

## Terms Completed

### ORDER SUMMARY – Case Number: C-15-1772

**Names:** Low VA Rates LLC and Eric Austin Kandell  


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**Order Number:** C-15-1772-17-CO01  


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**Effective Date:** 5/2/2017  


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**License Number:** NMLS # 1109426; NMLS # 174769  
**Or NMLS Identifier [U/L]**  
**License Effect:** N/A  


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**Not Apply Until:** N/A  


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**Not Eligible Until:** N/A  


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**Prohibition/Ban Until:** N/A  


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<b>Investigation Fee</b>	\$3,961.17	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 4/26/17
<b>Fine</b>	\$50,000	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 4/26/17
<b>Prosecution Costs</b>	\$3,751.98	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 4/26/17
<b>Restitution</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Judgment</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Satisfaction of Judgment Filed?</b>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N		
No. of Victims:		N/A		

Comments: Respondents have developed policies and procedures reasonably designed to detect and prevent distribution of ads to Washington State consumers that do not comply with the Consumer Loan Act. Respondents represent that they have not issued ads that violate the Consumer Loan Act since at least November 4, 2016.

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1 efficiently settled by entry of this Consent Order. The parties intend this Consent Order to fully  
2 resolve the Statement of Charges.

3 Based upon the foregoing:

4 **A. Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter  
5 of the activities discussed herein. It is FURTHER AGREED that, in consideration for the terms of  
6 this Consent Order, the Department hereby withdraws the Statement of Charges with respect to KC  
7 Bryan Smalley, Vice-President and Mortgage Loan Originator, NMLS No. 296801.

8 **B. Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a  
9 hearing before an administrative law judge, and hereby waive their right to a hearing and any and all  
10 administrative and judicial review of the issues raised in this matter, or of the resolution reached  
11 herein. Accordingly, Respondents, by their signatures and the signature of their representative below,  
12 withdraw their appeal to the Office of Administrative Hearings.

13 **C. Compliance with Act.** It is AGREED that Respondents have represented and warranted  
14 to the Department that, since at least November 4, 2016, they have not distributed direct mail  
15 solicitations to Washington State consumers that do not comply with the Act.

16 **D. Affirmative Action.** It is AGREED that Respondents have developed and implemented  
17 written compliance policies, procedures, and testing systems reasonably designed to detect and  
18 prevent the distribution of advertisements to Washington State consumers that do not comply with  
19 the Act.

20 **E. Fine.** It is AGREED that Low VA Rates, LLC shall pay a fine to the Department in the  
21 amount of \$50,000 upon entry of this Consent Order.

22 **F. Investigation Fee.** It is AGREED that Low VA Rates, LLC shall pay an investigation fee  
23 of \$3,961.17 to the Department upon entry of this Consent Order.

1           **G. Costs of Prosecution.** It is AGREED that Low VA Rates, LLC shall pay costs of  
2 prosecution in the amount of \$3,751.98 to the Department upon entry of this Consent Order. It is  
3 FURTHER AGREED that the fine, investigation fee, and costs of prosecution shall be paid together  
4 in one \$57,713.15 cashier’s check made payable to the “Washington State Treasurer.”

5           **H. Prior Conduct.** It is AGREED that the Department shall take no further enforcement  
6 action against Respondents for any advertising-related violations of the Act that may have occurred  
7 prior to the date of this Consent Order.

8           **I. Authority to Execute Order.** It is AGREED that the undersigned have represented and  
9 warranted that they have the full power and right to execute this Consent Order on behalf of the  
10 parties represented.

11           **J. Non-Compliance with Order.** It is AGREED that Respondents understand that failure to  
12 abide by the terms and conditions of this Consent Order may result in further legal action by the  
13 Director. In the event of such legal action, Respondents may be responsible to reimburse the Director  
14 for the cost incurred in pursuing such action, including but not limited to, attorney fees.

15           **K. Voluntarily Entered.** It is AGREED that Respondents have voluntarily entered into this  
16 Consent Order, which is effective when signed by the Director’s designee.

17           **L. Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read  
18 this Consent Order in its entirety and fully understand and agree to all of the same.

19           **M. Counterparts.** This Consent Order may be executed by the Respondents in any number  
20 of counterparts, including by facsimile or e-mail of a .pdf or similar file, each of which shall be  
21 deemed to be an original, but all of which, taken together, shall constitute one and the same Consent  
22 Order.

1 **RESPONDENTS:**

2 Low VA Rates, LLC

By:

3

\_\_\_\_\_/s/\_\_\_\_\_

\_\_\_\_4/24/17\_\_\_\_\_

4 Eric Austin Kandell  
President, CEO, and 100% Owner

Date

5

6 \_\_\_\_/s/\_\_\_\_\_

\_\_\_\_4/24/17\_\_\_\_\_

7 Eric Austin Kandell  
Individually

Date

8

Approved for Entry:

9

\_\_\_\_\_/s/\_\_\_\_\_

\_\_\_\_4/24/17\_\_\_\_\_

10 Michael Y. Kieval  
Weiner Brodsky Kider PC  
11 Attorney for Respondents

Date

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DO NOT WRITE BELOW THIS LINE

THIS ORDER ENTERED THIS 2<sup>nd</sup> DAY OF May, 2017.

/s/ \_\_\_\_\_  
CHARLES E. CLARK  
Director  
Division of Consumer Services  
Department of Financial Institutions

Presented by:

/s/ \_\_\_\_\_  
AMANDA J. HERNDON  
Financial Legal Examiner

Approved by:

/s/ \_\_\_\_\_  
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  
5 Whether there has been a violation of the  
6 Consumer Loan Act of Washington by:

7 **LOW VA RATES, LLC f/k/a UNITED**  
8 **MILITARY MORTGAGE, LLC d/b/a LOW VA**  
9 **RATES, NMLS No. 1109426; ERIC AUSTIN**  
10 **KANDELL, President, CEO, and 100% Owner,**  
11 **NMLS No. 174769, KC BRYAN SMALLEY,**  
12 **Vice-President and Mortgage Loan Originator,**  
13 **NMLS No. 296801,**

14 Respondents.

No. C-15-1772-16-SC02

**AMENDED<sup>1</sup> STATEMENT OF CHARGES**  
**and NOTICE OF INTENT TO ENTER AN**  
**ORDER TO CEASE AND DESIST, TAKE**  
**AFFIRMATIVE ACTION, IMPOSE FINE,**  
**COLLECT INVESTIGATION FEE, and**  
**RECOVER COSTS AND EXPENSES OF**  
**PROSECUTION**

15 **INTRODUCTION**

16 Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial  
17 Institutions of the State of Washington (Director) is responsible for the administration of chapter  
18 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to  
19 RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the  
20 Director, through his designee, Division of Consumer Services Director Charles E. Clark, institutes  
21 this proceeding and finds as follows:

22 **I. FACTUAL ALLEGATIONS**

23 **1.1 Respondents.**

24 **A. Respondent Low VA Rates, LLC f/k/a United Military Mortgage, LLC d/b/a Low**  
**VA Rates** (Low VA Rates) was licensed by the Department of Financial Institutions of the State of  
Washington (Department) to conduct business as a consumer loan company on or about February 21,

<sup>1</sup> Paragraph 1.1.C is amended to reflect that Respondent KC Bryan Smalley was licensed as a mortgage loan originator on or about December 10, 2013. Paragraph 1.6 is amended to reflect that the ARM direct mail solicitation at issue was published on or about May 15, 2015.

1 2014, under the name United Military Mortgage, LLC. Effective October 9, 2016, United Military  
2 Mortgage, LLC changed its name to Low VA Rates, LLC. Low VA Rates continues to be licensed to  
3 date.

4 **B. Respondent Eric Austin Kandell** (Kandell) has been the president, CEO, and 100%  
5 owner of Low VA Rates since at least February 21, 2014, and continues to be president, CEO, and  
6 100% owner of Low VA Rates to date. As president, CEO, and 100% owner of Low VA Rates,  
7 Kandell is responsible for Low VA Rates' marketing and compliance.

8 **C. Respondent KC Bryan Smalley** (Smalley) has been vice-president of Low VA Rates  
9 since at least February 21, 2014, and continues to be vice-president to date. As vice-president of Low  
10 VA Rates, Smalley is responsible for Low VA Rates' marketing and compliance. Smalley was  
11 licensed as a mortgage loan originator on or about December 10, 2013, and continues to be licensed  
12 to date. At all relevant times, Smalley's mortgage loan originator's license was sponsored by Low  
13 VA Rates.

14 **1.2 VA Mortgage Loan Advertising.** Between at least April 11, 2014, and June 26, 2015, Low  
15 VA Rates distributed over 100 direct mail solicitations to consumers in Washington State. The  
16 majority of these solicitations advertised adjustable rate mortgages (ARMs) guaranteed by the U.S.  
17 Department of Veterans Affairs (VA).

18 **1.3 2014 Limited-Scope Investigation.** Between about August 25, 2014, and October 21, 2014,  
19 the Department conducted a limited-scope investigation of Low VA Rates' advertising practices.  
20 During the limited-scope investigation, the Department reviewed Low VA Rates' direct mail  
21 solicitations advertising VA-guaranteed ARMs. The Department determined that Low VA Rates  
22 violated the Act by making deceptive statements regarding the financing terms or conditions of a  
23 residential mortgage loan and failing to make certain disclosures required by Part 1026 of Title 12 of  
24



1 the Code of Federal Regulations (Regulation Z). The Department notified Low VA Rates of these  
2 violations on or about September 29, 2014.

3 **1.4 2015 Limited-Scope Investigation.** Between about February 10, 2015, and March 16, 2015,  
4 the Department conducted a second limited-scope investigation of Low VA Rates' advertising  
5 practices. During the second limited-scope investigation, the Department reviewed a direct mail  
6 solicitation advertising a VA-guaranteed ARM. The Department again determined that Low VA  
7 Rates violated the Act by making deceptive statements regarding the financing terms or conditions of  
8 a residential mortgage loan and failing to make certain disclosures required by Regulation Z. The  
9 Department notified Low VA Rates of these violations on or about March 16, 2015.

10 **1.5 Repeat Violations.** After the Department notified Low VA Rates of the violations referenced  
11 in paragraphs 1.3 and 1.4 above, the Department received information that Low VA Rates continued  
12 to violate the Act by making deceptive statements regarding the finance terms or conditions of  
13 residential mortgage loans and failing to make certain disclosures required by Regulation Z in direct  
14 mail solicitations advertising VA-guaranteed ARMs.

15 **1.6 May 2015 ARM Direct Mail Solicitation.** On or about May 15, 2015, Low VA Rates mailed  
16 a direct mail solicitation to almost 16,000 Washington State consumers. The direct mail solicitation  
17 advertised a VA-guaranteed ARM with a 2.25% simple interest rate, a 2.38 annual percentage rate  
18 (APR), and an estimated monthly payment of \$1,054.25. The solicitation also claimed that there  
19 were "NO CLOSING COST options available." The solicitation:

- 20 A. Did not state the fact that the APR may increase after consummation of the loan.  
21 B. Did not disclose each simple annual interest rate that would apply over the term of the  
22 loan and the period of time during which each simple annual interest rate would apply.  
23 C. Did not disclose the amount of each payment that would apply over the term of the loan  
24 and the period of time during which each payment would apply.

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- 1 D. Did not clearly and conspicuously disclose the fact that estimated monthly payment did  
2 not include amounts for taxes and insurance premiums and that actual payment  
3 obligations would be greater.
- 4 E. Did not clearly and conspicuously disclose the terms of repayment over the full term of  
5 the loan.
- 6 F. Advertised an interest rate that was bought down without disclosing the cost of buying  
7 down the interest rate.
- 8 G. Claimed that there were “NO CLOSING COST options available” while advertising a  
9 bought-down interest rate.
- 10 H. Advertised that there were “NO CLOSING COST options available” even though the loan  
11 product advertised has a VA funding fee of ½% of the loan amount for all consumers  
12 except those who meet exceptions for certain disabled veterans and certain surviving  
13 spouses of veterans.

14 **1.7 On-Going Investigation.** The Department’s investigation into the alleged violations of the  
15 Act by Low VA Rates, Kandell, and Smalley (Respondents) continues to date.

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

17 **2.1 Unfair or Deceptive Practice.** Based on the Factual Allegations set forth in Section I above,  
18 Respondents are in apparent violation of RCW 31.04.027(2) for directly or indirectly engaging in  
19 any unfair or deceptive practice toward any person, and by being in apparent violation of WAC 208-  
20 620-550(5) and WAC 208-620-640.

21 **2.2 False or Deceptive Statements or Representations.** Based on the Factual Allegations set  
22 forth in Section I above, Respondents are in apparent violation of RCW 31.04.027(7) for making, in  
23 any manner, any false or deceptive statement or representation with regard to the rates, points, or  
24 other financing terms for a residential mortgage loan.

**2.3 Violations of Applicable Federal Law.** Based on the Factual Allegations set forth in Section  
I above, Respondents are in apparent violation of RCW 31.04.027(13) for violating any applicable  
federal laws relating to the activities governed by the Act, including but not limited to the  
advertising prohibitions contained in the Federal Trade Commission Act, 15 U.S.C. §§ 41-58; the

1 Truth in Lending Act, 15 U.S.C. § 1601 and Regulation Z, 12 C.F.R. Part 1026; and the Mortgage  
2 Acts and Practices – Advertising (MAP) rule, Regulation N, 12 C.F.R. Part 1014.

3 **2.4 False, Misleading, or Deceptive Advertisements.** Based on the Factual Allegations set forth  
4 in Section I above, Respondents are in apparent violation of RCW 31.04.135 for advertising, in any  
5 manner whatsoever, any statement or representation with regard to the rates, terms, or conditions for  
6 the lending of money that is false, misleading, or deceptive.

### 7 III. AUTHORITY TO IMPOSE SANCTIONS

8 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 31.04.093(5)(a), the  
9 Director may issue orders directing a licensee, its employee, loan originator, or other person subject  
10 to the Act to cease and desist from conducting business in a manner that is injurious to the public or  
11 violates any provision of the Act.

12 **3.2 Authority to Order Affirmative Action.** Pursuant to RCW 31.04.093(5)(b), the Director  
13 may issue an order directing a licensee, its employee, loan originator, or other person subject to the  
14 Act to take such affirmative action as is necessary to comply with the Act.

15 **3.3 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of  
16 up to one hundred dollars per day, per violation, upon the licensee, its employee or loan originator, or  
17 any other person subject to the Act for any violation of the Act.

18 **3.4 Authority to Charge Investigation Fee.** Pursuant to RCW 31.04.145(3) and WAC 208-620-  
19 590, every licensee investigated by the Director or the Director’s designee shall pay for the cost of  
20 the investigation, calculated at the rate of \$69.01 per staff hour devoted to the investigation.

21 **3.5 Authority to Recover Costs and Expenses.** Pursuant to RCW 31.04.205(2), the Director  
22 may recover the state’s costs and expenses for prosecuting violations of the Act.

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

2 Respondents’ violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC,  
3 as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose  
4 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and  
5 RCW 31.04.205. Therefore, it is the Director’s intention to ORDER that:

6 **4.1** Respondents Low VA Rates, LLC, Eric Austin Kandell, and KC Bryan Smalley cease  
7 and desist distributing direct mail solicitations offering Washington State consumers  
8 VA residential mortgage loans until such time as it is able to demonstrate to the  
9 Department’s satisfaction that it has in place compliance policies, procedures, and  
10 testing systems reasonably designed to detect and prevent the distribution of false,  
11 deceptive, or misleading direct mail solicitations in Washington.

12 **4.2** Respondents Low VA Rates, LLC, Eric Austin Kandell, and KC Bryan Smalley take  
13 affirmative action as is necessary to comply with the Act, including:

14 A. Within thirty days of the entry of a Final Order in this matter, review  
15 Respondent’s policies and procedures and make necessary changes to ensure  
16 the existing direct mail compliance systems are reasonably designed to detect  
17 and prevent the distribution of false, deceptive, or misleading direct mail  
18 solicitations in Washington State; and

19 B. Within sixty days of the entry of a Final Order in this matter, provide the  
20 Department with a report of Respondent’s review of its policies and  
21 procedures and any changes made to ensure the direct mail compliance  
22 systems are reasonably designed to detect and prevent the distribution of false,  
23 deceptive, or misleading direct mail solicitations in Washington State.

24 **4.3** Respondents Low VA Rates, LLC, Eric Austin Kandell, and KC Bryan Smalley  
jointly and severally pay a fine in the amount of \$100,000.00.

**4.4** Respondents Low VA Rates, LLC, Eric Austin Kandell, and KC Bryan Smalley  
jointly and severally pay an investigation fee. As of the date of this Statement of  
Charges, the investigation fee totals \$3,961.17.

**4.5** Respondents Low VA Rates, LLC, Eric Austin Kandell, and KC Bryan Smalley  
jointly and severally pay the Department’s costs and expenses for prosecuting  
violations of the Act in an amount to be determined at hearing or by declaration with  
supporting documentation in event of default by Respondents.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Amended Statement of Charges and Notice of Intent to Enter an Order to Cease and  
3 Desist, Take Affirmative Action, Impose Fine, Collect Investigation Fee, and Recover Costs and  
4 Expenses of Prosecution (Amended Statement of Charges) is entered pursuant to the provisions of  
5 RCW 31.04.093, RCW 31.04.165, RCW 31.04.202, and RCW 31.04.205, and is subject to the  
6 provisions of chapter 34.05 RCW, the Administrative Procedure Act. Respondents may make a  
7 written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND  
8 OPPORTUNITY FOR HEARING accompanying this Amended Statement of Charges.

9  
10 Dated this 3<sup>rd</sup> day of November, 2017.

11  
12 \_\_\_\_\_  
13 /s/ CHARLES E. CLARK  
14 Director  
15 Division of Consumer Services  
16 Department of Financial Institutions

17 Presented by:

18 \_\_\_\_\_  
19 /s/ AMANDA J. HERNDON  
20 Financial Legal Examiner

21 Approved by:

22 \_\_\_\_\_  
23 /s/ STEVEN C. SHERMAN  
24 Enforcement Chief

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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  
Consumer Loan Act of Washington by:

5 LOW VA RATES, LLC f/k/a UNITED  
6 MILITARY MORTGAGE, LLC d/b/a LOW VA  
RATES, NMLS No. 1109426; ERIC AUSTIN  
7 KANDELL, President, CEO, and 100% Owner,  
NMLS No. 174769, KC BRYAN SMALLEY,  
8 Vice-President and Mortgage Loan Originator,  
NMLS No. 296801,

9 Respondents.

No. C-15-1772-16-SC01

STATEMENT OF CHARGES and  
NOTICE OF INTENT TO ENTER AN  
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AFFIRMATIVE ACTION, IMPOSE FINE,  
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10 **INTRODUCTION**

11 Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial  
12 Institutions of the State of Washington (Director) is responsible for the administration of chapter  
13 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to  
14 RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the  
15 Director, through his designee, Division of Consumer Services Director Charles E. Clark, institutes  
16 this proceeding and finds as follows:

17 **I. FACTUAL ALLEGATIONS**

18 **1.1 Respondents.**

19 A. **Respondent Low VA Rates, LLC f/k/a United Military Mortgage, LLC d/b/a Low**  
20 **VA Rates** (Low VA Rates) was licensed by the Department of Financial Institutions of the State of  
21 Washington (Department) to conduct business as a consumer loan company on or about February 21,  
22 2014, under the name United Military Mortgage, LLC. Effective October 9, 2016, United Military  
23

1 Mortgage, LLC changed its name to Low VA Rates, LLC. Low VA Rates continues to be licensed to  
2 date.

3       **B. Respondent Eric Austin Kandell** (Kandell) has been the president, CEO, and 100%  
4 owner of Low VA Rates since at least February 21, 2014, and continues to be president, CEO, and  
5 100% owner of Low VA Rates to date. As president, CEO, and 100% owner of Low VA Rates,  
6 Kandell is responsible for Low VA Rates' marketing and compliance.

7       **C. Respondent KC Bryan Smalley** (Smalley) has been vice-president of Low VA Rates  
8 since at least February 21, 2014, and continues to be vice-president to date. As vice-president of Low  
9 VA Rates, Smalley is responsible for Low VA Rates' marketing and compliance. Smalley was  
10 licensed as a mortgage loan originator on or about February 21, 2014, and continues to be licensed to  
11 date. At all relevant times, Smalley's mortgage loan originator's license was sponsored by Low VA  
12 Rates.

13 **1.2 VA Mortgage Loan Advertising.** Between at least April 11, 2014, and June 26, 2015, Low  
14 VA Rates distributed over 100 direct mail solicitations to consumers in Washington State. The  
15 majority of these solicitations advertised adjustable rate mortgages (ARMs) guaranteed by the U.S.  
16 Department of Veterans Affairs (VA).

17 **1.3 2014 Limited-Scope Investigation.** Between about August 25, 2014, and October 21, 2014,  
18 the Department conducted a limited-scope investigation of Low VA Rates' advertising practices.  
19 During the limited-scope investigation, the Department reviewed Low VA Rates' direct mail  
20 solicitations advertising VA-guaranteed ARMs. The Department determined that Low VA Rates  
21 violated the Act by making deceptive statements regarding the financing terms or conditions of a  
22 residential mortgage loan and failing to make certain disclosures required by Part 1026 of Title 12 of  
23 the Code of Federal Regulations (Regulation Z). The Department notified Low VA Rates of these  
24 violations on or about September 29, 2014.

1 **1.4 2015 Limited-Scope Investigation.** Between about February 10, 2015, and March 16, 2015,  
2 the Department conducted a second limited-scope investigation of Low VA Rates' advertising  
3 practices. During the second limited-scope investigation, the Department reviewed a direct mail  
4 solicitation advertising a VA-guaranteed ARM. The Department again determined that Low VA  
5 Rates violated the Act by making deceptive statements regarding the financing terms or conditions of  
6 a residential mortgage loan and failing to make certain disclosures required by Regulation Z. The  
7 Department notified Low VA Rates of these violations on or about March 16, 2015.

8 **1.5 Repeat Violations.** After the Department notified Low VA Rates of the violations referenced  
9 in paragraphs 1.3 and 1.4 above, the Department received information that Low VA Rates continued  
10 to violate the Act by making deceptive statements regarding the finance terms or conditions of  
11 residential mortgage loans and failing to make certain disclosures required by Regulation Z in direct  
12 mail solicitations advertising VA-guaranteed ARMs.

13 **1.6 June 2015 ARM Direct Mail Solicitation.** On or about June 15, 2016, Low VA Rates mailed  
14 a direct mail solicitation to almost 16,000 Washington State consumers. The direct mail solicitation  
15 advertised a VA-guaranteed ARM with a 2.25% simple interest rate, a 2.38 annual percentage rate  
16 (APR), and an estimated monthly payment of \$1,054.25. The solicitation also claimed that there  
17 were "NO CLOSING COST options available." The solicitation:

- 18 A. Did not state the fact that the APR may increase after consummation of the loan.
- 19 B. Did not disclose each simple annual interest rate that would apply over the term of the  
20 loan and the period of time during which each simple annual interest rate would apply.
- 21 C. Did not disclose the amount of each payment that would apply over the term of the loan  
22 and the period of time during which each payment would apply.
- 23 D. Did not clearly and conspicuously disclose the fact that estimated monthly payment did  
24 not include amounts for taxes and insurance premiums and that actual payment  
obligations would be greater.



- 1 E. Did not clearly and conspicuously disclose the terms of repayment over the full term of  
2 the loan.
- 3 F. Advertised an interest rate that was bought down without disclosing the cost of buying  
4 down the interest rate.
- 5 G. Claimed that there were “NO CLOSING COST options available” while advertising a  
6 bought-down interest rate.
- 7 H. Advertised that there were “NO CLOSING COST options available” even though the loan  
8 product advertised has a VA funding fee of ½% of the loan amount for all consumers  
9 except those who meet exceptions for certain disabled veterans and certain surviving  
10 spouses of veterans.

11 **1.7 On-Going Investigation.** The Department’s investigation into the alleged violations of the  
12 Act by Low VA Rates, Kandell, and Smalley (Respondents) continues to date.

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

14 **2.1 Unfair or Deceptive Practice.** Based on the Factual Allegations set forth in Section I above,  
15 Respondents are in apparent violation of RCW 31.04.027(2) for directly or indirectly engaging in  
16 any unfair or deceptive practice toward any person, and by being in apparent violation of WAC 208-  
17 620-550(5) and WAC 208-620-640.

18 **2.2 False or Deceptive Statements or Representations.** Based on the Factual Allegations set  
19 forth in Section I above, Respondents are in apparent violation of RCW 31.04.027(7) for making, in  
20 any manner, any false or deceptive statement or representation with regard to the rates, points, or  
21 other financing terms for a residential mortgage loan.

22 **2.3 Violations of Applicable Federal Law.** Based on the Factual Allegations set forth in Section  
23 I above, Respondents are in apparent violation of RCW 31.04.027(13) for violating any applicable  
24 federal laws relating to the activities governed by the Act, including but not limited to the  
advertising prohibitions contained in the Federal Trade Commission Act, 15 U.S.C. §§ 41-58; the  
Truth in Lending Act, 15 U.S.C. § 1601 and Regulation Z, 12 C.F.R. Part 1026; and the Mortgage  
Acts and Practices – Advertising (MAP) rule, Regulation N, 12 C.F.R. Part 1014.

1 **2.4 False, Misleading, or Deceptive Advertisements.** Based on the Factual Allegations set forth  
2 in Section I above, Respondents are in apparent violation of RCW 31.04.135 for advertising, in any  
3 manner whatsoever, any statement or representation with regard to the rates, terms, or conditions for  
4 the lending of money that is false, misleading, or deceptive.

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

6 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 31.04.093(5)(a), the  
7 Director may issue orders directing a licensee, its employee, loan originator, or other person subject  
8 to the Act to cease and desist from conducting business in a manner that is injurious to the public or  
9 violates any provision of the Act.

10 **3.2 Authority to Order Affirmative Action.** Pursuant to RCW 31.04.093(5)(b), the Director  
11 may issue an order directing a licensee, its employee, loan originator, or other person subject to the  
12 Act to take such affirmative action as is necessary to comply with the Act.

13 **3.3 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of  
14 up to one hundred dollars per day, per violation, upon the licensee, its employee or loan originator, or  
15 any other person subject to the Act for any violation of the Act.

16 **3.4 Authority to Charge Investigation Fee.** Pursuant to RCW 31.04.145(3) and WAC 208-620-  
17 590, every licensee investigated by the Director or the Director's designee shall pay for the cost of  
18 the investigation, calculated at the rate of \$69.01 per staff hour devoted to the investigation.

19 **3.5 Authority to Recover Costs and Expenses.** Pursuant to RCW 31.04.205(2), the Director  
20 may recover the state's costs and expenses for prosecuting violations of the Act.

### 21 **IV. NOTICE OF INTENT TO ENTER ORDER**

22 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC,  
23 as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose  
24

1 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and  
2 RCW 31.04.205. Therefore, it is the Director's intention to ORDER that:

3 **4.1** Respondents Low VA Rates, LLC, Eric Austin Kandell, and KC Bryan Smalley cease  
4 and desist distributing direct mail solicitations offering Washington State consumers  
5 VA residential mortgage loans until such time as it is able to demonstrate to the  
6 Department's satisfaction that it has in place compliance policies, procedures, and  
7 testing systems reasonably designed to detect and prevent the distribution of false,  
8 deceptive, or misleading direct mail solicitations in Washington.

9 **4.2** Respondents Low VA Rates, LLC, Eric Austin Kandell, and KC Bryan Smalley take  
10 affirmative action as is necessary to comply with the Act, including:

11 A. Within thirty days of the entry of a Final Order in this matter, review  
12 Respondent's policies and procedures and make necessary changes to ensure  
13 the existing direct mail compliance systems are reasonably designed to detect  
14 and prevent the distribution of false, deceptive, or misleading direct mail  
15 solicitations in Washington State; and

16 B. Within sixty days of the entry of a Final Order in this matter, provide the  
17 Department with a report of Respondent's review of its policies and  
18 procedures and any changes made to ensure the direct mail compliance  
19 systems are reasonably designed to detect and prevent the distribution of false,  
20 deceptive, or misleading direct mail solicitations in Washington State.

21 **4.3** Respondents Low VA Rates, LLC, Eric Austin Kandell, and KC Bryan Smalley  
22 jointly and severally pay a fine in the amount of \$100,000.00.

23 **4.4** Respondents Low VA Rates, LLC, Eric Austin Kandell, and KC Bryan Smalley  
24 jointly and severally pay an investigation fee. As of the date of this Statement of  
Charges, the investigation fee totals \$3,961.17.

**4.5** Respondents Low VA Rates, LLC, Eric Austin Kandell, and KC Bryan Smalley  
jointly and severally pay the Department's costs and expenses for prosecuting  
violations of the Act in an amount to be determined at hearing or by declaration with  
supporting documentation in event of default by Respondents.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, Take  
3 Affirmative Action, Impose Fine, Collect Investigation Fee, and Recover Costs and Expenses of  
4 Prosecution (Statement of Charges) is entered pursuant to the provisions of RCW 31.04.093, RCW  
5 31.04.165, RCW 31.04.202, and RCW 31.04.205, and is subject to the provisions of chapter 34.05  
6 RCW, the Administrative Procedure Act. Respondents may make a written request for a hearing as  
7 set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING  
8 accompanying this Statement of Charges.

9  
10 Dated this 14<sup>th</sup> day of October, 2017.

11  
12 /s/ \_\_\_\_\_  
13 CHARLES E. CLARK  
14 Director  
15 Division of Consumer Services  
16 Department of Financial Institutions

17 Presented by:

18 /s/ \_\_\_\_\_  
19 AMANDA J. HERNDON  
20 Financial Legal Examiner

21 Approved by:

22 /s/ \_\_\_\_\_  
23 STEVEN C. SHERMAN  
24 Enforcement Chief

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