

Terms Completed

ORDER SUMMARY – Case Number: C-16-1989

Name: Mr. Mark Graham Lybbert

Order Number: C-16-1989-17-CO01

Effective Date: May 3, 2017

NMLS Number: 117318

License Effect: Interim (four month) MLO license granted subject to results of a compliance examination of Mr. Lybbert and his new company. With a risk rating of 1, Mr. Lybbert’s MLO license *will* be extended to end of 2017; with a risk rating of 2 or 3, Mr. Lybbert’s MLO license *may* be extended to end of 2017, or allowed to expire without extension or renewal; and with a risk rating of 4 or 5, Mr. Lybbert’s MLO license *will* expire without extension or renewal.

Investigation Costs:	\$ 4,000.00	Due: On entry of CO	Paid: <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date: May 3, 2017
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Comments: This Consent Order fully resolves Statement of Charges No. C-16-1989-17-SC01, and Mr. Lybbert does not admit any wrongdoing by its entry. Mr. Lybbert has represented to the Department that he and his prior company have ceased all unlicensed conduct, and that they have refunded all fees which inured to their benefit from unlicensed loan origination. Mr. Lybbert is required to retain an Auditor to review and make recommendations for increased compliance with the Act at his new company MG Lybbert, LLC, NMLS No. 1619636; to implement those recommendations; and is subject to a compliance review within four months to ascertain compliance with the new policies and procedures and the Act. Extension of Mr. Lybbert’s interim MLO license will be subject to the compliance examination results as detailed above.

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 MARK GRAHAM LYBBERT,
NMLS No. 117318,

6 Respondent.

No. C-16-1989-17-CO01

CONSENT ORDER

7
8 COME NOW the Director of the Washington State Department of Financial Institutions (Director),
9 through her designee Charles E. Clark, Division Director, Division of Consumer Services, and Mark G.
10 Lybbert (Respondent), by and through his counsel, Justin D. Park of Romero Park, PS, and finding that
11 the issues raised in the above-captioned matter may be economically and efficiently settled, agree to the
12 entry of this Consent Order. This Consent Order is entered pursuant to chapter 19.146 of the Revised
13 Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the
14 following:

15 **AGREEMENT AND ORDER**

16 The Department of Financial Institutions, Division of Consumer Services (Department) and Respondent
17 have agreed upon a basis for resolution of the matters alleged in the attached Statement of Charges No.
18 C-16-1989-17-SC01 (Statement of Charges) entered April 27, 2017. Pursuant to RCW 19.146, the
19 Mortgage Broker Practices Act (Act), and RCW 34.05.060 of the Administrative Procedure Act,
20 Respondent hereby agrees to the Department's entry of this Consent Order. The parties intend this
21 Consent Order to fully resolve the Statement of Charges and agree that the Respondent does not admit
22 any wrongdoing by its entry. Respondent is agreeing not to contest the Statement of Charges in
23 consideration of the terms of this Consent Order.

1 **Based upon the foregoing:**

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

4 **B. Waiver of Hearing.** It is AGREED that Respondent has been informed of the right to a hearing
5 before an administrative law judge, and hereby waives his right to a hearing and all administrative and
6 judicial review of the issues raised in this matter or the resolution reached herein.

7 **C. Cease and Desist and Future Compliance with the Act.** It is AGREED that Respondent has
8 represented to the Department that, except as necessary to protect borrowers currently in the Oxbow
9 Mortgage pipeline, Respondent has ceased and desisted from engaging in the unlicensed conduct
10 described in the Statement of Charges. It is AGREED and ORDERED that Respondent shall henceforth
11 comply with the Act and rules adopted thereunder, both now existing and as hereafter amended.

12 **D. License Required.** It is AGREED that Respondent understands that in order to conduct the
13 business of a mortgage broker or mortgage loan originator (MLO) in Washington, Respondent must first
14 obtain and maintain a mortgage broker or mortgage loan originator license in accordance with the Act or
15 qualify for an exemption as delineated in the Act. It is FURTHER AGREED that Respondent has been
16 licensed by the Department with an interim mortgage broker license pursuant to RCW 19.146.210(5),
17 with a fixed date of expiration four months after entry of this Consent Order.

18 **E. Restitution.** It is AGREED that Respondent has paid restitution in full, in the amount of all fees
19 which inured to the benefit of Respondent or Oxbow Mortgage, to the borrowers whose residential
20 mortgage loans were originated in April 2017.

21 **F. Affirmative Actions.** It is AGREED and ORDERED that Respondent shall take the following
22 affirmative actions to prevent future violations of, and to comply with, the Act and rules adopted
23 thereunder, both now existing and as hereafter amended:

- 1 **1. Outside Auditor.** Within four (4) weeks of entry of this Consent Order, Respondent
2 shall retain an independent auditing firm (Auditor) subject to the Department's approval
3 to conduct an analysis and compliance review of Respondent's origination, processing,
4 and back-office residential mortgage loan activities. The Auditor shall file a report of its
5 findings with Respondent and the Department within one (1) month of being retained.
6 The report shall note any deficiencies and make recommendations for new compliance
7 policies and procedures designed to detect, correct, and prevent future deficiencies.

- 8 **2. Implementation of Auditor's Recommendations.** Within six (6) weeks of receipt of
9 the Auditor's report of its findings, Respondent shall implement all of the Auditor's
10 recommendations for new compliance policies and procedures. In the event Respondent
11 decides not to implement specific recommendations of the Auditor, Respondents shall
12 provide the Department with a report explaining the basis for the decision not to
13 implement the specific recommendations.

- 14 **3. Residential Mortgage Loan File Review.** Beginning one (1) month after implementing
15 the Auditor's recommendations, Respondent shall thereafter continuously submit for
16 compliance review residential mortgage loan files originated and closed by Respondent
17 *after* the implementation of the Auditor's compliance recommendations. The review
18 may be conducted by the Auditor or, subject to the Department's approval, by a third-
19 party contractor of residential mortgage loan compliance services or a residential
20 mortgage loan compliance review software program.

- 21 **4. Compliance Examination.** Subject to the Department's availability, but in no event not
22 later than three months after entry of this Consent Order, Respondent, and any
23 Department-licensed mortgage broker operated by Respondent, shall be subject to a for-
cause compliance examination by the Department to determine compliance with the Act
and this Consent Order. Respondent shall be liable for and shall timely pay all costs of
the examination pursuant to RCW 19.146.228(2) as authorized by WAC 208-660-
510(8)(c). Failure to fully cooperate with the examination, or to timely pay the
Examination Invoice when due, is a violation of this Consent Order.

17 **G. Report of Examination Risk Rating.** It is AGREED and ORDERED that at the conclusion of the
18 compliance examination, a Report of Examination (ROE) Risk Rating of 1 or 2 *will* result in the
19 Department extending Respondent's interim mortgage broker license to December 31, 2017; that a ROE
20 Risk Rating of 3 *may* result in the Department extending Respondent's interim mortgage broker license
21 to December 31, 2017, or *may* result in in the Respondent's interim mortgage broker license expiring
22 without renewal; and that a ROE Risk Rating of 4 or 5 *will* result in Respondent's interim mortgage
23 broker license expiring without renewal, and *may* result in the issuance of a new Statement of Charges

1 seeking to revoke any and all of Respondent's Department-issued licenses, prohibit Respondent from the
2 mortgage broker industry, impose fines, recover the Department's costs and expenses, and impose other
3 sanctions necessary for the protection of the public.

4 **H. Investigation Fee.** It is AGREED that upon entry of this Consent Order Respondent shall pay an
5 investigation fee to the Department in the amount of \$4,000 in the form of a cashier's check made
6 payable to the "Washington State Treasurer."

7 **I. Non-Compliance with Order.** It is AGREED that Respondent understands that failure to abide by
8 the terms and conditions of this Consent Order may result in further legal action by the Director. In the
9 event of such legal action, Respondent may be responsible to reimburse the Director for the Department's
10 investigation fees, examination fees, and its costs and expenses for prosecuting violations of the Act.

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

13 **K. Completely Read, Understood, and Agreed.** It is AGREED that Respondent has read this
14 Consent Order in its entirety and fully understands and agrees to all of the same.

15 _____
16 /s/ Mark Graham Lybbert
17 Respondent

_____ 5/1/17
Date

18 **Approved for Entry:**

19 _____
20 /s/ Justin D. Park, WSBA No. 28340
21 Romero Park, PS
22 Attorneys for Respondent Mark G. Lybbert

_____ 5/2/17
Date

23 **DO NOT WRITE BELOW THIS LINE**

1 THIS ORDER ENTERED THIS 3rd DAY OF MAY, 2017.

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/s/

CHARLES E. CLARK
Director, Division of Consumer Services
Department of Financial Institutions

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8 Presented by:

Approved by:

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/s/

ANTHONY W. CARTER
Senior Legal Examiner

/s/

STEVEN C. SHERMAN
Enforcement Chief

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

4 IN THE MATTER OF DETERMINING
5 Whether there has been a violation of the
6 Mortgage Broker Practices Act of Washington
7 by:

8 **MARK GRAHAM LYBBERT,**
9 NMLS No. 117318,

10 Respondent.

No. C-16-1989-17-SC01

11 **STATEMENT OF CHARGES and NOTICE OF**
12 **INTENT TO ENTER AN ORDER TO CEASE AND**
13 **DESIST, ORDER RESTITUTION, TAKE**
14 **AFFIRMATIVE ACTION, IMPOSE FINES, and**
15 **COLLECT INVESTIGATIVE FEES**

16 **INTRODUCTION**

17 Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Washington State
18 Department of Financial Institutions (Director) is responsible for the administration of chapter 19.146
19 RCW, the Mortgage Broker Practices Act (Act). Having conducted an investigation pursuant to RCW
20 19.146.235, and based upon the facts available as of the date of this Statement of Charges, the Director,
21 through his designee, Division of Consumer Services Director Charles E. Clark, institutes this
22 proceeding and finds as follows:

23 **I. FACTUAL ALLEGATIONS**

24 **1.1 Mark Graham Lybbert** (Respondent) was licensed by the Department of Financial Institutions
(Department) to conduct business as the sole owner and executive officer of Oxbow Mortgage Company
PC, LLC (Oxbow Mortgage) effective September 9, 2016. At all times relevant to this matter Respondent
was licensed by the Department as a mortgage loan originator (MLO) for Oxbow Mortgage, and was
registered with NMLS as the Designated Broker of Oxbow Mortgage. Due to numerous violations of the
Act by Oxbow Mortgage dating back to 2013, on or about December 25, 2016, the Department renewed
Respondent's MLO license, and Oxbow Mortgage's mortgage broker license, with interim licenses
which expired on March 31, 2017.

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1 **1.2 Unlicensed Activity.** From on or about April 1, 2017, through on or about April 12, 2017,
2 Respondent conducted business as an unlicensed mortgage broker and unlicensed MLO, originating at
3 least one residential mortgage loan for a Washington borrower secured by real property located in
4 Washington, and continuing to hold himself and Oxbow Mortgage out as being able to provide
5 residential mortgage loans in Washington.

6 **1.3 Misrepresentations and Omissions.** From on or about April 1, 2017, through on or about
7 April 12, 2017, Respondent, by originating at least one residential mortgage loan for a Washington
8 borrower secured by real property located in Washington, represented that both he and Oxbow Mortgage
9 were licensed to provide the residential mortgage loan services or omitted disclosing that both he and
10 Oxbow Mortgage were not licensed to provide those services.

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

12 **2.1 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondent is in
13 apparent violation of RCW 19.146.200(1) and RCW 19.146.0201(3) for engaging in the business of a
14 mortgage broker and MLO without first obtaining a license to do so and directly or indirectly obtaining
15 property by misrepresentation.

16 **III. AUTHORITY TO IMPOSE SANCTIONS**

17 **3.1 Authority to Order Persons to Cease and Desist.** Pursuant to RCW 19.146.220(3), the Director
18 may order any person subject to the Act to cease and desist from conducting business.

19 **3.2 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2), the Director may order any
20 person subject to the Act to pay restitution for any violation of the Act

21 **3.3 Authority to Order Persons to Take Affirmative Action.** Pursuant to RCW 19.146.220(3), the
22 Director may order any person subject to the Act to take affirmative action necessary to comply with the
23 Act.

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1 **3.4 Authority to Impose Fines.** Pursuant to RCW 19.146.220(2) and WAC 208-660-530(6), the
2 Director may impose fines of up to \$100 per day for each violation of the Act.

3 **3.5 Authority to Collect Investigative Fees.** Pursuant to RCW 19.146.228(2), WAC 208-660-520(9)
4 & (11), and WAC 208-660-550(4)(a), the Director may charge forty-eight dollars per hour for an
5 examiner's time devoted to an investigation of any person subject to the Act.

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

7 Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as
8 set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
9 Sanctions, constitute a basis for the entry of an Order under RCW 19.146.220, RCW 19.146.221, and
10 RCW 19.146.223.

11 Therefore, it is the Director's intent to ORDER that:

- 12 **4.1** Respondent Mark G. Lybbert cease and desist engaging in the business of an unlicensed
13 mortgage broker or unlicensed mortgage loan originator.
- 14 **4.2** Respondent Mark G. Lybbert pay restitution to any Washington borrower to whom he or
15 Oxbow Mortgage entered into a contract for a residential mortgage loan secured by real
16 property located in the state of Washington equal to the amount collected from that
17 Washington borrower for those residential mortgage loan services, in an amount to be
18 determined at hearing or by declaration with supporting documentation in the event of
19 default by Respondent.
- 20 **4.3** Respondent Mark G. Lybbert take such affirmative action as is necessary to prevent
21 future violations of the Act.
- 22 **4.4** Respondent Mark G. Lybbert pay a fine. As of the date of this Statement of Charges, the
23 fine totals \$5,000.
- 24 **4.5** Respondent Mark G. Lybbert pay an investigation fee. As of the date of this Statement of
Charges, the investigation fee totals \$4,000.
- 4.6** Respondent Mark G. Lybbert 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 the event of default by Respondent.

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