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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION**

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

NO. C-04-018-04-CO01

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Loankey Financial, Inc.,
James C. Sweeney, Designated Broker, and
Melvin K. Gilmour, Owner

CONSENT ORDER

Respondents

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COMES NOW the Director of the Department of Financial Institutions (Director), through her designee Chuck Cross, Acting Division Director, Division of Consumer Services, and Loankey Financial, Inc., James C. Sweeney, Designated Broker, and Melvin K. Gilmour, Owner (hereinafter collectively as "Respondents"), and finding that the issues raised in the captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 19.146 of Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

AGREEMENT AND ORDER

The Department of Financial Institutions, Division of Consumer Services (Department) and Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-04-018-04-SC01, entered February 24, 2004, (copy attached hereto). Pursuant to chapter 19.146 RCW, the Mortgage Broker Practices Act (Act) and RCW 34.05.060 of the Administrative Procedure Act, Respondents hereby agree to the Department's entry of this Consent Order and further agree that the issues raised in the above captioned matter may be economically and efficiently settled by entry of this Consent Order. The parties intend this Consent Order to fully resolve Statement of Charges No. C-04-018-04-SC01, entered February 24, 2004.

Based upon the foregoing:

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

CONSENT ORDER
Loankey Financial, Inc.
James C. Sweeney, Designated Broker
Melvin K. Gilmour, Owner

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
210 11th Ave SW, Room 300
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8795

1 **B. Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a hearing before
2 an administrative law judge, and that they have waived their right to a hearing and any and all administrative and
3 judicial review of the issues raised in this matter, or of the resolution reached herein.

4 **C. Mortgage Broker License.** It is AGREED that Respondents shall immediately surrender their mortgage
5 broker license. It is further AGREED that Respondents shall immediately provide the Department with a fully
6 completed "Mortgage Broker Office Closure/License Surrender Form." It is further AGREED that Respondents shall
7 not apply to the Department for any license for a period of three (3) years from the entry of this Consent Order.

8 **D. Fine.** It is AGREED that, should any of the Respondents apply to the Department for any license at any
9 time during the period beginning three (3) years from the date of entry of this Consent Order and ending five (5) years
10 from the date of entry of this Consent Order, the applying Respondents shall jointly and severally pay to the Department
11 a fine of \$6,000.00.

12 **E. Annual Assessments.** It is AGREED that Respondents shall pay to the Department the cumulative
13 delinquent annual assessments due through January 31, 2004 totaling \$1,592.58 (\$530.86 for the years ended January
14 31, 2002, 2003 and 2004, respectively), upon entry of this order.

15 **F. Investigation Fee.** It is AGREED that Respondents shall pay to the Department an investigation fee of
16 \$286.68, upon entry of this order.

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

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

23 **I. Voluntarily Entered.** It is AGREED that the undersigned Respondents have voluntarily entered into this
24 Consent Order, which is effective when signed by the Director's designee.

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

3 **RESPONDENTS:**

4 **Loankey Financial, Inc.**

5 By:

6 /s/
Melvin K. Gilmour
7 Owner

/4/14/04
Date

8
9 /s/
Melvin K. Gilmour, Individually

/4/14/04/
Date

10
11 /s/
12 James C. Sweeney, Designated Broker and Individually

/4/14/04
Date

13 THIS ORDER ENTERED THIS 29th DAY OF April, 2004.

14
15 /s/
16 CHUCK CROSS
17 Acting Director and Enforcement Chief
18 Division of Consumer Services
19 Department of Financial Institutions
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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION**

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

Loankey Financial, Inc.,
James C. Sweeney, Designated Broker, and
Melvin K. Gilmour, Owner,

Respondents.

NO. C-04-018-04-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENT TO REVOKE LICENSE,
IMPOSE FINES, AND PROHIBIT FROM
PARTICIPATION IN THE MORTGAGE BROKER
INDUSTRY

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (“Director”) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (“Act”). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation, and based upon the facts available as of February 13, 2004, the Director institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents:

A. **Loankey Financial, Inc. (“Loankey”)** is known to have conducted the business of a mortgage broker at:

1243 Alpine Road, Suite 111
Walnut Creek, California 94596

B. **James C. Sweeney (“Sweeney”)** was named designated broker on January 4, 2000.

C. **Melvin K. Gilmour (“Gilmour”)** is known to be the owner of Loankey.

1.2 License: Respondent Loankey was licensed by the Department of Financial Institutions (“Department”)

to conduct business as a mortgage broker on January 4, 2000, and has continued to be licensed to date.

1 **1.3 Failure to Pay Annual Assessment:** Payment of the annual assessment is due to the Department no
2 later than the last business day of January of each year. To date, the Department has not received the following
3 annual assessments due from Respondents:

4 A. Payment of the annual assessment of \$530.86 for the years 2001, 2002 and 2003 was due to the
5 Department no later than the last business day of January 2002, 2003 and 2004.

6 B. Payment of the annual assessment of \$530.86 for the year 2004 will be due to the Department no
7 later than the last business day of January 2005.

8 **1.4 Failure to Maintain Bond:** On July 2, 2002, the Department received notice of the cancellation of
9 Loankey's surety bond from Great American Insurance Company. To date, Respondents have not notified the
10 Department that Loankey's surety bond was cancelled, nor have Respondents replaced the surety bond.

11 **1.5 Failure to Submit Continuing Education Certificate:** A certificate of satisfactory completion of an
12 approved continuing education course was due to the Department no later than the last day of January 2002, 2003,
13 and 2004. To date, the Department has not received the required certificates due from Respondent Sweeney.

14 **1.6 Failure to Respond to Directive Requirement:** On September 23, 2003, the Department issued a
15 directive to Respondents requiring submission of Certificates of Completion for Continuing Education, payment
16 of the main office and branch office annual assessments, and replacement of Loankey's bond. To date, the
17 Department has not received a response to its directive. In addition to this Directive, the Department has evidence
18 that letters regarding continuing education and bond cancellation were successfully sent to Respondents on
19 October 22, 2002, and July 23, 2002.

20 **1.7 Failure to Notify DFI of Significant Developments:**

21 A. As stated in 1.4 above, to date, Respondents have not notified the Department of the cancellation
22 of Loankey's surety bond.

1 **2.5 Authority to Revoke License:** Pursuant to RCW 19.146.220(2)(b)(ii) and (iii), and WAC 208-660-
2 160(1), (2), (8), and (13), the Director may revoke a license for failure to pay a required annual assessment, for
3 failure to maintain the required surety bond, and for failure to comply with any directive or order of the Director.

4 **2.6 Authority to Charge Examination Fee:** Pursuant to RCW 19.146.228(2), and WAC 208-660-060(2), upon
5 completion of any examination of the books and records of a licensee, the Department will furnish to the licensee a
6 billing to cover the cost of the examination. The examination charge will be calculated at the rate of forty-seven dollars
7 and seventy-eight cents (\$47.78) per hour that each staff person devoted to the examination.

8 **2.7 Authority to Impose Fine:** Pursuant to RCW 19.146.220(2)(c)(i) and (ii) and WAC 208-660-165, the
9 Director may impose fines on the licensee for failure to maintain the required surety bond and for failure to
10 comply with any directive or order of the Director.

11 **2.8 Authority to Prohibit from the Industry:** Pursuant to RCW 19.146.220(2)(e)(i) and (iv), the Director
12 may prohibit a covered individual from participation in the conduct of the affairs of a licensed mortgage broker,
13 for failure to maintain the required surety bond and for failure to comply with any directive or order of the
14 Director.

16 III. NOTICE OF INTENT TO ENTER ORDER

17 Respondents' violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth in
18 the above Facts and Grounds for Entry of Order, constitute a basis for the entry of an Order under RCW 19.146.220.

19 Therefore, it is the Director's intention to ORDER that:

- 20 3.1 The mortgage broker license held by Respondent Loankey Financial, Inc. be revoked; and
21 3.2 Respondents James C. Sweeney and Melvin K. Gilmour be prohibited from participation in the
22 conduct of the affairs of any licensed mortgage broker for a period of five (5) years; and
23 3.3 Respondents, jointly and severally, pay the annual assessment due, in the amount of \$1592.58, as
24 calculated in 1.3 above, for the years 2001, 2002, and 2003; and
25 3.4 Respondents, jointly and severally, pay an examination fee for \$286.68, calculated at \$47.78 per hour
for each staff hour devoted to the investigation (6 hours); and

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- 3.5 Respondents, jointly and severally, pay a fine of \$6000.00 for:
- a) Failure to maintain the required bond, calculated at \$100.00 per day for 30 days; and
 - b) Failure to comply with a directive, calculated at \$100.00 per day for 30 days.

1 **RCW 19.146.205 License – Application – Exchange of fingerprint data with federal bureau of investigation – Fee – Bond or alternative.**

2 . . .

3 (4)(a) Each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount of not greater
4 than sixty thousand dollars nor less than twenty thousand dollars which the director deems adequate to protect the public
5 interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as
6 surety. The bonding requirement as established by the director may take the form of a uniform bond amount for all
7 licensees or the director may establish by rule a schedule establishing a range of bond amounts which shall vary according
8 to the annual average number of loan originators or independent contractors of a licensee. The bond shall run to the state
9 of Washington as obligee, and shall run first to the benefit of the borrower and then to the benefit of the state and any
10 person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this
11 chapter or rules adopted under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully
12 conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer
13 loss by reason of a violation of this chapter or rules adopted under this chapter. Borrowers shall be given priority over the
14 state and other persons. The state and other third parties shall be allowed to receive distribution pursuant to a valid claim
15 against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final
16 judgment may be entered prior to one hundred eighty days following the date the claim is filed. The bond shall be
17 continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel
18 the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the
19 bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or
20 decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be
21 liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall
22 the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability.
23 The bond shall not be liable for any penalties imposed on the licensee, including, but not limited to, any increased
24 damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the
25 surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if
the arrangement provides at least as much coverage as is required under this subsection.

(b) In lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit,
an irrevocable letter of credit, or such other instrument as approved by the director by rule, drawn in favor of the director
for an amount equal to the required bond.

(c) In lieu of the surety bond or compliance with (b) of this subsection, an applicant may obtain insurance or coverage
from an association comprised of mortgage brokers that is organized as a mutual corporation for the sole purpose of
insuring or self-insuring claims that may arise from a violation of this chapter. An applicant may only substitute coverage
under this subsection for the requirements of (a) or (b) of this subsection if the director, with the consent of the insurance
commissioner, has authorized such association to organize a mutual corporation under such terms and conditions as may
be imposed by the director to ensure that the corporation is operated in a financially responsible manner to pay any claims
within the financial responsibility limits specified in (a) of this subsection. [1997 c 106 § 9; 1994 c 33 § 8; 1993 c 468 §
6.]

Severability – 1997 c 106: See note following RCW 19.146.100. Adoption of rules – Severability – 1993 c 468: See notes
following RCW 19.146.020. Effective dates – 1993 c 468: See note following RCW 19.146.200.

20 **RCW 19.146.215 Continuing education – Rules.** The designated broker of every licensee shall complete an annual
continuing education requirement, which the director shall define by rule. [1997 c 106 § 11; 1994 c 33 § 11.]

21 Severability – 1997 c 106: See note following RCW 19.146.010.

22 **RCW 19.146.220 Director – Powers and duties – Violations as separate violations – Rules.** (1) The director shall
enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and
hold hearings.

(2) The director may impose the following sanctions:

24 . . .

(b) Suspend or revoke licenses for:

- 1 (i) False statements or omission of material information on the application that, if known, would have allowed the
director to deny the application for the original license;
- 2 (ii) Failure to pay a fee required by the director or maintain the required bond;
- 3 (iii) Failure to comply with any directive or order of the director; or
- 4 (iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or
19.146.265;
- 5 (c) Impose fines on the licensee, employee or loan originator of the licensee, or other person subject to this chapter for:
- 6 (i) Any violations of RCW 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200,
19.146.205(4), or 19.146.265; or
- 7 (ii) Failure to comply with any directive or order of the director;
- 8 . . .
- 9 (e) Issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage
broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject
to licensing under this chapter for:
- 10 (i) Any violation of 19.146.0201(1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or
19.146.265;
- 11 . . .
- 12 (iv) Failure to comply with any directive or order of the director.
- 13 (3) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and
distinct violation or failure.
- 14 . . .
- 15 [1997 c 106 § 12; 1997 c 58 § 879; 1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

16 **RCW 19.146.221 Action by director – Hearing – Sanction.** The director may, at his or her discretion and as provided
for in *RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does
not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on
the action then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after
hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then
the director may impose any sanction authorized by this chapter. [1994 c 33 § 13.]

17 **RCW 19.146.223 Director – Administration and interpretation.** The director shall have the power and broad
administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as
expressed in RCW 19.146.005. [1994 c 33 § 2.]

18 **RCW 19.146.228 Fees – Rules – Exception.** The director shall establish fees by rule in accordance with RCW 43.24.086
sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

- 19 (1) An annual assessment paid by each licensee on or before a date specified by rule
- 20 (2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person
subject to this chapter; [1997 c 106 § 13; 1994 c 33 § 9.]

21 **RCW 19.146.230 Administrative procedure act application.** The proceedings for denying license applications, issuing
cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies issued pursuant
to this chapter and any appeal therefrom or review thereof shall be governed by the provisions of the administrative
procedure act, chapter 34.05 RCW. [1994 c 33 § 16; 1993 c 468 § 10.]

1 **WAC 208-660-042 Continuing education requirement.** (1) The principal or designated broker of a licensee
2 must satisfactorily complete an approved continuing education course annually. Each licensee must file annually a
3 certificate of satisfactory completion of an approved continuing education course by the licensee's principal or designated
4 broker no later than the last business day of the month in which the anniversary date of the issuance of the licensee's
5 license occurs.

(2) This section applies to each licensee beginning on the first anniversary date of the issuance of the licensee's license
which occurs after December 31, 1995. (For example, if a licensee's license was issued on January 10, 1994, then the
licensee must submit its first certificate of satisfactory completion of an approved continuing education course no later
than the last business day of January 1996.)

[Statutory Authority: [RCW 43.320.010](#), [19.146.223](#). 01-01-044, § 208-660-042, filed 12/8/00, effective 1/8/01; 96-04-
028, recodified as § 208-660-042, filed 2/1/96, effective 4/1/96. Statutory Authority: [RCW 19.146.225](#). 95-13-091, § 50-
60-042, filed 6/21/95, effective 7/22/95.]

7 **WAC 208-660-060 Department's fees and assessments.**

8 (2) Upon completion of any examination of the books and records of a licensee, the department will furnish to the
9 licensee a billing to cover the cost of the examination. The examination charge will be calculated at the rate of \$46.26 per
10 hour that each staff person devoted to the examination. The examination billing will be paid by the licensee promptly
upon receipt. Licensees that were issued licenses prior to March 21, 1994, have prepaid in their initial license fee the cost
of the first compliance examination of the licensee conducted by the department during the first two years after the date of
issuance of the license.

11 (3) Each licensee shall pay to the director an annual assessment of \$513.95 for each license, and \$513.95 for each
12 branch office certificate. The annual assessment(s) will be due no later than the last business day of the month in which
the anniversary date of the issuance of the broker's license occurs.

13 **WAC 208-660-150 Disclosure of significant developments.** (1) A licensee must notify the director in writing
within thirty days after the occurrence of any of the following developments:

- 14 (a) Licensee's filing for bankruptcy or reorganization.
15 (b) Receipt of notification of license revocation procedures in any state against the licensee.
16 (c) The filing of a felony indictment or information related to mortgage brokering activities of the licensee, or any
officer, director, principal, or designated broker of the licensee.
17 (d) The licensee, or any officer, director, principal, or designated broker of the licensee being convicted of a felony.
18 (e) Receipt of notification of cancellation of the licensee's surety bond or approved alternative, or any significant
decline in value of an approved alternative held by the director.
19 (f) The filing of any material litigation against the licensee.

(2) A licensee must notify the director in writing ten days prior to a change of the location of the licensee's principal
place of business or any of its branch offices.

(3) A licensee must notify the director in writing within five days after a change in the licensee's:

- 20 (a) Name or legal status (e.g., from sole proprietor to corporation, etc.);
21 (b) Mailing address or telephone number;
22 (c) President, partner, designated broker, or branch office manager;
23 (d) Trust account (e.g., change in the status, location, or account number);
24 (e) State master business license; or
25 (f) Standing with the state of Washington secretary of state.

[96-04-028, recodified as § 208-660-150, filed 2/1/96, effective 4/1/96. Statutory Authority: [RCW 19.146.225](#). 95-13-091,
§ 50-60-150, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-150, filed 1/7/94,
effective 2/7/94.]

24 **WAC 208-660-160 License application denial or condition; license suspension or revocation.** The director may
deny or condition approval of a license application, or suspend or revoke a license if the applicant or licensee, or any

1 principal or designated broker of the applicant or licensee:

(1) Has failed to pay a fee due to the state in accordance with the Mortgage Broker Practices Act;

2 . . .
3 (13) Has failed to comply with an order, directive, or requirement of the director, or his or her designee, or with an assurance of discontinuance entered into with the director, or his or her designee;

4 **WAC 208-660-165 Fines and penalties for violation of the Mortgage Broker Practices Act.** Each mortgage
5 broker and each of its principals, designated brokers, officers, employees, independent contractors, and agents shall
6 comply with the applicable provisions of the Mortgage Broker Practices Act. Each violation of any applicable provision of
7 the Mortgage Broker Practices Act, or of any order, directive, or requirement of the director may, at the discretion of the
8 director, subject the violator to a fine of up to one hundred dollars for each offense. Each day's continuance of the
9 violation is a separate and distinct offense. In addition, the director in his or her discretion may by order assess other
10 penalties for a violation of the Mortgage Broker Practices Act.
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