

## CONSENT ORDER SUMMARY

Case Number C-18-2586

**Names:** Clear Choice Mortgage, LLC and Jessica J. Wells, individually

**Order Number:** C-18-2586-19-CO01

**Effective Date:** May 28, 2019

**NMLS No.** Clear Choice Mortgage, LLC - 986780  
Jessica J. Wells - 1305464

**License Effect:** N/A

**Not Apply Until:** N/A

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

<b>Investigation Costs</b>	\$ 1,000	<u>Due:</u> Upon delivery of executed CO to DFI	<u>Paid:</u> <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	<u>Date:</u> 5/22/2019
<b>Fine</b>	\$ 50,000, with \$ 25,000 paid, \$ 25,000 stayed	<u>Due:</u> \$9,000 on delivery of executed CO to DFI, \$16,000 over 18 months	<u>Paid:</u> <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (\$9,000 paid, \$16,000 still due.	<u>Date:</u> \$9,000 was paid 5/22/2019

Comments: Respondents represented and warranted to the Department, through counsel, that they shall cease and desist directly or indirectly engaging in any unfair or deceptive practice toward any person, including by aiding and abetting mortgage loan originators to originate residential mortgage loans from unlicensed locations, and failing to timely provide borrowers with required disclosures. They further agreed, and were ordered, to henceforth comply with the Mortgage Broker Practices Act.

Respondent Clear Choice admitted that its failure to maintain adequate compliance procedures contributed to the repeat violations of the Act. With that exception, Respondents neither admit nor deny the Factual Allegations in the Statement of Charges.

The \$25,000 Stayed Fine is stayed subject to compliance with this Consent Order, the Mortgage Broker Practices Act, and the results of a Compliance Examination subject to the Department's availability, within 18 months of the entry of this Order, at Respondents' cost.

Respondents were ordered to maintain the relationship with their existing compliance consultant, or retain a replacement not objectionable to the Department, for two (2) years from the entry of the Consent Order, and to file with the Department a report of the consultant's work within three (3) months of entry of this Consent Order, and annually thereafter for two (2) years on the anniversary date of the entry of this Consent Order, noting any deficiencies discovered, any recommendations made for new policies or procedures to detect and prevent repeat deficiencies, the implementation of those new policies or procedures, and the results of the new policies or procedures in detecting and preventing repeat deficiencies. A copy of any new policies or procedures adopted and implemented by Respondent Clear Choice Mortgage, LLC, shall accompany each report to the Department.



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

3           **B. Waiver of Hearing.** It is AGREED that Respondent Wells, individually and as the Managing  
4 Member of Respondent Clear Choice, has been informed of Respondents' right to a hearing before an  
5 administrative law judge, and hereby waives the right to a hearing, and to any and all administrative and  
6 judicial review of the issues raised in this matter, or of the resolution reached herein.

7           **C. Cease and Desist and Future Compliance.** It is AGREED and ORDERED that Respondent  
8 Wells has represented and warranted to the Department, through counsel, that Respondents shall cease  
9 and desist directly or indirectly engaging in any unfair or deceptive practice toward any person, including  
10 by aiding and abetting mortgage loan originators to originate residential mortgage loans from unlicensed  
11 locations, and failing to timely provide borrowers with required disclosures. It is FURTHER AGREED  
12 and ORDERED that Respondents shall henceforth comply with the Act.

13           **D. Admissions.** It is AGREED that Respondent Clear Choice admits that its failure to maintain  
14 adequate compliance procedures contributed to the repeat violations of the Act noted in the 2018 Report  
15 of Examination and the Factual Allegations noted in the Charges. It is further AGREED that with the  
16 above exceptions, Respondents neither admit nor deny the Factual Allegations in the Charges; will not  
17 take any action or make or permit to be made any public statement creating the impression that this Order  
18 is without factual basis; and that nothing in this paragraph affects Respondents' right to take legal or  
19 factual positions in defense of litigation.

20           **E. Refunds to Borrowers.** It is AGREED that Respondents have provided the Department with  
21 proof they have paid \$276.46 in refunds to two borrowers pursuant to the 2018 Report of Examination.

22           **F. Rights of Non-Parties.** It is AGREED that the Department does not represent or have the  
23 consent of any person or entity not a party to this Order to take any action concerning their personal legal  
24 rights. It is further AGREED that for any person or entity not a party to this Order, this Order does not

1 limit or create any private rights or remedies against Respondents, limit or create liability of  
2 Respondents, or limit or create defenses of Respondents to any claims.

3 **G. Fine (Partially Stayed).** It is AGREED and ORDERED that Respondents are liable to the  
4 Department for a fine of \$50,000, and that in consideration of the terms of this Order, \$25,000 of the fine  
5 (the Paid Fine) shall be paid pursuant to Paragraph I, below, and the \$25,000 balance of the fine (the  
6 Stayed Fine) shall be stayed for 18 months subject to compliance with this Order, the Act, and the Risk  
7 Rating assigned to Respondent Clear Choice as detailed in Paragraph K, below.

8 **H. Investigation Fee.** It is AGREED and ORDERED that Respondents shall pay an Investigation  
9 Fee of \$1,000 pursuant to Paragraph I, below.

10 **I. Payments.** It is AGREED and ORDERED that payment of \$9,000 of the \$25,000 Paid Fine,  
11 along with the \$1,000 Investigation Fee, shall be made by one \$10,000 cashier's check made payable to  
12 the "Washington State Treasurer" delivered to the Department with Respondents' fully executed copy of  
13 this Order. It is FURTHER AGREED and ORDERED that beginning on the last business day of the  
14 month following entry by the Department of this Order, and continuing monthly until the \$16,000  
15 balance of the Paid Fine is paid in full, Respondent shall commence making monthly payments of \$1,000  
16 to the Department, in the form of cashier's checks made payable to the "Washington State Treasurer."

17 **J. Affirmative Remedial Action.** It is AGREED that Respondent Wells has represented and  
18 warranted to the Department, through counsel, that Respondent Clear Choice has taken significant  
19 affirmative remedial actions necessary to comply with the Act going forward, including by retaining a  
20 compliance consulting firm to develop and/or update written policies and procedures reasonably designed  
21 to detect and prevent future violations of the Act, specifically including but not limited to addressing the  
22 findings set forth in the Department's 2018 Report of Examination and the Factual Allegations detailed in  
23 the Charges, and providing the Department with those written policies and procedures. It is FURTHER  
24 AGREED that Respondent Wells has represented and warranted to the Department, through counsel, that

1 Respondent Clear Choice has already addressed each of the findings in the 2018 Report of Examination,  
2 and is actively implementing appropriate corrective measures to prevent future violations of the Act. It is  
3 FURTHER AGREED and ORDERED that Respondents shall maintain the relationship with their  
4 existing compliance consultant, or retain a replacement not objectionable to the Department, for two (2)  
5 years from the entry of this Order. Within three (3) months of entry of this Order, and annually thereafter  
6 for two (2) years on the anniversary date of the entry of this Order, the compliance consultant shall file  
7 with the Department a report of its work for Respondent Clear Choice, noting any deficiencies  
8 discovered, any recommendations made for new policies or procedures to detect and prevent repeat  
9 deficiencies, the implementation of those new policies or procedures, and the results of the new policies  
10 or procedures in detecting and preventing repeat deficiencies. A copy of any new policies or procedures  
11 adopted and implemented by Respondent Clear Choice shall accompany each report to the Department.

12 **K. Compliance Examination.** It is AGREED and ORDERED that subject to the Department’s  
13 availability, within 18 months of the entry of this Order, at Respondents’ cost, the Department will  
14 conduct a compliance examination of Respondent Clear Choice’s business practices, policies, and  
15 procedures, including Respondents’ compliance with the Act and this Order. At the conclusion of the  
16 compliance examination, the Department will generate an Examination Risk Rating. A Risk Rating of  
17 one (1) or two (2) will result in the Stayed Fine expiring without further notice or action by the  
18 Department, and the \$25,000 Stayed Fine will not subsequently be imposed by the Department. A Risk  
19 Rating of three (3) may result in the Department lifting the stay and imposing the Stayed Fine pursuant to  
20 Paragraph L. A Risk Rating of four (4) or five (5) will result in the Department lifting the stay and  
21 imposing the Stayed Fine pursuant to Paragraph L, and may result in the imposition of other sanctions  
22 necessary for the enforcement of the Act, the Order, and the protection of the public. Regardless of the  
23 assigned Risk Rating, Respondents must timely respond to and address all findings in the Report of  
24

1 Examination, and timely pay the invoice for the examination. Failure to timely pay any examination  
2 invoice is a breach of this Order.

3 **L. Lifting of Stay and Imposition of Stayed Fine.** It is AGREED and ORDERED that:

- 4 1. If during the 18-month stay, the Department determines that Respondents have not  
5 complied with the Act or this Order, or received a three (3), four (4), or five (5)  
6 Examination Risk Rating, and the Department seeks to lift the stay and impose the Stayed  
7 Fine, the Department will first serve Respondents with a written notice of alleged  
8 noncompliance.
- 9 2. The notice will include:
- 10 a. A description of the alleged noncompliance;
  - 11 b. A statement that the Department seeks to lift the stay and impose the Stayed Fine;
  - 12 c. Notice that either Respondent can contest the Department's determination of  
13 alleged noncompliance either in an adjudicative hearing before an Administrative  
14 Law Judge assigned by the Office of Administrative Hearings, or by submitting a  
15 written response to the Department contesting the alleged noncompliance; and
  - 16 d. Notice that the notification and adjudicative hearing process provided in this  
17 Paragraph L applies only to this Order solely in the event either Respondent chooses  
18 to contest the Department's determination of noncompliance.
- 19 3. Any Respondent who wishes to contest the Department's determination of alleged  
20 noncompliance will have twenty (20) days from the date of service of the notice of alleged  
21 noncompliance to submit a written request to the Department for an adjudicative hearing.
- 22 4. In lieu of requesting an adjudicative hearing, within twenty (20) days from the date of  
23 service of the notice of alleged noncompliance, any Respondent may submit a written  
24 response to the Department contesting the alleged noncompliance for consideration by the  
Department. The response must include that Respondent's waiver of the right to an  
adjudicative hearing before an Administrative Law Judge, may address the alleged  
noncompliance, and may seek an alternative resolution to lifting the stay and imposing the  
Stayed Fine.
5. The scope and issues of the adjudicative hearing are limited solely to whether or not  
Respondents are in violation of the terms of the Act, this Order, or received a three (3),  
four (4), or five (5) Examination Risk Rating.
6. At the conclusion of the hearing, the Administrative Law Judge will issue an Initial  
Decision and Order. Either party may file a Petition for Review of that Initial Decision  
and Order with the Director of the Department.



1 THIS ORDER ENTERED THIS 28th DAY OF MAY 2019.

2  
3 /s/  
4 RICHARD ST. ONGE  
5 Acting Director  
6 Division of Consumer Services  
7 Department of Financial Institutions

8 Presented by:

Approved by:

9 /s/  
10 ANTHONY W. CARTER  
11 Senior Legal Examiner  
12 Consumer Services Enforcement Unit  
13 Department of Financial Institutions

/s/  
14 STEVEN C. SHERMAN  
15 Enforcement Chief  
16 Consumer Services Enforcement Unit  
17 Department of Financial Institutions





1 **1.2 Examinations.**

2 **A. 2016 Desk Review Examination.** In 2016, the Department conducted an off-site desk review  
3 examination of Respondent Clear Choice and Respondent Wells (Respondents) as of March  
4 30, 2016. The desk review primarily focused on the timeliness and accuracy of quarterly  
5 Mortgage Call Reports (MCRs) and annual Financial Condition Reports (FCRs) filed with the  
6 Department. The desk review identified that Respondents failed to timely file six MCRs and  
7 two FCRs, and failed to accurately file one MCR. On or about April 6, 2016, the Department  
8 notified Respondents that their conduct violated Washington Administrative Code (WAC)  
9 208-660-400(1).<sup>1</sup>

10 **B. 2018 Full-Scope On-Site Examination.** In 2018, the Department conducted a full-scope on-  
11 site examination of Respondents covering the period from July 1, 2016, through September  
12 30, 2018 (the relevant period). The 2018 Report of Examination (ROE) identified repeat and  
13 new violations of the Act, rules, and applicable federal laws and regulations. The  
14 Examinations Unit advised Respondents make refunds to two consumers, which was done, and  
15 referred the ROE to the Enforcement Unit to address the repeat and other violations.

16 **1.3 Violations.** During the relevant period Respondents committed the below-listed violations:

17 **A. Mortgage Call Reports.** Respondents failed to timely file at least five quarterly MCRs with the  
18 Department, and filed at least one inaccurate MCR with the Department. These were repeat  
19 violations from the 2016 desk review examination.

20 **B. Financial Condition Reports.** Respondents failed to timely file at least one annual FCR with the  
21 Department, and filed at least one inaccurate FCR with the Department. These were repeat  
22 violations from the 2016 desk review examination.

23 **C. Aiding and Abetting.** Respondents aided and abetted unlicensed mortgage loan originator  
24 activity by allowing at least five licensed and sponsored mortgage loan originators to originate at  
at least ten residential mortgage loans for consumers from locations not licensed by the Department.  
Respondents closed at least nine of the residential mortgage loans originated from unlicensed  
locations.

**D. Referral Agreements.** Respondents allowed at least one licensed and sponsored mortgage loan  
originator to enter into at least two prohibited referral fee agreements with real estate agents.

**E. Rate Lock Agreements.** In at least 14 of the 26 residential mortgage loan files reviewed,  
Respondents either failed to provide consumers with a complete and accurate rate lock agreement,  
or failed to provide consumers with a rate lock agreement at all.

**F. Information Booklet.** In at least eight of the 26 residential mortgage loan files reviewed,  
Respondents failed to provide consumers with the required special information booklet within  
three days of receipt of a residential mortgage loan application.

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<sup>1</sup> Violations noted in the 2016 desk review examination are not included in these Charges.

1 **G. Privacy Policy.** In at least seven of the 26 residential mortgage loan files reviewed, Respondents  
2 failed to provide consumers with the required privacy policy.

3 **1.4 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by  
4 Respondents continues to date.

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

6 **2.1 Liability of Mortgage Broker.** Pursuant to RCW 19.146.245, a licensed mortgage broker is liable  
7 for any conduct violating the Act by the Designated Broker or mortgage loan originators employed or  
8 engaged by the licensed mortgage broker. Pursuant to WAC 208-660-530(6), a licensed mortgage broker  
9 and each of its principals, officers, Designated Brokers, and mortgage loan originators must comply with  
10 the Act, and are subject to a fine of up to \$100 per day for each violation of the Act.

11 **2.2 Responsibility of Designated Broker.** Pursuant to RCW 19.146.200(3), every licensed mortgage  
12 broker must have at all times a Designated Broker responsible for all activities of the mortgage broker. A  
13 Designated Broker with supervisory authority over a mortgage broker is responsible for violations of the  
14 Act by that mortgage broker and its mortgage loan originators. Pursuant to WAC 208-660-530(7), the  
15 DB will be held responsible for those violations if the DB:

16 **A.** Directed or instructed the conduct that was in violation of the Act;

17 **B.** Had knowledge of the specific conduct and approved or allowed the conduct; or

18 **C.** Knew, or by the exercise of reasonable care and inquiry should have known, of the conduct in  
19 time to prevent it, or minimize the consequences, and did not.

20 **2.3 Mortgage Call Reports.** Based on the Factual Allegations set forth in Section I above, Respondents  
21 are in apparent violation of RCW 19.146.0201(2) and (8), RCW 19.146.390, and WAC 208-660-400(1)  
22 for failing to file timely and accurate MCRs with the Department.

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1 **2.4 Financial Condition Reports.** Based on the Factual Allegations set forth in Section I above,  
2 Respondents are in apparent violation of RCW 19.146.0201(2) and (8), RCW 19.146.390, and WAC 208-  
3 660-400(1), for failing to file timely and accurate FCRs with the Department.

4 **2.5 Aiding and Abetting.** Based on the Factual Allegations set forth in Section I above, Respondents  
5 are in apparent violation of RCW 19.146.0201(2) for aiding and abetting unlicensed mortgage loan  
6 originator activity.

7 **2.6 Requirement to Comply with Applicable Federal Laws.** Based on the Factual Allegations set  
8 forth in Section I above, Respondents are in apparent violation of RCW 19.146.0201(2) and (11) for  
9 failing to comply with federal laws and regulations applicable to the activities governed by the Act,  
10 including:

- 11 A. The Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.*, and Regulation X, 24  
12 C.F.R. § 1024 *et seq.*, for allowing at least one licensed and sponsored mortgage loan originator to  
enter into prohibited referral fee agreements with real estate agents;
- 13 B. The Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. § 1026.19(g),  
14 for failing to deliver to consumers, or place in the mail to consumers, the required special  
15 information booklet (Your Home Loan Toolkit) no later than three business days after receipt of a  
consumer's residential mortgage loan application; and
- 16 C. The Gramm-Leach-Bliley Act, 12 U.S.C. §6801 *et seq.*, and Regulation P, the Privacy Policy, 12  
17 C.F.R. §1016.4, including the Appendix, for failing to provide consumers with complete and  
accurate privacy policy notices.
- 18 D. The Federal Trade Commission Act, 15 U.S.C. §45(a) *et seq.*, for failing to provide consumers  
with timely and accurate rate lock agreements.

19 **2.7 Requirement to Provide Rate Lock Agreements.** Based on the Factual Allegations set forth in  
20 Section I above, Respondents are in apparent violation of RCW 19.146.0201(2) and (11), RCW  
21 19.146.030(2)(c), and The Federal Trade Commission Act, 15 U.S.C. §45(a) *et seq.*, for failing to provide  
22 consumers with timely and accurate rate lock agreements.

23 **2.8 Requirement to Provide Special Information Booklet.** Based on the Factual Allegations set forth  
24 in Section I above, Respondents are in apparent violation of RCW 19.146.0201(2) and (11) for violating

1 the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 CFR § 1026.19(g), for failing to  
2 deliver to consumers, or place in the mail to consumers, the required special information booklet no later  
3 than three business days after receipt of a consumer's residential mortgage loan application.

4 **2.9 Requirement to Deliver a Complete and Accurate Privacy Policy.** Based on the Factual  
5 Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.0201(2)  
6 and (11) for violating the Gramm-Leach-Bliley Act, 12 U.S.C. §6801 *et seq.*, and Regulation P, the  
7 Privacy Policy, 12 C.F.R. §1016.4, including the Appendix, for failing to provide to consumers complete  
8 and accurate privacy policy notices.

### 9 III. AUTHORITY TO IMPOSE SANCTIONS

10 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 19.146.220(3), the Director  
11 may issue an Order directing any person subject to the Act to cease and desist from conducting business.

12 **3.2 Authority to Order Affirmative Action.** Pursuant to RCW 19.146.220(3), the Director may issue  
13 an Order directing any person subject to the Act to take action necessary to comply with the Act.

14 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2), the Director may impose a fine of up  
15 to \$100 per day for each violation of the Act.

16 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2) and WAC 208-660-  
17 550(4)(a), the Director may charge forty-eight dollars per hour for an examiner's time devoted to an  
18 investigation.

19 **3.5 Authority to Recover Costs and Expenses.** Pursuant to RCW 19.146.221(2), the Director may  
20 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 19.146 RCW and chapter 208-660 WAC, as  
23 set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose

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1 Sanctions, constitute a basis for the entry of an Order under RCW 19.146.220, RCW 19.146.221, and  
2 RCW 19.146.223. Therefore, it is the Director's intent to ORDER that:

- 3       **4.1** Respondents Clear Choice Mortgage, LLC, and Jessica J. Wells cease and desist directly  
4       or indirectly engaging in any unfair or deceptive practice toward any person including by:
- 5           **A.** Aiding and abetting mortgage loan originators to originate residential mortgage loans  
6           from unlicensed locations; and
  - 7           **B.** Failing to timely provide consumers with required disclosures.
- 8       **4.2** Respondents Clear Choice Mortgage, LLC, and Jessica J. Wells take remedial affirmative  
9       action as is necessary to comply with the Act going forward, including by:
- 10           **A.** Developing and/or updating written policies and procedures reasonably designed to  
11           detect and prevent future violations of the Act, specifically including but not limited to  
12           the findings set forth in Respondents' 2018 Report of Examination
  - 13           **B.** Providing the Department with those written policies and procedures;
  - 14           **C.** Responding to the Consumer Services Division Examination Unit addressing each of  
15           the findings in Respondents' 2018 Report of Examination; and
  - 16           **D.** Implementing appropriate corrective measures to each of the findings in Respondents'  
17           2018 Report of Examination to the satisfaction of the Consumer Services Division  
18           Examination Unit.
- 19       **4.3** Respondents Clear Choice Mortgage, LLC, and Jessica J. Wells jointly and severally pay  
20       a fine. As of the date of this Statement of Charges, the fine totals \$50,000.
- 21       **4.4** Respondents Clear Choice Mortgage, LLC, and Jessica J. Wells jointly and severally pay  
22       an investigation fee. As of the date of this Statement of Charges, the investigation fee  
23       totals \$1,200.
- 24       **4.5** Respondents Clear Choice Mortgage, LLC, and Jessica J. Wells 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.

## V. AUTHORITY AND PROCEDURE

22       The Department enters these Charges pursuant to the provisions of RCW 19.146.220, RCW  
23       19.146.221, RCW 19.146.223, and RCW 19.146.230, and subject to the provisions of the Administrative  
24       Procedure Act, RCW 34.05. Respondents may each make a written request for a hearing as set forth in

1 the NOTICE OF OPPORTUNITY FOR ADJUDICATIVE HEARING AND TO DEFEND  
2 accompanying these Charges.

3  
4 Dated this 22nd day of February 2019.

5  
6  
7 /s/  
8 CHARLES E. CLARK  
9 Director, Division of Consumer Services  
10 Department of Financial Institutions

11 Presented by:

Approved by:

12  
13 /s/  
14 ANTHONY W. CARTER  
15 Senior Legal Examiner  
16 Department of Financial Institutions  
17 Division of Consumer Services

18  
19 /s/  
20 STEVEN C. SHERMAN  
21 Enforcement Chief  
22 Department of Financial Institutions  
23 Division of Consumer Services