

ORDER SUMMARY – Case Number: C-20-3034

Name(s): Kelly Mortgage Inc and Tracy Lyn Kelly

Order Number: C-20-3034-22-CO01

Effective Date: March 16, 2022

License Number or NMLS Identifier [U/L] Kelly Mortgage Inc NMLS #1594896
Tracy Lyn Kelly NMLS #24660

License Effect: _____

Not Apply Until: _____

Not Eligible Until: _____

Prohibition/Ban Until: _____

Investigation Costs	\$ 8,000	Due upon delivery of Consent Order	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 3/16/2022
Fine	\$ 20,000 (\$17,500 stayed for 2 years)	\$2,500 Due upon delivery of Consent order	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 3/16/2022
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: Compliance Exam due within 15 months

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **DIVISION OF CONSUMER SERVICES**

4 IN THE MATTER OF DETERMINING
5 Whether there have been violations of the
6 Consumer Loan Act of Washington by:

7 KELLY MORTGAGE, INC., d/b/a Mortgage
8 Gal, NMLS No. 1594896;
9 TRACY LYN KELLY, President, Owner, and
10 MLO, NMLS No. 24660;
11 JORDAN KENDALL BIEL, Division Manager
12 and MLO, NMLS No. 349006; and
13 DANIEL LOUIS SHERTZER, MLO,
14 NMLS No. 1880812,

15 Respondents.

No.: C-20-3034-22-CO01

16 CONSENT ORDER AS TO KELLY
17 MORTGAGE, INC. and TRACY LYN
18 KELLY

19 COMES NOW the Director of the Department of Financial Institutions (Director), through his
20 designee Lucinda Fazio, Division of Consumer Services Director, and Kelly Mortgage, Inc.
21 (Respondent KMI) and Tracy Lyn Kelly (Respondent Kelly), and finding that the issues raised in the
22 above-captioned matter may be economically and efficiently settled, agree to the entry of this
23 Consent Order. This Consent Order is entered pursuant to chapter 31.04 of the Revised Code of
24 Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the
following:

19 **AGREEMENT AND ORDER**

20 The Department of Financial Institutions, Division of Consumer Services (Department),
21 Respondent KMI, and Respondent Kelly have agreed upon a basis for resolution of the matters
22 alleged in Statement of Charges No. C-20-3034-21-SC01 (Statement of Charges), entered May 28,
23 2021, (copy attached hereto). Pursuant to chapter 31.04 RCW, the Consumer Loan Act (Act), and
24 RCW 34.05.060 of the Administrative Procedure Act, Respondent KMI and Respondent Kelly
(collectively the “Kelly Respondents”) hereby agree to the Department’s entry of this Consent Order

1 and further agree that the issues raised in the above-captioned matter may be economically and
2 efficiently settled by entry of this Consent Order. The parties intend this Consent Order to fully
3 resolve the Statement of Charges solely as to the Kelly Respondents.

4 Based upon the foregoing:

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

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

13 **C. No Admission or Denial of Liability.** The Department and the Kelly Respondents intend
14 this Consent Order to fully resolve the Statement of Charges as to the Kelly Respondents and agree
15 that the Kelly Respondents do not admit or deny any wrongdoing by its entry.

16 **D. Fine (Partially Stayed).** It is AGREED that the Kelly Respondents shall pay a fine to the
17 Department in the amount of \$20,000 pursuant to the Payments section of this Order, below.

18 **E. Investigation Fee.** It is AGREED that the Kelly Respondents shall pay an investigation
19 fee to the Department in the amount of \$8,000 pursuant to the Payments section of this Order,
20 below.

21 **F. Payments.** It is AGREED and ORDERED that the Kelly Respondents shall pay \$2,500
22 of the fine and the entire investigation fee, a total of \$10,500, upon delivery to the Department of
23 this Order fully executed and dated. It is FURTHER AGREED and ORDERED that, contingent

1 upon the Kelly Respondents' compliance with this Consent Order, the Act, and the Rules, the
2 Department stays the remaining \$17,500 of the fine for two (2) years from the date of entry of this
3 Order. If the Department does not seek to lift the stay and impose the stayed fine, the stayed fine
4 shall expire without further notice or action by the Department. Payments shall be made in the form
5 of a cashier's check made payable to the "Washington State Treasurer."

6 **G. Compliance Examination.** It is AGREED and ORDERED that, at the Department's
7 convenience and the Kelly Respondents' cost, within 12 and 15 months after entry of this Consent
8 Order, the Department will conduct a compliance examination of Respondent KMI. The purpose of
9 the examination will be to ascertain compliance with the applicable terms of this Consent Order, the
10 Act, the Rules, and applicable federal laws and regulations. It is FURTHER AGREED and
11 ORDERED that that an examination rating of three (3) *may* result, and that an examination rating of
12 four (4) *will* result, in the lifting of the stayed fine.

13 **H. Lifting of Stay and Imposition of Stayed Fine.** It is AGREED and ORDERED that:

- 14 1. If during the two-year stay the Department determines the Kelly Respondents have
15 not complied with the Act and Rules, have not complied with the applicable terms
16 of this Consent Order, or that Respondent KMI has received an examination risk
17 rating of three (3) or four (4), and the Department seeks to lift the stay and impose
18 the stayed fine, the Department will first serve the Kelly Respondents with a written
19 notice of alleged noncompliance.
- 20 2. The notice will include:
- 21 a. A description of the alleged noncompliance;
 - 22 b. A statement that the Department seeks to lift the stayed fine;
 - 23 c. Notice that the Kelly Respondents can contest the notice of alleged
24 noncompliance by either requesting an adjudicative hearing before an ALJ from
the OAH, or by submitting a written response to the Department contesting the
alleged noncompliance; and
 - d. Notice that the process for lifting the stay applies only to this Consent Order.
3. The Kelly Respondents have twenty (20) days from the date of service of the notice
of alleged noncompliance to submit a written request to the Department for an

1 adjudicative hearing or, in lieu thereof, to submit a written response contesting the
2 alleged noncompliance.

- 3 4. The scope and issues of the adjudicative hearing are limited solely to whether or not
4 the Kelly Respondents are in violation of the Act, this Consent Order, or that
5 Respondent KMI received an examination risk rating of three (3) or four (4).
- 6 5. At the conclusion of the adjudicative hearing the ALJ will issue an initial decision.
7 A party may file a Petition for Review of that initial decision with the Director of
8 the Department.
- 9 6. In lieu of requesting an adjudicative hearing, within twenty (20) days from the date
10 of service of the notice of alleged noncompliance, the Kelly Respondents may
11 submit a written response for consideration by the Department contesting the alleged
12 noncompliance. The response must include each Respondent's waiver of the right
13 to an adjudicative hearing, may address the alleged noncompliance, and may seek
14 an alternative resolution to lifting the stayed fine.
- 15 7. **Default.** If the Kelly Respondents do not timely request an adjudicative hearing, or
16 timely submit a written response contesting the notice of alleged noncompliance,
17 the Department may lift the stay and impose the stayed fine without further notice.

18 **I. Records Retention.** It is AGREED that Respondent KMI, its officers, employees, and
19 agents shall maintain records in compliance with the Act and provide the Director with the location
20 of the books, records and other information relating to Respondent KMI's consumer loan company
21 business, and the name, address and telephone number of the individual responsible for maintenance
22 of such records in compliance with the Act.

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

K. Non-Compliance with Order. It is AGREED that the Kelly Respondents understand that
failure to abide by the terms and conditions of this Consent Order may result in further legal action
by the Director. In the event of such legal action, the Kelly Respondents may be responsible to

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8 DANIEL LOUIS SHERTZER, MLO,
NMLS No. 1880812,

9 Respondents.

No. C-20-3034-21-SC01

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

10
11 **INTRODUCTION**

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

17 **I. FACTUAL ALLEGATIONS**

18 **1.1 Respondents.**

19 **A. Respondent Kelly Mortgage, Inc., d/b/a Mortgage Gal (Respondent KMI).** The Department
20 of Financial Institutions (Department) licensed Respondent KMI to conduct business in Washington as a
21 consumer loan company on or about July 10, 2017, and annually approved renewal of that license
22 through December 31, 2020. During the Relevant Period (January 1, 2020, to December 31, 2020),
23 Respondent KMI was licensed in Washington. However, Respondent KMI surrendered its Washington
24 consumer loan company license effective January 1, 2021.

1 **B. Respondent Tracy Lyn Kelly (Respondent Kelly).** Respondent Kelly is the President and sole
2 owner, officer, and director of Respondent KMI. On or about August 3, 2017, the Department licensed
3 Respondent Kelly as a Mortgage Loan Originator (MLO) sponsored by Respondent KMI, and the
4 Department has annually approved renewal of her MLO license through December 31, 2020. During the
5 Relevant Period, Respondent Kelly was licensed in Washington. However, Respondent Kelly did not
6 renew her MLO license by December 31, 2020, and as of January 1, 2021, Respondent Kelly’s
7 Washington MLO license is expired. Hereinafter, Respondent KMI and Respondent Kelly are referred to
8 as the Kelly Respondents.

9 **C. Respondent Jordan Kendall Biel (Respondent Biel).** On or about June 14, 2014, the
10 Department licensed Respondent Biel as a MLO. On or about June 4, 2019, Respondent KMI hired
11 Respondent Biel, and on or about June 5, 2019, sponsored Respondent Biel as a MLO authorized to work
12 in Washington. During the Relevant Period (January 1, 2020, to December 31, 2020), Respondent Biel
13 was licensed in Washington. However, Respondent Biel did not renew his MLO license by December 31,
14 2020, and as of January 1, 2021, Respondent Biel’s Washington MLO license in Washington is expired.

15 **D. Respondent Daniel Louis Shertzer (Respondent Shertzer).** On or about December 17, 2019,
16 the Department licensed Respondent Shertzer as a Washington MLO sponsored by another consumer
17 loan company. On or about January 8, 2020, Respondent Shertzer left that company, and his Washington
18 MLO license became inactive. Respondent Shertzer did not renew his Washington MLO license, and as
19 of January 1, 2021, Respondent Shertzer’s MLO license in Washington is expired.

20 On or about June 1, 2020, Respondent KMI hired Respondent Shertzer, but never sponsored
21 Respondent Shertzer as a MLO authorized to work in Washington.

22 **1.2 Background**

23 **A. Direct Mail Solicitation.** On or around August 13, 2020, the Kelly Respondents and Respondent
24 Biel caused to be distributed in Washington at least 500 copies of a direct mail “Current Loan”

1 solicitation (Solicitation) offering Washington consumers the opportunity to refinance their existing FHA
2 residential mortgage loans for 30 years at an interest rate of 2.49% with an APR of 2.650. The
3 Solicitation is incorporated herein in full as Exhibit A.

4 **B. Complaint Investigation.** On or about September 2, 2020, the Department received a complaint
5 relating to the Solicitation, and determined the Solicitation violated the Act, associated rules contained in
6 WAC 208-620 (Rules), and applicable federal advertising laws and regulations, by:

- 7 1. Misrepresenting the advertised loan was available for "\$0 out of pocket expenses."
- 8 2. Omitting to disclose the terms required to obtain a "\$0 Appraisal."
- 9 3. Misrepresenting that "homeowners that call and compare us, always choose us."
- 10 4. Misrepresenting that Respondent KMI would make the "Best Offer Guaranteed."
- 11 5. Misrepresenting that Respondent KMI offers the best interest rates and mortgage loan fees.
- 12 6. Misrepresenting that Respondent KMI shops numerous banks daily for the best rates.
- 13 7. Making false, misleading, or deceptive representations regarding the rates, points, terms, or
14 conditions for the advertised mortgage loans.
- 15 8. Advertising a discounted interest rate without clearly and conspicuously disclosing that the
16 rate was discounted, and the cost to the borrower to obtain the discounted rate.
- 17 9. Failing to clearly and conspicuously disclose whether the advertised monthly mortgage
18 payment included amounts for taxes, insurance, or other products, and that the actual
19 payment obligation would be greater.
- 20 10. Failing to clearly and conspicuously disclose the required additional credit disclosures
21 when advertising credit triggering terms.

22 **C. Directive to Respondent KMI.** On or about October 1, 2020, the Department served Respondent
23 KMI with Directive No. 052707-20-DI01 (KMI Directive) seeking detailed written explanations and
24 documents related to the Solicitation. On or about October 28, 2020, the Department received an initial
response to the Directive from the Kelly Respondents. The response provided incomplete, false, and
misleading answers to the requests for written explanations, produced only one document in response to
numerous requests for production of documents, and omitted numerous explanations and documents. In
addition, the Kelly Respondents failed to certify, under penalty of perjury, that the responsive
explanations and document were true and correct.

Due to the Kelly Respondents' incomplete initial response, the Department immediately requested
the Kelly Respondents provide a more complete response to the KMI Directive. In addition, the

1 Department specifically requested the name, address, and phone number of the marketing firm(s) that
2 developed and mailed the Solicitation; the name, address, and phone number of the vendor that
3 purportedly promised that the Solicitation was in compliance with TILA, Regulation Z, and all other
4 relevant guidelines; and the name, address, and phone number of *Optimal Blue*, the company purportedly
5 providing the Kelly Respondents with the names of lenders with “the most aggressive pricing...”

6 On or about October 29, 2020, the Department received the Kelly Respondents’ follow-up response
7 to the Directive. As with the initial response, the follow-up response provided incomplete, false, and
8 misleading answers to the requests for written explanations, produced only one additional document, and
9 omitted numerous explanations and documents. The Kelly Respondents omitted to identify the marketing
10 firm(s) that developed and mailed the Solicitation; the identity of the vendor that purportedly promised
11 the Solicitation was in compliance with TILA, Regulation Z, and all other relevant guidelines; and the
12 contact information for *Optimal Blue*. In addition, the Kelly Respondents again failed to certify, under
13 penalty of perjury, that the responsive explanations and documents were true and correct.

14 **D. Investigative Subpoena to Kelly Respondents.** On or about November 2, 2020, the Department
15 opened an investigation into the Kelly Respondents, and on or about November 17, 2020, served them
16 with Subpoena No. C-20-3034-20-SB01 (KMI Subpoena). On or about November 20, 2020, the KMI
17 Subpoena was delivered to Respondent KMI and signed for by George A. Taylor, the Director of
18 Operations for Respondent KMI. Similar to the KMI Directive, the KMI Subpoena sought written
19 explanations and documents related to their advertising and other business practices. On or about
20 December 11, 2020, the Department received a response to the KMI Subpoena. As with the response to
21 the KMI Directive, the Kelly Respondents’ response to the KMI Subpoena provided incomplete, false,
22 and misleading answers to the requests for written explanations, produced only one document in response
23 to the requests for production of documents, and omitted numerous explanations and documents. In
24 addition, the Kelly Respondents again failed to certify, under penalty of perjury, that the responsive

1 explanations and documents were true and correct. The Kelly Respondents did finally identify Redstone
2 Print and Mail, Inc. (Redstone) as the California firm responsible for the distribution of the Solicitation in
3 Washington.

4 **E. Investigative Subpoena to Redstone.** On or about January 22, 2021, the Department served
5 Redstone with witness Subpoena No. C-20-3034-21-SB02 (Redstone Subpoena). On or about March 30,
6 2021, the Department received explanations and documents from Redstone in response to the Redstone
7 Subpoena. The explanations and documents indicated that on or about July 15, 2020, and again on or
8 about August 14, 2020, Respondent Biel, on behalf of the Kelly Respondents and Respondent Shertzer,
9 personally requested that Redstone prepare and deliver the Solicitation to consumers in Washington.

10 **F. Investigative Subpoena to Respondent Biel.** On or about April 1, 2021, the Department served
11 Respondent Biel with Subpoena No. C-20-3034-21-SB03 (Biel Subpoena). On or about April 7, 2021,
12 the Biel Subpoena was delivered to Respondent KMI and signed for by George A. Taylor. The Biel
13 Subpoena sought written explanations and documents related to Respondent Biel's involvement with the
14 Redstone Solicitations. Though Respondent Biel timely contacted the Department to arrange to provide a
15 response, Respondent Biel never responded to the subpoena by the due date, Friday, April 23, 2021.

16 **G. Investigative Subpoena to Respondent Shertzer.** On or about April 2, 2021, the Department
17 served Respondent Shertzer with Subpoena No. C-20-3034-21-SB04 (Shertzer Subpoena). On or about
18 April 7, 2021, the Shertzer Subpoena was delivered to and signed for by Respondent Shertzer at his home
19 address. (The Shertzer Subpoena was also delivered the same day to Respondent KMI and signed for by
20 George A. Taylor.) Like the Biel Subpoena, the Shertzer Subpoena sought written explanations and
21 documents related to Respondent Shertzer's involvement with the Redstone Solicitations. Respondent
22 Shertzer never responded to the subpoena by the due date, Monday, April 26, 2021.

23 **H. Subpoena Duces Tecum and to Testify to Respondent Kelly.** On or about April 8, 2021, the
24 Department served Respondent Kelly with Subpoena No. C-20-3034-21-SD01 (Kelly SDT). On or about

1 April 9, 2021, the Kelly SDT was delivered to and signed for by Respondent Kelly at her home address.
2 (The Kelly SDT was also delivered the same day to Respondent KMI and signed for by George A.
3 Taylor.) Among other items, the Kelly SDT sought documents related to the Kelly Respondent's
4 involvement with the Redstone Solicitations distributed in Washington. In particular, the Kelly SDT
5 sought production of all e-mails related to the Redstone Solicitations that were sent by, or received by,
6 Respondent KMI, Respondent Kelly, or Respondent Biel.

7 On or about April 26, 2021, the Department received an initial response to the Kelly SDT. The
8 response failed to produce any responsive e-mails. Instead, the Kelly Respondents produced one e-mail
9 related to completely different solicitations requested by Respondent Biel and Respondent Shertzer on or
10 about July 30, 2020, neither of which were delivered to Washington consumers. Though no written
11 explanations were requested, Respondent Kelly provided an explanation related to those solicitations, and
12 completely failed to address the Redstone Solicitations specifically referenced in the Kelly SDT.
13 However, the written explanation did provide that "any orders placed [with Redstone] by Mr. Biel were
14 done only with my authorization and direction."

15 Due to the incomplete initial response, the Department immediately requested that Respondent
16 Kelly produce all responsive e-mails. To date, Respondent Kelly has not produced any emails responsive
17 to the Kelly SDT, necessitating the cancellation of Respondent Kelly's scheduled testimony.

18 **I. Prior State Regulatory Action.** On or about June 24, 2016, the Nevada Department of Business
19 and Industry, Division of Mortgage Lending (Nevada), issued a Notice of Intent to Impose
20 Administrative Fine and Assess Investigative Costs (Notice) against Respondent Kelly and her prior
21 business. The Notice alleged that Respondent Kelly had failed to disclose, on required monthly loan
22 activity reports, at least six loans made in Nevada during the period of September 2014 to April 2015.
23 The Notice advised Respondent Kelly of Nevada's intent to impose sanctions on Respondent Kelly and
24 her prior business, including a \$5,000 fine and \$3,765 in investigative costs. Respondent Kelly never

1 requested an administrative hearing on the Notice; instead, on or about July 1, 2016, Respondent Kelly
2 simply paid the proposed sanctions. On or about July 20, 2016, Nevada issued a Final Order (Nevada
3 Order) against Respondent Kelly and her prior business imposing the proposed sanctions.

4 The Nevada Order found the findings of fact and conclusions of law set forth in the Notice to be
5 true and correct, including that:

- 6 1. Respondent Kelly had failed to submit accurate monthly activity reports for five
7 months, including three months in 2014 and two months in 2015.
- 8 2. Respondent Kelly, despite being advised to correct those monthly activity reports, had
9 failed to submit corrected monthly activity reports for those five months.
- 10 3. Respondent Kelly, by failing to provide the corrected monthly activity reports, had
11 made a false representation that she and her prior business had not arranged or closed
12 any loans in Nevada during those five months.

13 Though Respondent Kelly had an on-going obligation to expediently update her answers on her
14 NMLS MU4, particularly the State Regulatory Action disclosure questions related to the Nevada Order,
15 Respondent Kelly failed to properly answer the State Regulatory Action disclosure questions related to
16 the Nevada Order on her NMLS MU4 Individual Filing Form. In addition, Respondent Kelly repeatedly
17 swore (or affirmed) that to the best of her knowledge and belief, her answers to the NMLS State
18 Regulatory Action disclosure questions in her NMLS record were true, accurate and complete.

19 **1.3 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by
20 the Kelly Respondents, Respondent Biel, and Respondent Shertzer continues to date.

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

22 **2.1 Requirement to Comply with Investigative Authority.** Based on the Factual Allegations set forth
23 in Section I above, the Kelly Respondents, Respondent Biel, and Respondent Shertzer are all in apparent
24 violation of RCW 31.04.145(1) for failing to comply with the Department's investigation authority. In
addition, based on the Factual Allegations set forth in Section I above, the Kelly Respondents,
Respondent Biel, and Respondent Shertzer are all in apparent violation of RCW 31.04.027(1)(b) for

1 directly or indirectly engaging in any unfair or deceptive practice toward any person by being in apparent
2 violation of WAC 208-620-550(14).

3 **2.2 False Statements to the Department.** Based on the Factual Allegations set forth in Section I
4 above, the Kelly Respondents are in apparent violation of RCW 31.04.027(1)(h) for negligently making
5 any false statement in connection with any investigation conducted by the Department. In addition, based
6 on the Factual Allegations set forth in Section I above, the Kelly Respondents are in apparent violation of
7 RCW 31.04.027(1)(b) for directly or indirectly engaging in any unfair or deceptive practice toward any
8 person by being in apparent violation of WAC 208-620-550(6).

9 **2.3 Omissions of Material Facts.** Based on the Factual Allegations set forth in Section I above, the
10 Kelly Respondents are in apparent violation of RCW 31.04.027(1)(h) for knowingly and willfully make
11 any omission of material fact in connection with any investigation conducted by the Department. In
12 addition, based on the Factual Allegations set forth in Section I above, the Kelly Respondents are in
13 apparent violation of RCW 31.04.027(1)(b) for directly or indirectly engaging in any unfair or deceptive
14 practice toward any person by being in apparent violation of WAC 208-620-550(6).

15 **2.4 False, Misleading, or Deceptive Advertising.** Based on the Factual Allegations set forth in Section
16 I above, the Kelly Respondents are in apparent violation of RCW 31.04.135 for advertising, in any
17 manner, any statement or representation with regard to the rates, terms, or conditions for the lending of
18 money that is false, misleading, or deceptive. In addition, based on the Factual Allegations set forth in
19 Section I above, the Kelly Respondents are in apparent violation of RCW 31.04.027(1)(b) for directly or
20 indirectly engaging in any unfair or deceptive practice toward any person by being in apparent violation
21 of WAC 208-620-550(22) and WAC 208-620-640.

22 **2.5 False or Deceptive Statements or Representations in Advertising.** Based on the Factual
23 Allegations set forth in Section I above, the Kelly Respondents are in apparent violation of RCW
24 31.04.027(1)(g) for making, in any manner, any false or deceptive statement or representation with regard

1 to the rates, points, or other financing terms for a residential mortgage loan in advertising. In addition,
2 based on the Factual Allegations set forth in Section I above, the Kelly Respondents are in apparent
3 violation of RCW 31.04.027(1)(b) for directly or indirectly engaging in any unfair or deceptive practice
4 toward any person by being in apparent violation of WAC 208-620-550(22) and WAC 208-620-640.

5 **2.6 Unfair or Deceptive Advertising.** Based on the Factual Allegations set forth in Section I above, the
6 Kelly Respondents are in apparent violation of RCW 31.04.027(1)(b) for directly or indirectly engaging
7 in any unfair or deceptive practice toward any person, and by being in apparent violation of WAC 208-
8 620-550(5); WAC 208-620-550(9); WAC 208-620-550(22), WAC 208-620-630(5); WAC 208-620-
9 630(7); WAC 208-620-630(9), and WAC 208-620-640.

10 **2.7 Requirement to Comply with Applicable Federal Law.** Based on the Factual Allegations set
11 forth in Section I above, the Kelly Respondents are in apparent violation of RCW 31.04.027(1)(m) for
12 violating any applicable federal laws relating to the activities governed by the Act, including the Federal
13 Trade Commission Act; the Truth in Lending Act and Regulation Z; the Mortgage Acts and Practices –
14 Advertising (MAP) rule, Regulation N; and the S.A.F.E. Act, Regulations G and H. In addition, based on
15 the Factual Allegations set forth in Section I above, the Kelly Respondents are in apparent violation of
16 RCW 31.04.027(1)(b) for directly or indirectly engaging in any unfair or deceptive practice toward any
17 person by being in apparent violation of WAC 208-620-505.

18 **2.8 Requirement to Maintain and Preserve Books and Records.** Based on the Factual Allegations
19 set forth in Section I above, the Kelly Respondents are in apparent violation of RCW 31.04.155 and
20 WAC 208-620-520 for failing to maintain and preserve records related to advertising, including
21 communications with vendors involved in the creation and distribution of the Solicitation.

22 //

23 //

24 //

1 **III. AUTHORITY TO IMPOSE SANCTIONS**

2 **3.1 Authority to Revoke Licenses.** Pursuant to RCW 31.04.093(3), the Director may revoke licenses
3 issued under the Act for (b) knowingly or without the exercise of due care violating any provision of the
4 Act or any rule adopted thereunder, or for (d), failing to comply with a subpoena issued under the Act.

5 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 31.04.093(6)(e), the Director may issue an
6 order prohibiting from participation in the affairs of any licensee any officer, principal, or mortgage loan
7 originator of a licensee for a violation of RCW 31.04.027.

8 **3.3 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of up to
9 one hundred dollars per day, per violation, upon licensees for any violation of the Act.

10 **3.4 Authority to Recover Costs and Expenses of Prosecution.** Pursuant to RCW 31.04.205(2), the
11 Director may recover the Department’s costs and expenses for prosecuting violations of the Act.

12 **3.5 Authority to Charge and Collect Investigation Fees.** Pursuant to RCW 31.04.145(3) and WAC
13 208-620-590, every licensee investigated by the Director shall pay for the cost of the investigation,
14 calculated at the rate of \$69.01 per staff hour devoted to the investigation.

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

16 The violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC by Respondent
17 KMI, Respondent Kelly, Respondent Biel, and Respondent Shertzer, as set forth in the above Factual
18 Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis for the
19 entry of an Order under RCW 31.04.093, RCW 31.04.165, and RCW 31.04.205. Therefore, it is the
20 Director’s intent to ORDER that:

21 **4.1** Respondent Kelly Mortgage, Inc.’s license to conduct the business of a consumer loan
22 company under the Act be revoked.

23 **4.2** Respondent Tracy Lyn Kelly’s license to conduct the business of a mortgage loan
24 originator under the Act be revoked.

- 1 **4.3** Respondent Jordan Kendall Biel’s license to conduct the business of a mortgage loan
2 originator under the Act be revoked.
- 3 **4.4** Respondent Kelly Mortgage, Inc. and Respondent Tracy Lyn Kelly be prohibited from
4 participation in the conduct of the affairs of any consumer loan company or mortgage
5 broker subject to licensure by the Director, in any manner.
- 6 **4.5** Respondent Jordan Kendall Biel be prohibited from participation in the conduct of the
7 affairs of any consumer loan company or mortgage broker subject to licensure by the
8 Director, in any manner, for a period of five (5) years.
- 9 **4.6** Respondent Daniel Louis Shertzer be prohibited from participation in the conduct of the
10 affairs of any consumer loan company or mortgage broker subject to licensure by the
11 Director, in any manner, for a period of five (5) years.
- 12 **4.7** Respondent Kelly Mortgage, Inc. and Respondent Tracy Lyn Kelly jointly and severally
13 pay an administrative fine to the Department. As of the date of these Charges, the fine
14 totals \$100,000.
- 15 **4.8** Respondent Jordan Kendall Biel pay an administrative fine to the Department. As of the
16 date of these Charges, the fine totals \$2,500.
- 17 **4.9** Respondent Daniel Louis Shertzer pay an administrative fine to the Department. As of
18 the date of these Charges, the fine totals \$1,500.
- 19 **4.10** Respondent Kelly Mortgage, Inc. and Respondent Tracy Lyn Kelly jointly and severally
20 pay the Department’s costs of the investigation into their conduct. As of the date of these
21 Charges, the investigation fee totals \$8,000.00.
- 22 **4.11** Respondent Jordan Kendall Biel pay the Department’s costs of the investigation into his
23 conduct. As of the date of these Charges, the investigative fee totals \$1,000.
- 24 **4.12** Respondent Daniel Louis Shertzer pay the Department’s costs of the investigation into
 his conduct. As of the date of these Charges, the investigative fee totals \$500.
- 4.13** Respondent Kelly Mortgage, Inc. and Respondent Tracy Lyn Kelly 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, in event of default by Respondents, by
 declaration with supporting documentation.
- 4.14** Respondent Jordan Kendall Biel pay the Department’s costs and expenses for
 prosecuting violations of the Act in an amount to be determined at hearing, or, in event
 of default, by declaration with supporting documentation.
- 4.15** Respondent Daniel Louis Shertzer pay the Department’s costs and expenses for
 prosecuting violations of the Act in an amount to be determined at hearing, or, in event
 of default, by declaration with supporting documentation.

