

ORDER SUMMARY – Case Number: C-17-2309

Names: Kevin Gardner, Inc. d/b/a Snohomish Mortgage Company;
Kevin E. Gardner

Order Number: C-17-2309-18-CO01

Effective Date: May 14, 2018

License Numbers: 121366 and 123231

License Effect: _____

Not Apply Until: _____

Not Eligible Until: _____

Prohibition/Ban Until: _____

Investigation Costs	\$ 1245.60		Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 5/11/18
Fine	\$ 10,000	Due 5/31/19	Paid <input type="checkbox"/> Y <input 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
Financial Literacy and Education	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Cost of Prosecution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
	No. of Victims:			

Comments: _____

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-17-2309-18-CO01

5 KEVIN GARDNER, INC. D/B/A SNOHOMISH
MORTGAGE COMPANY, NMLS #121366,

CONSENT ORDER

6 and

7 KEVIN E. GARDNER, President, Owner,
8 Designated Broker, and Mortgage Loan
Originator, NMLS #123231,

9 Respondents.

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

17 **AGREEMENT AND ORDER**

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-17-2309-17-SC01 (Statement of Charges), entered January 5, 2018 (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
24 economically and efficiently settled by entry of this Consent Order. The parties intend this Consent

1 Order to fully resolve the Statement of Charges.

2 Based upon the foregoing:

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

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

10 C. **Investigation Fee.** It is AGREED that Respondent shall pay to the Department an
11 investigation fee of \$1,245.60, in the form of a cashier's check made payable to the "Washington
12 State Treasurer," upon entry of this Consent Order.

13 D. **Fine.** It is AGREED that Respondents shall pay a fine to the Department in the amount of
14 \$10,000.00, in the form of one or more cashier's checks made payable to the "Washington State
15 Treasurer." Respondents shall pay \$1,754.40 of the fine upon entry of this Consent Order.
16 Respondents shall pay the remaining \$8,245.60 of the fine by May 31, 2019. The investigation fee
17 and the portion of the fine that are due upon entry of this Consent Order may be paid together in one
18 \$3,000.00 cashier's check made payable to the "Washington State Treasurer." The remaining
19 \$8,245.60 of the fine may be paid in one or more cashier's checks, including monthly installments,
20 by May 31, 2019.

21 E. **Authority to Execute Order.** It is AGREED that the undersigned have represented and
22 warranted that they have the full power and right to execute this Consent Order on behalf of the
23 parties represented.

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

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

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

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

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1 **RESPONDENTS:**

2 **Kevin Gardner, Inc. d/b/a Snohomish Mortgage Company**

3 By:

4
5 /s/
6 Kevin E. Gardner
7 President, Owner, Designated Broker, and
8 Mortgage Loan Originator

5/4/18
Date

7 **Kevin E. Gardner**

8
9 /s/
10 Kevin E. Gardner
11 Individually

5/4/18
Date

11 Approved for Entry:

12 /s/
13 Jessica M. Creager, WSBA No. 42183
14 Rosenberg Law Group, PLLC
Attorney for Respondents

5/9/2018
Date

DO NOT WRITE BELOW THIS LINE

15 **THIS ORDER ENTERED THIS 14th DAY OF May, 2018.**

17
18 /s/
19 CHARLES E. CLARK
20 Director
21 Division of Consumer Services
22 Department of Financial Institutions

21 Presented by:

Approved by:

22
23 /s/
24 DREW STILLMAN
Financial Legal Examiner

/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 KEVIN GARDNER INC. D/B/A SNOHOMISH
MORTGAGE COMPANY, NMLS #121366,

6 and

7 KEVIN E. GARDNER, President, Owner,
8 Designated Broker, and Mortgage Loan
Originator, NMLS #123231,

9 Respondents.

No. C-17-2309-17-SC01

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

10 **INTRODUCTION**

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

17 **I. FACTUAL ALLEGATIONS**

18 **1.1 Respondents.**

19 A. **Kevin Gardner Inc. d/b/a Snohomish Mortgage Company (Respondent**
20 **Snohomish Mortgage)** was licensed by the Department of Financial Institutions of the State of
21 Washington (Department) to conduct business as a mortgage broker on or about March 13, 2006, and
22 continues to be licensed to date.

23 B. **Kevin E. Gardner (Respondent Gardner)** is President, Owner, Designated Broker,
24 and a mortgage loan originator of Respondent Snohomish Mortgage. Respondent Gardner was named

1 Designated Broker of Respondent Snohomish Mortgage on or about March 13, 2006, and continues
2 to be Designated Broker to date. Respondent Gardner was licensed by the Department to conduct
3 business as a mortgage loan originator on or about January 1, 2007, and continues to be licensed to
4 date.

5 **1.2 Prior Regulatory Order.** On or about March 14, 2013, the Director issued Statement of
6 Charges C-12-1002-12-SC01. On or about July 9, 2013, the Director issued Consent Order C-12-
7 1002-13-CO01 to resolve the Statement of Charges.

8 **1.3 False Statements on License Renewal Applications.** After entry of the Statement of
9 Charges and Consent Order, Respondents applied to renew their licenses on five occasions beginning
10 on or about December 9, 2013. Each time, Respondent Gardner attested that the information
11 contained in the Nationwide Multistate Licensing System (NMLS) for both Respondents was true,
12 accurate, and complete. Respondent Gardner also acknowledged his duty to expediently update and
13 correct the information. Contrary to these attestations, Respondents' NMLS filings contained false
14 responses to questions seeking regulatory action disclosure. In particular, Respondent Snohomish
15 Mortgage's NMLS filings represented that no state agency had entered an order within the last ten
16 years against it in connection with a financial services-related activity. In addition, Respondent
17 Gardner's NMLS filings represented that no state agency had ever disciplined him, entered an order
18 against him in connection with a financial services-related activity or any license or registration, or
19 taken any of these actions against any organization over which he exercised control.

20 **1.4 On-Going Investigation.** The Department's investigation into the alleged violations of the
21 Act by Respondents continues to date.

22 II. GROUNDS FOR ENTRY OF ORDER

23 **2.1 Responsibility for Conduct of Loan Originators.** Pursuant to RCW 19.146.245, a licensed
24 mortgage broker is liable for any conduct violating the Act by the designated broker, a loan

1 originator, or other licensed mortgage broker while employed or engaged by the licensed mortgage
2 broker.

3 **2.2 Responsibility of Designated Broker.** Pursuant to RCW 19.146.200(3), every licensed
4 mortgage broker must at all times have a designated broker responsible for all activities of the
5 mortgage broker in conducting the business of a mortgage broker. A designated broker, principal, or
6 owner who has supervisory authority over a mortgage broker is responsible for a licensee's,
7 employee's, or independent contractor's violations of the Act if: the designated broker, principal, or
8 owner directs or instructs the conduct or, with knowledge of the specific conduct, approves or allows
9 the conduct; or the designated broker, principal, or owner who has supervisory authority over the
10 licensed mortgage broker knows or by the exercise of reasonable care and inquiry should have known
11 of the conduct, at a time when its consequences can be avoided or mitigated and fails to take
12 reasonable remedial action.

13 **2.3 False Statements or Omissions of Material Facts.** Based on the Factual Allegations set
14 forth in Section I above, Respondents are in apparent violation of RCW 19.146.0201(8) for
15 negligently making any false statement or knowingly and willfully making any omission of material
16 fact in connection with any reports filed by a licensee or in connection with any investigation
17 conducted by the Department.

18 **2.4 Requirement to Provide Information upon License Renewal.** Based on the Factual
19 Allegations set forth in Section I above, Respondent Snohomish Mortgage is in apparent violation of
20 RCW 19.146.205(2) and Respondent Gardner is in apparent violation of RCW 19.146.300(2)(a) for
21 failing to provide, upon license renewal, complete and accurate answers to all disclosure questions in
22 their NMLS filings.

23 III. AUTHORITY TO IMPOSE SANCTIONS

24 **3.1 Authority to Revoke License.** Pursuant to RCW 19.146.220(2), the Director may revoke

1 licenses for: false statements or omission of material information on the application that, if known,
2 would have allowed the Director to deny the application for the original license; or any violation of
3 the Act.

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

8 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2), the Director may impose fines
9 against a licensee, employees, independent contractors, agents of licensees, or other persons subject
10 to the Act for any violation of the Act.

11 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-
12 520(9) & (11), and WAC 208-660-550(4)(a), the Department will charge forty-eight dollars per hour
13 for an examiner's time devoted to an investigation.

14 **3.5 Authority to Recover Costs and Expenses.** Pursuant to RCW 19.146.221(2), the Director
15 may recover the state's costs and expenses for prosecuting violations of the Act.

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

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

21 **4.1** Respondent Kevin Gardner Inc. d/b/a Snohomish Mortgage Company's license to
22 conduct the business of a mortgage broker be revoked.

23 **4.2** Respondent Kevin E. Gardner's license to conduct the business of a loan originator be
24 revoked.

- 1 **4.3** Respondent Kevin Gardner Inc. d/b/a Snohomish Mortgage Company be prohibited
2 from participation in the conduct of the affairs of any mortgage broker subject to
 licensure by the Director, in any manner, for a period of five years.
- 3 **4.4** Respondent Kevin E. Gardner be prohibited from participation in the conduct of the
4 affairs of any mortgage broker subject to licensure by the Director, in any manner, for
 a period of five years.
- 5 **4.5** Respondents Kevin Gardner Inc. d/b/a Snohomish Mortgage Company and Kevin E.
6 Gardner jointly and severally pay a fine. As of the date of this Statement of Charges,
 the fine totals \$20,000.
- 7 **4.6** Respondents Kevin Gardner Inc. d/b/a Snohomish Mortgage Company and Kevin E.
8 Gardner jointly and severally pay an investigation fee. As of the date of this Statement
 of Charges, the investigation fee totals \$542.40.
- 9 **4.7** Respondents Kevin Gardner Inc. d/b/a Snohomish Mortgage Company and Kevin E.
10 Gardner 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 either or both Respondents.

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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 FOR ADJUDICATIVE HEARING AND
6 TO DEFEND accompanying this Statement of Charges.

7
8 Dated this 5th day of January, 2018.

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 DREW STILLMAN
18 Financial Legal Examiner

19 Approved by:

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