

**CONSENT ORDER SUMMARY**  
**DFI Case Number C-15-1760**

<b>Respondent(s):</b>	Prime Choice Funding, Inc. and Keith C. McKay, Owner, President, and CEO			
<b>Consent Order No.:</b>	C-15-1760-17-CO01			
<b>Effective Date:</b>	February 22, 2017			
<b>NMLS Number(s):</b>	Prime Choice: 117375; Mr. McKay: 150966			
<b>License Effect:</b>	None.			
<b>Investigation Costs</b>	\$ 3,002.40	Due: On entry of CO	Paid: <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date: 2/17/2017
<b>Examination Costs</b>	\$ 9,524.70	Due: On entry of CO	Paid: <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date: 2/17/2017
<b>Fine</b>	\$100,000.00	Due: On entry of CO	Paid: <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date: 2/17/2017

**Comments:** Without admitting any wrongdoing, Respondents represented and warranted to the Department that upon receipt of the Statement of Charges they ceased and desisted from engaging in unfair or deceptive acts or practices, and that they will henceforth comply with RCW 19.146, the Mortgage Brokers Practices Act. Respondents drafted revised compliance policies, procedures, and testing systems reasonably designed to detect and prevent the distribution of false, deceptive, or misleading advertising in Washington, and will provide the Department with a copy of Respondents' final advertising compliance policies, procedures, and testing systems within 60 days of the entry of the Consent Order.

---

**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-15-1760-17-CO01

CONSENT ORDER

PRIME CHOICE FUNDING, INC., NMLS NO. 117375,  
and  
KEITH CARL McKAY, Owner, President, Designated  
Broker, and Mortgage Loan Originator, NMLS No. 150966,

Respondents.

COME NOW the Acting Director of the Department of Financial Institutions (Director), through her designee Charles E. Clark, Division Director, Division of Consumer Services; Prime Choice Funding, Inc. (Respondent Prime Choice); and Keith C. McKay, Respondent Prime Choice's owner, president, and designated broker (Respondent McKay), and finding that the issues raised in this matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 19.146 of the Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

**AGREEMENT AND ORDER**

The Department of Financial Institutions, Division of Consumer Services (Department) and Respondents Prime Choice and McKay (hereinafter Respondents) have agreed upon a basis for resolution of the matters alleged in the attached Statement of Charges, No. C-15-1760-16-SC01 (Statement of Charges), entered October 17, 2016. Pursuant to RCW 19.146, the Mortgage Broker Practices Act (Act), and RCW 34.05.060 of the Administrative Procedure Act, Respondents hereby agree to the Department's entry of this Consent Order. The parties intend this Consent Order to fully resolve the Statement of Charges and agree that the Respondents do not admit any wrongdoing by its entry.

**Based upon the foregoing:**

**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 Respondents have been informed of the right to a hearing  
2 before an administrative law judge, and hereby waive their 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, Respondents  
4 withdraw their appeal to the Office of Administrative Hearings.

5           **C. Cease and Desist and Cooperation.** It is AGREED that Respondents have represented and  
6 warranted to the Department that upon receipt of the Statement of Charges Respondents ceased and desisted from  
7 engaging in unfair or deceptive acts or practices, and shall henceforth comply with the Act. It is further AGREED  
8 that Respondents have cooperated with the Department's Investigation and subsequent Examination, and that the  
9 terms of this Consent Order represent a compromise in settlement of this matter.

10           **D. Remedial Affirmative Action.** It is AGREED that Respondents have developed and adopted draft  
11 written compliance policies, procedures, and testing systems reasonably designed to detect and prevent the  
12 distribution of false, deceptive, or misleading advertising in Washington. It is FURTHER AGREED and  
13 ORDERED that, within 60 days of the entry of this Consent Order, Respondents shall provide the Department  
14 with a copy of Respondents' final written advertising compliance policies, procedures, and testing systems.

15           **E. Fines.** It is AGREED and ORDERED that Respondents shall pay a fine of \$100,000 to the  
16 Department pursuant to Paragraph F, below.

17           **F. Examination Fees, Investigation Fees, and Payment.** It is AGREED and ORDERED that  
18 Respondents shall pay \$9,524.70 in Examination fees and \$3,002.40 in Investigation fees. It is FURTHER  
19 AGREED and ORDERED that the fine and fees shall be paid together in one \$112,527.10 cashier's check made  
20 payable to the "Washington State Treasurer" upon entry of this Consent Order.

21           **G. Authority to Execute Order.** It is AGREED that Respondent McKay has represented and warranted  
22 that he has the full authority and right to execute this Consent Order on behalf of Respondent Prime Choice.

23           **H. Non-Compliance with Order.** It is AGREED that Respondents understand that failure to abide by  
24 the terms and conditions of this Consent Order may result in further legal action by the Director. In the event of  
25

1 such legal action, Respondents may be responsible to reimburse the Director for the Department's investigation  
2 fees, examination fees, and its costs and expenses for prosecuting violations of the Consent Order and/or Act.

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

5 **J. Completely Read, Understood, and Agreed.** It is AGREED that Respondent McKay individually  
6 and on behalf of Respondent Prime Choice has read this Consent Order in its entirety and fully understands and  
7 agrees to all of the same.

8 **RESPONDENTS:**

9 Prime Choice Funding, Inc.

10 By:

11 \_\_\_\_\_  
Keith Carl McKay  
Owner, President, and Designated Broker

\_\_\_\_\_ Date

12 \_\_\_\_\_  
13 Keith Carl McKay  
Individually

\_\_\_\_\_ Date

14 **DO NOT WRITE BELOW THIS LINE**

15 THIS ORDER ENTERED THIS \_\_\_\_\_ DAY OF FEBRUARY, 2017.

18 \_\_\_\_\_  
CHARLES E. CLARK  
19 Director, Division of Consumer Services  
20 Department of Financial Institutions

21  
22 Presented by:

Approved by:

23  
24 \_\_\_\_\_  
ANTHONY W. CARTER  
Senior Legal Examiner

25 \_\_\_\_\_  
STEVEN C. SHERMAN  
Enforcement Chief

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 PRIME CHOICE FUNDING, INC.,  
NMLS NO. 117375, and  
6 KEITH CARL McKAY, Owner, President,  
Designated Broker, and Mortgage Loan Originator,  
7 NMLS No. 150966,

8 Respondents.

No. C-15-1760-16-SC01

STATEMENT OF CHARGES and NOTICE OF  
INTENT TO ENTER AN ORDER TO CEASE AND  
DESIST, TAKE AFFIRMATIVE ACTION,  
IMPOSE FINE, COLLECT EXAMINATION and  
INVESTIGATION FEES, and RECOVER COSTS  
AND EXPENSES OF PROSECUTION

9 **INTRODUCTION**

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

15 **I. FACTUAL ALLEGATIONS**

16 **1.1 Respondents**

17 **A. Prime Choice Funding, Inc.** (Respondent Prime Choice) was licensed by the Washington State  
18 Department of Financial Institutions (Department) to conduct business as a mortgage broker under the Act on or  
19 about February 7, 2008. After transitioning to licensure as a mortgage lender under the Consumer Loan Act,  
20 Respondent Prime Choice was again licensed as a mortgage broker under the Act on February 19, 2013, and  
21 continues to be licensed by the Department as a mortgage broker to date.

22 **B. Respondent Keith Carl McKay** (Respondent McKay) has been the sole owner, officer, and director of  
23 Respondent Prime Choice since it was first licensed by the Department. Respondent McKay was licensed by the  
24 Department as a mortgage loan originator (MLO) sponsored by Respondent Prime Choice on or about January 7,  
25

1 2013, and was appointed its Designated Broker on or about February 19, 2013. Respondent McKay continues to  
2 be licensed MLO and Designated Broker for Respondent Prime Choice's to date.

3 **1.2 Unfair, Deceptive, and Misleading Advertising.**

4 **A. 2010 and 2011 Complaints.** In December 2010 and April 2011, when Respondent McKay was operating  
5 Respondent Prime Choice as a mortgage *lender* under Washington's Consumer Loan Act (CLA), the Department  
6 received complaints relating to solicitations distributed to Washington consumers by Respondents. The  
7 Department determined the solicitations violated the CLA and the Truth in Lending Act (TILA) by:

- 8 1. Advertising credit disclosure triggering terms without making the required additional disclosures;
- 9 2. Failing to disclose, with adjustable rate mortgages (ARMs), that the advertised annual percentage rate  
10 (APR) may increase after loan consummation; and
- 11 3. Advertising a rate of interest without conspicuously disclosing the corresponding APR.

12 On or about August 18, 2011, and again on or about August 29, 2011, Respondents were advised of the  
13 Department's determinations and advised to implement a system of controls designed to prevent future violations.

14 **B. 2015 Complaints.** During 2015, when Respondent McKay was operating Respondent Prime Choice as a  
15 mortgage *broker* under the Act, the Department received complaints relating to solicitations distributed to  
16 Washington consumers by Respondents.

17 **C. Federal Housing Authority (FHA) Streamline Refinance Solicitation.** One of Respondents' 2015  
18 solicitations offered Washington consumers the opportunity to refinance residential mortgage loans using the  
19 FHA's Streamline Refinance program. The Department determined the solicitation violated the Act by:

- 20 1. Advertising credit disclosure triggering terms without making the required additional disclosures;
- 21 2. Advertising a proposed monthly payment without disclosing what was included in the payment;
- 22 3. Advertising the URL [lowestpmt.com](http://lowestpmt.com); and
- 23 4. Using information about the recipients' current FHA loan in the solicitation without disclosing the  
24 name of the source of that information.

24 **D. U.S. Department of Veterans Affairs (VA) Interest Rate Reduction Refinance Loan (IRRRL)**  
25 **and Cash-Out Refinance Solicitation.** One of Respondents' 2015 solicitations offered Washington

1 consumers the opportunity to refinance residential mortgage loans using either the VA's IRRRL or Cash-Out  
2 Refinance loan program. In addition to the four issues described above, the Department determined the  
3 solicitation violated the Act by:

- 4 1. Advertising credit disclosure triggering terms without making the required additional disclosures;
- 5 2. Advertising a proposed monthly payment without disclosing what was included in the payment;
- 6 3. Advertising a 5-1 ARM loan as having fixed monthly payments;
- 7 4. Advertising a monthly payment that was an interest-only payment;
- 8 5. Failing to disclose that the actual monthly payment obligation would be greater than advertised;
- 9 6. Failing to disclose the period of time during which each monthly payment would apply;
- 10 7. Failing to disclose each simple annual rate of interest that would apply;
- 11 8. Failing to disclose that the advertised APR may increase after loan consummation;
- 12 9. Advertising the URL lowestpmt.com; and
- 13 10. Using information about the recipients' current VA loan without disclosing the name of the source of  
14 that information.

15 **E. Internet Advertising.** Beginning on or about January 21, 2010, and as updated on or about April 21,  
16 2015, Respondents use the URL lowestpmt.com. In direct mail solicitations distributed in Washington  
17 Respondents include instructions for recipients to visit a "Personalized Website" for more information; provides  
18 an "Approval ID" number; and identifies the "Personalized Website" as [http://\[RecipientName\]lowestpmt.com](http://[RecipientName]lowestpmt.com).  
19 Borrowers who enter the URL are sent to Respondents' secure Internet website, where they are prompted to input  
20 their Approval ID number, e-mail address, and are invited to apply for a residential mortgage loan. The website,  
21 named "Best Mortgage Rates," was active as of the date of this Statement of Charges.

22 The "Best Mortgage Rates" website does not link to Respondent Prime Choice's main Internet home page,  
23 <https://www.primechoicefunding.com>, and does not include a link to the NMLS Consumer Access page. As of the  
24 date of this Statement of Charges, Respondents' main Internet home page includes a link to Respondents'  
25 "lowestpmt.com" website; a customer testimonial referencing getting "the best rate" from Respondents; and, with  
respect to VA loans, represents that VA loans are "Garunteed (sic) by the VA."

1 Respondents' other Internet advertising, appearing on Facebook, LinkedIn, Yelp, and YouTube, frequently  
2 failed to include the NMLS number for Respondent Prime Choice; failed to include the NMLS numbers for  
3 MLOs, including Respondent McKay; and failed to include a link to the NMLS Consumer Access page.

4 **1.3 2016 Examination.** From July 25 through July 29, 2016, the Department conducted an examination of  
5 Respondent Prime Choice's mortgage brokerage under the Act, reviewing its business practices from April 1,  
6 2014, through June 30, 2016. The Department examined Respondents' advertising practices, and identified the  
7 use of certain direct mail solicitations as detailed below.

8 **A. FHA Streamline Refinance Solicitation.** Respondents distributed the FHA Streamline Refinance  
9 solicitation described in Paragraph 1.3 C throughout 2015, with Washington distributions taking place during at  
10 least the months of January, March, June, September, and November 2015.

11 **B. VA IRRRL and Cash-Out Refinance Solicitation.** Respondents distributed the VA IRRRL and Cash-  
12 Out Refinance Solicitation described in Paragraph 1.3 C for approximately three months in early 2015, with  
13 Washington distributions taking place in at least February, April, and May 2015.

14 **C. Tri-Fold VA Cash-Out Refinance Solicitation.** In July 2015 Respondents began using an 8.5 x 11 Tri-  
15 Fold direct mail solicitation for a VA Cash-Out refinance that included, as one of the panels, a mock check in the  
16 amount of \$30,000 payable to the recipient. Respondents distributed the Tri-Fold VA Cash-Out Refinance  
17 Solicitation for approximately four months, with Washington distributions taking place in at least July, August,  
18 October, and December 2015. The Department determined the solicitation violated the Act by:

- 19 1. Advertising credit disclosure triggering terms without making the required additional disclosures;
- 20 2. Advertising a proposed monthly payment without disclosing what was included in the payment;
- 21 3. Advertising a 5-1 ARM as having fixed monthly payments;
- 22 4. Failed to disclose that the actual monthly payment obligation would be greater than advertised;
- 23 5. Failed to disclose the period of time during which each monthly payment would apply;
- 24 6. Failed to disclose each simple annual rate of interest that would apply;
- 25 7. Failed to disclose that the advertised APR may increase after consummation;
8. Advertised a "no closing costs" loan;
9. Using the URL lowestpmt.com; and



1           **10.** Using information about the recipients' current VA loan without disclosing the name of the source of  
2           that information.

3           **D. 2016 Advertising:** During the first six months of 2016, Respondents continued its use of the FHA  
4 Streamline Refinance Solicitation, with Washington distributions taking place in at least March and June 2016,  
5 and the Tri-Fold VA Cash-Out Refinance Solicitation, with Washington distributions taking place in at least  
6 January, February, April, and May 2016.

7           **E. Failure to Maintain Books and Records.** During at least 2015 and through the 2016 Examination,  
8 Respondents did not maintain accurate and current books and records of its advertising sufficient for it, or the  
9 Department, to identify the dates, methods, and areas of distribution of these solicitations.

10          **1.5 Loan File Review.** In addition to examining Respondents' advertising practices, the Department reviewed  
11 34 loan files originated by Respondents between April 1, 2014, and June 30, 2016, and noted numerous state and  
12 federal law violations. The findings of state law violations included:

13           **A. Mortgage Call Reports.** Respondents filed inaccurate quarterly Mortgage Call Reports (MCRs)  
14 for the 1<sup>st</sup> and 2<sup>nd</sup> quarters of 2014, and for the 1<sup>st</sup> and 2<sup>nd</sup> quarters of 2015.

15           **B. Surety Bond.** After exceeding funding limits in 2014 and 2015, Respondents failed to increase the  
16 amount of coverage under Respondent Prime Choice's mortgage broker surety bond.

17           **C. Trust Account.** Respondents failed to deposit borrowers' third-party fees received from escrow  
18 agents as reimbursements for credit reports into a trust account, instead depositing those fees and  
19 comingling those fees into Respondents' general account.

20           **D. Trust Account Disclosures.** Respondents failed to complete and deliver to some borrowers the  
21 required trust account disclosure within three days of application. Instead, borrowers received trust  
22 account disclosures with blanks on them, and which failed to disclose whether Respondent Prime  
23 Choice had, or had not, requested funds for payment of third party fees.

24           **E. Rate Lock Agreements.** Respondents failed to provide some borrowers with the required initial  
25 Rate Lock Agreement within three days of locking a borrower's interest rate, and, when there was a  
change to the terms of the initial rate lock, failed to provide some borrowers, within three days of  
the change, new Rate Lock Agreements reflecting those changes.

**F. Complete Rate Lock Agreements.** Respondents failed to provide some borrowers with completed  
Rate Lock Agreements, failing to disclose whether the interest rate lock was guaranteed, and if so,  
the company name of the rate lock guarantor.

1 The Department's findings of federal law violations included:

2  
3 **G. Anti-Money Laundering Program.** Respondents failed to develop their own anti-money  
4 laundering (AML) program, and instead use the AML policy of another company. For example,  
5 though Respondent Prime Choice does not have a Board of Directors, its AML policy relies upon a  
6 Board of Directors to complete many tasks. In addition, its AML policy does not have internal  
7 controls and procedures specific to its mortgage brokerage business, and requires all AML  
8 violations be reported to a person who does not, and never has, worked for Respondents.

9  
10 **H. Red Flags Policy.** Respondents failed to establish a Red Flags Policy compliant with the Federal  
11 Trade Commission's (FTC) Red Flags Rule to prevent identity theft. Respondents' Red Flags  
12 Policy fails to specifically address concerns specific to its mortgage brokerage business; fails to  
13 identify red flags in mortgage loan origination, processing, closing, or funding; and does not  
14 adequately address employee training or how employees are to report red flags should they be  
15 discovered.

16  
17 **I. Loan Estimates.** Respondents failed to provide some borrowers with completed Loan Estimate.  
18 The Truth in Lending Act (TILA) requires a mortgage broker to make a good faith effort to disclose  
19 the name, address, and NMLS number of the creditor *if* one has been identified. Though  
20 Respondents provided some borrowers with Rate Lock Agreements which identified the creditor,  
21 some Loan Estimates provided by Respondents did not disclose creditors' names, addresses, and  
22 NMLS numbers.

23  
24 **J. Homeownership Counseling Lists.** Respondents failed to provide some borrowers with a  
25 Homeownership Counseling List within three business days of accepting a complete application,  
instead providing some borrowers with an Internet web address and link for borrowers to find a  
counselor. When Respondents relied upon the creditor/lender to provide the Homeownership  
Counseling List, the list was not timely provided to some borrowers.

**K. Credit Score Disclosures.** Respondents failed to provide some borrowers with accurate and  
complete National Credit Score Disclosures, instead providing some borrowers with a Credit Score  
Disclosure which containing blanks (in the credit score range) or had incorrect ranges for certain  
scoring models.

**L. Privacy Policy.** Respondents failed to provide some borrowers with an accurate privacy policy  
disclosure, instead disclosing contradictory information. Respondent Prime Choice disclosed to  
some borrowers that it does not share borrower personal information, yet also disclosed that  
borrowers could limit information sharing by returning a mail-in to Respondent Prime Choice if  
they wanted opt out from information sharing.

**M. Equal Credit Opportunity Act Notices.** Respondents failed to provide some borrowers with Equal  
Credit Opportunity Act (ECOA) notices that accurately disclosed the correct agency and address for  
oversight of Respondent Prime Choice.

**N. Unnecessary Disclosures.** Respondents delivered unnecessary and outdated disclosures to some  
Washington borrowers, including California-specific fair lending and mortgage disclosures and  
disclosure referencing the federal RESPA Servicing Disclosure and the GFE, both of which were  
replaced, effective October 3, 2015, with the Loan Estimate.

1  
2 **II. GROUNDS FOR ENTRY OF ORDER**

3 **2.1 Liability of Mortgage Broker.** Pursuant to RCW 19.146.245, a licensed mortgage broker is liable for any  
4 conduct violating the Act by the designated broker, loan originator, or other licensed mortgage broker while  
5 employed or engaged by the licensed mortgage broker. Pursuant to WAC 208-660-440, a mortgage broker is  
6 responsible for ensuring the accuracy and reliability of its advertising. Pursuant to WAC 208-660-530(6), a  
7 licensed mortgage broker and each of its principals, officers, designated brokers, and mortgage loan originators  
8 must comply with the Act, and is subject to a fine of up to \$100 per day for each violation of the Act.

9 **2.2 Responsibility of Designated Broker.** Pursuant to RCW 19.146.200(4), every licensed mortgage broker  
10 must at all times have a designate broker responsible for all activities of the mortgage broker in conducting the  
11 business of a mortgage broker. A designated broker, principal, or owner who has supervisory authority over a  
12 mortgage broker is responsible for a licensee's, employee's, or independent contractor's violations of the Act, and  
13 pursuant to WAC 208-660-530(7), will be held responsible for those violations if they directed or instructed the  
14 conduct that was in violation of the Act; had knowledge of the specific conduct and approved or allowed the  
15 conduct; or knew, or by the exercise of reasonable care and inquiry should have known, of the conduct in time to  
16 prevent it, or minimize the consequences, and did not.

17 **2.3 Definition of Borrower.** Pursuant to RCW 19.146.010(2), a borrower is defined as any person who  
18 consults with a mortgage broker or MLO seeking advice or information on obtaining a residential mortgage loan,  
19 or to apply for or obtain a residential mortgage loan, regardless of whether the person actually obtains a loan.

20 **2.4 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondents are in  
21 apparent violation of RCW 19.146.0201(1), (2), (3), (6), (7), (10), and (15), for:

- 22 **A.** Directly or indirectly employing a scheme, device or artifice to defraud or mislead borrowers or lenders  
23 or any person by advertising in violation of the Act and applicable federal laws;
- 24 **B.** Directly or indirectly engaging in an unfair or deceptive practice toward any person by advertising in  
25 violation of the Act and applicable federal laws and by making unnecessary disclosures related to  
California law to Washington borrowers;

- 1 C. Directly or indirectly obtaining property by fraud or misrepresentation through its unfair, deceptive, and  
misleading advertising;
- 2 D. Failing to make disclosures to borrowers as required by RCW 19.146.030 and applicable federal laws;
- 3 E. Making in any manner, any false or deceptive statement or representation with regard to the rates, points,  
4 or other financing terms or conditions for a residential mortgage loan;
- 5 F. Advertising any rate of interest without conspicuously disclosing the annual percentage rate implied by  
such rate of interest; and
- 6 G. Failing to comply with any provision of RCW 19.146.030 through RCW 19.146.080 or any rule adopted  
7 under those sections.

8 **2.5 Requirement to Submit Mortgage Call Reports.** Based on the Factual Allegations set forth in Section I  
9 above, Respondents are in apparent violation of RCW 19.146.390 for failing to timely submit accurate mortgage  
10 call reports through the NMLS.

11 **2.6 Requirement to Maintain Surety Bond.** Based on the Factual Allegations set forth in Section I above,  
12 Respondents are in apparent violation of RCW 19.146.205(6) for failing to maintain a surety bond adequate to  
13 protect the public interest.

14 **2.7 Requirement to Maintain Funds from Borrowers in Trust.** Based on the Factual Allegations set forth in  
15 Section I above, Respondents are in apparent violation of RCW 19.146.050 for failing, prior to the end of the third  
16 business day following receipt, to deposit funds received from, or on behalf of, borrowers for payment of third-  
17 party provider services, in a trust account of a federally insured financial institution located in this state, and for  
18 commingling trust account funds with operating funds.

19 **2.8 Requirement to Provide Borrowers with Trust Account Disclosures.** Based on the Factual Allegations  
20 set forth in Section I above, Respondents are in apparent violation of RCW 19.146.030(2)(f) for failing to provide  
21 borrowers accurate trust account disclosures.

22 **2.9 Requirement to Provide Borrowers with Rate Lock Disclosures.** Based on the Factual Allegations set  
23 forth in Section I above, Respondents are in apparent violation of RCW 19.146.030(2)(c) for failing to provide  
24 borrowers with timely and accurate rate lock disclosures.

1 **2.10 Requirement to Maintain Advertising Records.** Based on the Factual Allegations set forth in Section I  
2 above, Respondents are in apparent violation of RCW 19.146.060(4) for failing to maintain books and records  
3 relating to its advertising in Washington, which includes, in the case of material distributed by the mortgage  
4 broker, the dates, methods, and areas of distribution for each advertisement.

5 **2.11 Requirement to Comply with Applicable Federal Laws.** Based on the Factual Allegations set forth in  
6 Section I above, Respondents are in apparent violation of RCW 19.146.0201(11) for failing to comply with  
7 federal laws and regulations applicable to the activities governed by the Act, including:

- 8 **A.** The Truth in Lending Act (TILA), 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. § 1026, by  
9 advertising credit triggering terms without making the required additional credit disclosures, by  
10 advertising ARM loans without making the required ARM disclosures, and by failing to provide  
11 borrowers with complete Loan Estimates.
- 12 **B.** The Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq.*, and Regulation V, 12 C.F.R. § 1022 *et*  
13 *seq.*, by failing to provide borrowers with a complete and accurate Credit Score Disclosure.
- 14 **C.** The Federal Trade Commission Act (FTC Act), 15 U.S.C. § 5, by engaging in unfair or deceptive acts or  
15 practices in or affecting commerce with respect to advertising, and by failing to establish a Red Flags  
16 policy compliant with the FTC's Red Flags Rule, 15 U.S.C. § 1681 *et seq.*
- 17 **D.** The Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2601 *et seq.*, and Regulation X,  
18 24 C.F.R. § 1024 *et seq.*, by failing to provide borrowers with accurate and complete Homeownership  
19 Counseling lists.
- 20 **E.** The Financial Crimes Enforcement Network's anti-money laundering (AML) policy, by failing to  
21 develop a Bank Secrecy Act/Anti-Money Laundering Program as required by 31 C.F.R. Part 1029.210.
- 22 **F.** The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.*, and Regulation B, 12 C.F.R. § 1002,  
23 by, when providing notices of actions taken, failing to provide borrowers with the correct name and  
24 address of the federal agency that administers compliance with respect to Respondent Prime Choice.
- 25 **G.** The Gramm-Leach-Bliley Act (GLBA), 12 U.S.C. 6801 *et seq.*, and Regulation P, Privacy Policy, 12  
C.F.R. § 1016, by failing to provide borrowers with accurate or complete privacy policy disclosures.

### III. AUTHORITY TO IMPOSE SANCTIONS

22 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 19.146.220(3), the Director may  
23 issue an Order directing a licensee to cease and desist from conducting business.

24 **3.2 Authority to Order Affirmative Action.** Pursuant to RCW 19.146.220(3), the Director may issue an  
25 Order directing a licensee to take such affirmative action as is necessary to comply with the Act.

1 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2), the Director may impose fines of up to one  
2 hundred dollars per day, per violation, against a licensee for any violation of the Act.

3 **3.4 Authority to Collect Examination and Investigation Fees.** Pursuant to RCW 19.146.228(2), WAC 208-  
4 660-510(8)(c), WAC 208-660-520(9) & (11), and WAC 208-660-550(3)(b), (4)(a), and (5), the Department will  
5 charge forty-eight dollars per hour, plus travel costs, for an examiner's time devoted to an examination of a  
6 licensee; and forty-eight dollars per hour for an examiner's time devoted to an investigation of a licensee.

7 **3.5 Authority to Recover Costs and Expenses.** Pursuant to RCW 19.146.221(2), the Director may recover  
8 the Department's costs and expenses for prosecuting violations of the Act.

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

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

14 **4.1** Respondents Prime Choice Funding, Inc. and Keith C. McKay cease and desist directly or  
15 indirectly engaging in any unfair or deceptive practice toward any person, and distributing in  
16 Washington any false, deceptive, or misleading advertising offering Washington consumers  
17 residential mortgage loans until such time as they are able to demonstrate, to the Department's  
18 satisfaction, that Respondent Prime Choice Funding, Inc. has in place written compliance  
19 policies, procedures, and testing systems reasonably designed to detect and prevent the  
20 distribution of false, deceptive, or misleading advertising in Washington.

18 **4.2** Respondents Prime Choice Funding, Inc. and Respondent Keith C. McKay take remedial  
19 affirmative action as is necessary to comply with the Act, including:

20 a. Within 30 days of the entry of a Final Order in this matter, develop and adopt  
21 written compliance policies, procedures, and testing systems reasonably designed to  
22 detect and prevent the distribution of false, deceptive, or misleading advertising in  
23 Washington; and

24 b. Within 60 days of the entry of a Final Order in this matter, provide the Department  
25 with a copy of Respondents' written advertising compliance policies.

**4.3** Respondents Prime Choice Funding, Inc. and Keith C. McKay jointly and severally pay a fine.  
As of the date of this Statement of Charges, the fine totals \$200,000.

