July 2009, Respondent Howett was hired as the Branch Manager of New Day's Delaware branch.

1 **1.3 Multi-State Investigation:** On April 13, 2015, the Department entered into a Settlement
2 Agreement and Consent Order with New Day in resolution of an investigation into allegations that
3 New Day had allowed owners, managers, and employees to cheat on state and federal Continuing
4 Education (CE) requirements established by the National Mortgage Licensing System (NMLS). The
5 Settlement Agreement and Consent Order recites that in violation of state and federal law, New
6 Day's owners, managers, and employees had engaged employees working for New Day's
7 Compliance Department to sit through CE programs and take the associated CE tests. In settlement
8 of the matter, New Day agreed to pay more than five million dollars in civil penalties, reform its
9 business practices with respect to CE compliance, and terminate certain key personnel. New Day
10 further represented that Respondent Howett of its Delaware Branch had been terminated.

11 **1.4** On December 2, 2013, Respondent Howett entered into a Separation Agreement and Release
12 (Separation/Release) with New Day. The Separation/Release concluded as follows:

13 After investigation, the Company has determined to terminate certain employees
14 for cause. The decisional unit for this termination involved certain management-
15 level individuals found to have engaged in some level of improper conduct with
16 respect to continuing education credits or the internal investigation conducted
with respect to the same. The eligibility criteria for termination involved those
employees in management who directly engaged in such improper conduct and
did not report their or others' improper conduct, as shown on Attachment A.

17 Attachment A to the Separation/Release identified Respondent Howett as a Vice President selected
18 for termination. Respondent Howett did not renew his Washington MLO license for 2014.

19 **1.5 Delaware Investigation:** On or about July 11, 2014, examiners with the Maryland State
20 Department of Labor, Licensing, and Regulations interviewed Respondent Howett concerning his
21 knowledge of and participation in New Day's NMLS CE violations. Respondent Howett told the
22 examiners that he was aware that Compliance Department employees at New Day would take CE
23 tests for MLOs, and that MLOs would make cash payments to those employees for taking the CE
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1 tests. The Delaware investigation further revealed that on April 27, 2012, Respondent Howett sent
2 his NMLS login name and password to a New Day Compliance Department employee.

3 **1.6 Washington Investigation.** On July 16, 2015, the Department requested that New Day
4 identify whether Respondent Howett had been terminated, had a reduction in pay, or had any other
5 disciplinary action taken against him due to knowledge of, or participation in, the conduct at issue in
6 the Settlement Agreement and Consent Order. In response, on September 18, 2015, New Day
7 provided the Department a list indicating that Respondent Howett had been terminated by New Day.

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

9 **2.1 Definition of Mortgage Loan Originator.** Pursuant to RCW 31.45.015(17)(a) and
10 WAC 208-620-010, "Mortgage Loan Originator" means in part an individual who for compensation
11 or gain (i) takes a residential mortgage loan application, or (ii) offers or negotiates terms of a
12 residential mortgage loan.

13 **2.2 Continuing Education Requirements.** Pursuant to RCW 31.45.267, a licensed MLO must
14 annually complete a minimum of eight hours of continuing education approved by NMLS.

15 **2.3 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondent is
16 in apparent violation of RCW 31.04.027(1), for directly or indirectly employing any scheme, device,
17 or artifice to defraud or mislead any person; (2), for directly or indirectly engaging in any unfair or
18 deceptive practice toward any person; and (13), for violating any applicable state or federal law
19 relating to the activities governed by the Act.

20 **III. AUTHORITY TO IMPOSE SANCTIONS**

21 **3.1 Authority to Prohibit from Industry.** Pursuant to RCW 31.04.093(6), the Director may issue
22 an order prohibiting from participation in the affairs of any licensee any person subject to the Act for
23 any violation of RCW 31.04.027.

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1 **3.2 Authority to Collect Investigation Fees.** Pursuant to RCW 31.04.145(3), every licensee
2 investigated by the Director or the Director's designee must pay to the Director the cost of the
3 investigation as determined by rule. Pursuant to WAC 208-620-590, the investigation fee is
4 calculated at the rate of \$69.01 per staff hour devoted to the investigation.

5 **3.3 Authority to Recover Costs and Expenses.** Pursuant to RCW 31.04.205(2), the Director may
6 recover the state's costs and expenses for prosecuting violations of the Act, including for staff time
7 spent preparing for and attending administrative hearings, and reasonable attorneys' fees.

8 **IV. NOTICE OF INTENT TO ENTER ORDER**

9 Respondent's violations of the Act as set forth in the above Factual Allegations, Grounds for
10 Entry of Order, and Authority to Impose Sanctions, constitute a basis for the entry of an Order under
11 the Act. Therefore, it is the Director's intent to ORDER that:

12 **4.1** Respondent Tracy Michael Howett be prohibited from participating in
13 the affairs of any licensee, or any person subject to the Act, for a
period of ten (10) years;

14 **4.2** Respondent Tracy Michael Howett pay the Department the
15 investigation fees incurred in investigating this matter, which as of the
date of this Statement of Charges totals \$175.53; and

16 **4.3** Respondent Tracy Michael Howett pay the Department's costs and
17 expenses for prosecuting this matter in an amount to be determined at
hearing.

18 **V. AUTHORITY AND PROCEDURE**

19 This Statement of Charges and Notice of Intent to Enter an Order to Prohibit from Industry,
20 Collect Investigative Fees, and Recover Costs and Expenses (Statement of Charges) is entered
21 pursuant to the provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.202, and RCW
22 31.04.205, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure

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1 Act). Respondent may make a written request for a hearing as set forth in the NOTICE OF
2 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this
3 Statement of Charges.

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5 Dated this 17th day February, 2016.

6 /s/
7 CHARLES E. CLARK
8 Director, Division of Consumer Services
9 Department of Financial Institutions

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11 Presented by:

Approved by:

12 /s/
13 ANTHONY W. CARTER
14 Senior Financial Legal Examiner

/s/
DEBORAH P. TAELLIUS
Financial Legal Examiner Supervisor