

ORDER SUMMARY – Case Number: C-16-1858

Name(s): RUSSELL ROGER HENRY, RUSSELL R. HENRY

Order Number: C-16-1858-17-CO01

Effective Date: 3/8/17

License Number: 362697, 118220
Or NMLS Identifier [U/L] _____

License Effect: Revoked (stayed), Revoked (stayed)

Not Apply Until: _____

Not Eligible Until: _____

Prohibition/Ban Until: 5 years (stayed), 5 years (stayed)

Investigation Costs	\$1,500	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine	\$15,000	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N		
No. of Victims:				

Comments: Confession of judgment for fine, to be filed, bear 12% interest, and collected within two years. Revocations and prohibitions stayed for three years conditioned upon compliance with the Act with up to two compliance exams.

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:

No.: C-16-1858-17-CO01

5 **CONSENT ORDER**

6 RUSSELL ROGER HENRY D/B/A
HOME FINANCE,
NMLS # 362697,
7 RUSSELL R. HENRY,
NMLS # 118220,

8 Respondents.

9 COMES NOW the Director of the Department of Financial Institutions (Director), through his
10 designee Charles E. Clark, Division Director, Division of Consumer Services, Russell Roger Henry
11 d/b/a Home Finance (Respondent Home Finance), and Russell R. Henry (Respondent Henry), and
12 finding that the issues raised in the above-captioned matter may be economically and efficiently
13 settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter
14 19.146 of the Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative
15 Procedure Act, based on the following:

16 **AGREEMENT AND ORDER**

17
18 The Department of Financial Institutions, Division of Consumer Services (Department) and
19 Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges
20 No. C-16-1858-16-SC01 (Statement of Charges), entered October 13, 2016, (copy attached hereto).
21 Pursuant to chapter 19.146 RCW, the Mortgage Broker Practices Act (Act), and RCW 34.05.060 of
22 the Administrative Procedure Act, Respondents hereby agree to the Department's entry of this
23 Consent Order and further agree that the issues raised in the above-captioned matter may be

1 economically and efficiently settled by entry of this Consent Order. The parties intend this Consent
2 Order to fully 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.

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

11 **C. Mortgage Broker License Revocation.** It is AGREED that Respondent Home Finance's
12 mortgage broker license is revoked. It is further AGREED that Respondent Home Finance's
13 mortgage broker license revocation is STAYED contingent upon Respondent Home Finance's
14 compliance with the terms of this Consent Order.

15 **D. Mortgage Loan Originator License Revocation.** It is AGREED that Respondent
16 Henry's mortgage loan originator license is revoked. It is further AGREED that Respondent Henry's
17 mortgage loan originator license revocation is STAYED contingent upon Respondent Henry's
18 compliance with the terms of this Consent Order.

19 **E. Prohibition from Industry.** It is AGREED that, for a period of five years from the date
20 of entry of this Consent Order, Respondents are prohibited from participating, in any capacity, in the
21 conduct of the affairs of any mortgage broker licensed by the Department or subject to licensure or
22 regulation by the Department. It is further AGREED that Respondents' prohibition from the
23

1 mortgage broker industry is STAYED contingent upon Respondents' compliance with the terms of
2 this Consent Order.

3 **F. Confession of Judgment for Fine.** It is AGREED that Respondents have entered into a
4 Confession of Judgment for a fine in the amount of \$15,000 owed to the Department.

5 **G. Lifting of Stay.** It is AGREED that the Department may seek to lift the stay and impose
6 the license revocations and prohibitions against either Respondent, or both Respondents, subject to
7 the following terms:

- 8 **1.** The Department may conduct up to two compliance examinations of Respondents
9 within the three year period immediately following the entry of this Consent Order.
10 Respondents shall reimburse the Department for the cost of the compliance
11 examinations.
- 12 **2.** The Department may seek to lift the stay at any time within the three year period
13 immediately following the entry of this Consent Order if the Department determines
14 that Respondents have violated any of the following:
 - 15 **a.** RCW 19.146.0201,
 - 16 **b.** RCW 19.146.030,
 - 17 **c.** RCW 19.146.050,
 - 18 **d.** RCW 19.146.060,
 - 19 **e.** WAC 208-660-400, or
 - 20 **f.** WAC 208-660-450.
- 21 **3.** The Department may seek to lift the stay if Respondents have not paid the fine
22 pursuant to the Confession of Judgment by the end of the thirty (30) month period
23 immediately following the entry of this Consent Order,
- 24 **4.** The Department will first serve Respondents with a written notice of
noncompliance if the Department seeks to lift the stay and impose the license
revocations and prohibitions. The notice of noncompliance will include:
 - a.** a description of the alleged noncompliance,
 - b.** a statement of the Department's intent to lift the stay,
 - c.** notice that Respondents may contest the allegations of noncompliance
by either requesting an adjudicative hearing in writing or by submitting a
written response to the allegations of noncompliance, and
 - d.** notice that the process for lifting the stay applies only to this Consent
Order.

- 1 **5.** Respondents will be afforded ten (10) business days from the date of service of the
2 notice of noncompliance to submit to the Department either a written request for an
3 adjudicative hearing or a written response to the allegations of noncompliance.
- 4 **6.** The scope and issues of the adjudicative hearing are limited solely to whether or not
5 Respondents have failed to comply with the terms of this Consent Order.
- 6 **7.** At the conclusion of the adjudicative hearing the Administrative Law Judge will
7 issue an initial decision. Either party may subsequently file a Petition for Review
8 with the Director of the Department.
- 9 **8.** In lieu of requesting an adjudicative hearing, within ten (10) business days from the
10 date of service of the notice of noncompliance, Respondents may submit a written
11 response to the allegations of noncompliance for consideration by the Department
12 in determining whether to lift the stay. The response must include a waiver of the
13 right to an adjudicative hearing, may address the allegations of noncompliance, and
14 may request an alternative resolution to lifting the stay.
- 15 **9.** If Respondents do not timely request an adjudicative hearing or submit a written
16 response to the notice of noncompliance, the Department may lift the stay without
17 further notice.
- 18 **10.** If the Department has not moved to lift the stayed revocations and prohibitions
19 within 42 months of the date of this Consent Order, said revocations and
20 prohibitions will be nullified.

21 **H. Investigation Fee.** It is AGREED that Respondents shall pay to the Department an
22 investigation fee of \$1,500 in the form of a cashier's check made payable to the "Washington State
23 Treasurer" upon entry of this Consent Order.

24 **I. Change of Address.** It is AGREED that for the duration of the period this Consent Order
25 is in effect, unless otherwise agreed to in writing by the Department, Respondent Home Finance shall
26 provide the Department with a mailing address and telephone number at which Respondent Home
27 Finance can be contacted and Respondent Home Finance shall notify the Department in writing of
28 any changes to its mailing address or telephone number within fifteen days of any such change.

29 **J. Records Retention.** It is AGREED that Respondent Home Finance, its officers,
30 employees, and agents shall maintain records in compliance with the Act and provide the Director

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

4 **K. Authority to Execute Order.** It is AGREED that the undersigned have represented and
5 warranted that they have the full power and right to execute this Consent Order on behalf of the
6 parties represented.

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

11 **M. Voluntarily Entered.** It is AGREED that Respondents have voluntarily entered into this
12 Consent Order, which is effective when signed by the Director's designee.

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

15 **RESPONDENTS:**

16 **Russell Roger Henry d/b/a Home Finance**

17 By:

18 _____/s/_____
19 Russell R. Henry
Principal

_____1/19/2017_____
Date

20 _____/s/_____
21 Russell R. Henry

_____1/19/2017_____
Date

22
23 **DO NOT WRITE BELOW THIS LINE**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

THIS ORDER ENTERED THIS 8th DAY OF March, 2017.

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

Presented by:

_____/s/_____
KENNETH J. SUGIMOTO
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
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

5 RUSSELL ROGER HENRY D/B/A
HOME FINANCE,
6 NMLS # 362697
RUSSELL R. HENRY,
7 NMLS #118220,

8 Respondents.

No. C-16-1858-16-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER AN
ORDER TO REVOKE LICENSE, PROHIBIT
FROM INDUSTRY, IMPOSE FINE,
COLLECT INVESTIGATION FEE, AND
RECOVER COSTS AND EXPENSES

9 **INTRODUCTION**

10 Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of
11 Financial Institutions of the State of Washington (Director) is responsible for the administration of
12 chapter 19.146 RCW, the Mortgage Broker Practices Act (Act). After having conducted an
13 investigation pursuant to RCW 19.146.235, and based upon the facts available as of the date of this
14 Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Prohibit from
15 Industry, Impose Fine, Collect Investigation Fee, and Recover Costs and Expenses (Statement of
16 Charges), the Director, through his designee, Division of Consumer Services Director Charles E.
17 Clark, institutes this proceeding and finds as follows:

18 **I. FACTUAL ALLEGATIONS**

19 **1.1 Respondents.**

20 A. **Russell Roger Henry d/b/a Home Finance (Respondent Home Finance)** was
21 licensed by the Department of Financial Institutions of the State of Washington (Department) to
22 conduct business as a mortgage broker on or about May 25, 2012, and continues to be licensed to
23 date.

1 **B. Russell R. Henry (Respondent Henry)** was licensed by the Department to conduct
2 business as a loan originator on or about November 15, 2006, and continues to be licensed to date.
3 Respondent Henry was named Designated Broker of Respondent Home Finance on or about May 25,
4 2012, and continues to be Designated Broker to date.

5 **1.2 Prior Enforcement Actions.** On or about May 28, 2014, the Department entered Statement
6 of Charges No. C-13-1380-14-SC01, alleging that Respondent Home Finance violated RCW
7 19.146.0201 and RCW 19.146.095. On or about December 18, 2014, the Department and
8 Respondent Home Finance entered Consent Order No. C-13-1380-14-CO01 (Consent Order).
9 Pursuant to the Consent Order, Respondent Home Finance agreed that it would cease and desist from
10 violating RCW 19.146.0201. Between on or about December 18, 2014, and the date of this
11 Statement of Charges, Respondent Home Finance violated RCW 19.146.0201 as set forth below, and
12 violated the terms of the Consent Order.

13 **1.3 Examination.** Between November 30, 2015, and December 23, 2015, the Department
14 conducted a compliance examination of Respondent Home Finance pursuant to the Act. The
15 Department reviewed ten loan files and Respondent Home Finance's business practices for the period
16 from September 1, 2013, to November 30, 2015, and noted violations of the Act which include those
17 set forth below.

18 **1.4 Disclosures.** In at least four loans, Respondents failed to timely provide loan applicants with
19 completed rate lock agreements. In at least five loans, Respondents failed to timely provide loan
20 applicants with a full written disclosure containing an itemization and explanation of all fees and
21 costs that the borrower is required to pay in connection with obtaining a residential mortgage loan
22 and specifying the fee or fees which inure to the benefit of the mortgage broker. In at least six loans,
23 Respondents failed to timely provide loan applicants with completed Good Faith Estimates and

1 Truth-in-Lending disclosures. In at least four loans, Respondents failed to timely provide loan
2 applicants with a clear and conspicuous written list of homeownership counseling organizations that
3 provide relevant counseling services in the loan applicant's location. In at least five loans,
4 Respondents failed to timely provide loan applicants with privacy policy notices. In at least four
5 loans, Respondents failed to timely provide loan applicants with accurate Equal Credit Opportunity
6 Act notices.

7 **1.5 Failure to Maintain Funds in Trust.** From at least in or around February 2015, through at
8 least in or around September 2015, Respondent Home Finance received trust funds from or on behalf
9 of borrowers for the payment of third-party service providers. Respondent Home Finance deposited
10 these trust funds into operating accounts under its control, thereby commingling trust funds with
11 operating funds. As of the date of this Statement of Charges, Respondent Home Finance continues to
12 operate without a trust account as required by the Act.

13 **1.6 Failure to Report.** Respondents failed to submit complete, accurate, and timely mortgage
14 call reports to the Department from the first quarter of 2014 through the second quarter of 2015.

15 **1.7 On-Going Investigation.** The Department's investigation into the alleged violations of the
16 Act by Respondents continues to date.

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

18 **2.1 Responsibility for Conduct of Designated Broker or Loan Originator.** Pursuant to RCW
19 19.146.245, a licensed mortgage broker is liable for any conduct violating the Act by the designated
20 broker or a loan originator while employed or engaged by the licensed mortgage broker.

21 **2.2 Responsibility of Designated Broker.** Pursuant to RCW 19.146.200, every licensed
22 mortgage broker must at all times have a designated broker responsible for all activities of the
23 mortgage broker in conducting the business of a mortgage broker. A designated broker, principal, or

1 owner who has supervisory authority over a mortgage broker is responsible for a licensee's,
2 employee's, or independent contractor's violations of the Act if: the designated broker, principal, or
3 owner directs or instructs the conduct or, with knowledge of the specific conduct, approves or allows
4 the conduct; or the designated broker, principal, or owner who has supervisory authority over the
5 licensed mortgage broker knows or by the exercise of reasonable care and inquiry should have known
6 of the conduct, at a time when its consequences can be avoided or mitigated and fails to take
7 reasonable remedial action.

8 **2.3 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondents
9 are in apparent violation of RCW 19.146.0201(2), (6), (11), and (15) for directly or indirectly
10 engaging in an unfair or deceptive practice toward any person, failing to make disclosures to loan
11 applicants and non-institutional investors as required by RCW 19.146.030 and any other applicable
12 state or federal law, failing to comply with state and federal laws applicable to the activities governed
13 by the Act, and failing to comply with any provision of RCW 19.146.030 through RCW 19.146.080
14 or any rule adopted under those sections.

15 **2.4 Requirement to Disclose Residential Mortgage Loan Fees.** Based on the Factual
16 Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.030
17 for failing to provide borrowers with full written disclosures, containing an itemization and
18 explanation of all fees and costs that the borrowers were required to pay in connection with obtaining
19 a residential mortgage loan, within three days following receipt of a loan application of any moneys
20 from the borrowers.

21 **2.5 Requirement to Maintain Funds from Borrower for Payment of Third-Party Service**
22 **Providers in Trust.** Based on the Factual Allegations set forth in Section I above, Respondents are
23 in apparent violation of RCW 19.146.050 for failing to deposit funds received from a borrower or on

1 behalf of a borrower for payment of third-party service providers in a trust account of a federally
2 insured financial institution located in this state, prior to the end of the third business day following
3 receipt of such monies, and for commingling operating funds with trust account funds.

4 **2.6 Requirement to File Reports.** Based on the Factual Allegations set forth in Section I above,
5 Respondents are in apparent violation of WAC 208-660-400 for failing to file accurate and complete
6 mortgage call reports to the Department through the NMLS on the dates and in a form prescribed by
7 the Director or the NMLS.

8 **2.7 Requirement to Maintain Accurate and Current Books and Records.** Pursuant to RCW
9 19.146.060 and WAC 208-660-450, Respondents are required to keep all books and records in a
10 location that is on file with and readily available to the Department until at least twenty-five months
11 have elapsed following the effective period to which the books and records relate.

12 **III. AUTHORITY TO IMPOSE SANCTIONS**

13 **3.1 Authority to Revoke License.** Pursuant to RCW 19.146.220(2), the Director may revoke
14 licenses for violations of orders or any violation of the Act.

15 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 19.146.220(4), the Director may
16 issue orders removing from office or prohibiting from participation in the conduct of the affairs of a
17 licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed
18 mortgage broker or any person subject to licensing under the Act, for any violation of the Act.

19 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2), the Director may impose fines
20 against a licensee or other persons subject to the Act, for any violation of the Act.

21 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-
22 520(9) and (11), and WAC 208-660-550(4)(a), the Department will charge forty-eight dollars per
23

1 hour for an examiner's time devoted to an investigation of a licensee or other person subject to the
2 Act.

3 **3.5 Authority to Recover Costs and Expenses.** Pursuant to RCW 19.146.221(2), the Director
4 may recover the state's costs and expenses for prosecuting violations of the Act.

5 //

6 //

7 //

8 //

9 //

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

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

2 Respondents' violations of the provisions of chapter 19.146 RCW and chapter 208-660 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 19.146.220, RCW 19.146.221, and
5 RCW 19.146.223. Therefore, it is the Director's intention to ORDER that:

- 6 **4.1** Respondent Russell Roger Henry d/b/a Home Finance's license to conduct the
7 business of a mortgage broker be revoked.
- 8 **4.2** Respondent Russell R. Henry's license to conduct the business of a loan originator be
9 revoked.
- 10 **4.3** Respondents Russell Roger Henry d/b/a Home Finance and Russell R. Henry be
11 prohibited from participation in the conduct of the affairs of any mortgage broker
12 subject to licensure by the Director, in any manner, for a period of five years.
- 13 **4.4** Respondents Russell Roger Henry d/b/a Home Finance and Russell R. Henry jointly
14 and severally pay a fine. As of the date of this Statement of Charges, the fine totals
15 \$50,000.
- 16 **4.5** Respondents Russell Roger Henry d/b/a Home Finance and Russell R. Henry jointly
17 and severally pay an investigation fee. As of the date of this Statement of Charges, the
18 investigation fee totals \$1,500.
- 19 **4.6** Respondents Russell Roger Henry d/b/a Home Finance and Russell R. Henry jointly
20 and severally pay the Department's costs and expenses for prosecuting violations of
21 the Act in an amount to be determined at hearing or by declaration with supporting
22 documentation in event of default by Respondents.
- 23 **4.7** Respondents Russell Roger Henry d/b/a Home Finance and Russell R. Henry maintain
24 records in compliance with the Act and provide the Department with the location of
the books, records and other information relating to Respondent Russell Roger Henry
d/b/a Home Finance's mortgage broker business, and the name, address and telephone
number of the individual responsible for maintenance of such records in compliance
with the Act.

21 //
22 //
23 //

1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges is entered pursuant to the provisions of RCW 19.146.220, RCW
3 19.146.221, RCW 19.146.223, and RCW 19.146.230, and is subject to the provisions of chapter
4 34.05 RCW (the Administrative Procedure Act). Respondents may make a written request for a
5 hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR
6 HEARING accompanying this Statement of Charges.

7
8 Dated this 13th day of October, 20176.

9
10 /s/ _____
11 CHARLES E. CLARK
12 Director
13 Division of Consumer Services
14 Department of Financial Institutions

15 Presented by:

16 _____/s/_____
17 KENNETH J. SUGIMOTO
18 Financial Legal Examiner

19 Approved by:

20 _____/s/_____
21 STEVEN C. SHERMAN
22 Enforcement Chief