

ORDER SUMMARY – Case Number: C-07-034

Name(s): Penny Lee Tobacco
aka Penny Lee Kanzler
aka Penny Souza

Order Number: C-07-034-09-CO01

Effective Date: August 17, 2009

License Number: DFI: 40636 [NMLS: 150436]

Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)

License Effect: Application Withdrawn

Not Apply Until: August 18, 2029 (ANY License)

Not Eligible Until:

Prohibition/Ban Until: August 18, 2029 (mortgage broker industry)

Investigation Costs	\$8,496	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Fine	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	\$8,496	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Satisfaction of Judgment Filed?	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N			
No. of Victims:				

Comments: Respondent provided Confession of Judgment for \$8,496 investigation fee filed in King County.

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

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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-07-034-09-CO01

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PENNY LEE TOBACCO,
aka PENNY LEE KANZLER,
aka PENNY SOUZA,

CONSENT ORDER

Respondent.

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COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and Penny Lee Tobacco (hereinafter Respondent), 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 Respondent have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-07-034-07-SC01 (Statement of Charges), entered December 28, 2007, (copy attached hereto). Pursuant to chapter 19.146 RCW, the Mortgage Broker Practices Act and RCW 34.05.060 of the Administrative Procedure Act, Respondent hereby agrees to the Department's entry of this Consent Order and further agrees 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 the Statement of Charges.

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
C-07-034-09-CO01
Penny Lee Tobacco

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

1 **B. Waiver of Hearing.** It is AGREED that Respondent has been informed of the right to a hearing
2 before an administrative law judge, and hereby waives her 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. Accordingly, Respondent,
4 by her signature below, withdraws her appeal to the Office of Administrative Hearings.

5 **C. License Application Withdrawal.** It is AGREED that Respondent's application for a loan originator
6 license is deemed withdrawn.

7 **D. Prohibition from Industry.** It is AGREED that Respondent is prohibited from participating in the
8 conduct of the affairs of any mortgage broker licensed by the Department or any mortgage broker subject to
9 licensure or regulation by the Department for twenty years from the date of entry of this Consent Order in any
10 capacity, including but not limited to: (1) any financial capacity whether active or passive or (2) as an officer,
11 director, principal, designated broker, employee, or loan originator or (3) any management, control, oversight or
12 maintenance of any trust account(s) in any way related to any residential mortgage transaction or (4) receiving,
13 disbursing, managing or controlling in any way, consumer trust funds in any way related to any residential
14 mortgage transaction.

15 **E. Application for License.** It is AGREED that Respondent shall not apply to the Department for any
16 license under any name for a period of twenty years from the date of entry of this Consent Order. It is further
17 AGREED that, should Respondent apply to the Department for any license under any name at any time later than
18 twenty years from the date of entry of this Consent Order, Respondent shall be required to meet any and all
19 application requirements in effect at that time.

20 **F. Declaration of Financial Condition and Confession of Judgment.** It is AGREED that Respondent
21 has provided the Department with a Declaration comprehensively describing her current financial condition and
22 representing her current inability to pay the investigation fee obligation agreed to in Paragraph G of this Consent
23 Order. It is further AGREED that, based on this Declaration, the Department has accepted a Confession of
24 Judgment from Respondent for the investigation fee obligation agreed to in Paragraph G of this Consent Order. A

1 copy of this Confession of Judgment is attached and incorporated into this Consent Order by this reference.
2 Consistent with Chapter 4.60 of the Revised Code of Washington, the Department may immediately seek entry of
3 the judgment. Respondent shall, upon the Department's request, fully and promptly cooperate with the
4 Department in its efforts to get the judgment entered by the superior court.

5 **G. Confession of Judgment for Investigation Fee.** It is AGREED that Respondent has entered into a
6 Confession of Judgment for an investigation fee in the amount of \$8,496 owed to the Department.

7 **H. Non-Compliance with Order.** It is AGREED that Respondent understands that failure to abide
8 by 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 cost incurred in
10 pursuing such action, including but not limited to, attorney fees.

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

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

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1 **RESPONDENT:**

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Penny Lee Tobacco
Penny Lee Tobacco

8-14-09

Date

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DO NOT WRITE BELOW THIS LINE

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THIS ORDER ENTERED THIS 17th DAY OF August, 2009.

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Deborah Bortner

DEBORAH BORTNER

Director

Division of Consumer Services

Department of Financial Institutions

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Presented by:

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Mark T. Olson

MARK T. OLSON
Financial Examiner

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Approved by:

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James R. Brusselback
JAMES R. BRUSSELBACK
Enforcement Chief

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CONSENT ORDER
C-07-034-09-CO01
Penny Lee Tobacco

DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF FINANCIAL
INSTITUTIONS,

Plaintiff,

v.

PENNY LEE TOBACCO,

Defendant.

NO.

CONFESSION OF JUDGMENT

Judgment Summary

Judgment Creditor:	State of Washington, Department of Financial Institutions
Attorneys for Department of Financial Institutions:	Robert M. McKenna, Washington Attorney General Chad C. Standifer, Assistant Attorney General
Judgment Debtor:	Penny Lee Tobacco
Principal Judgment Amount for Cost of Investigation:	\$8,496.00 owed to the Department of Financial Institutions
Total Judgment Amount:	\$8,496.00
Post-Judgment Interest (per annum):	12%

1 Pursuant to Chapter 4.60 of the Revised Code of Washington, Judgment by Confession,
2 defendant Penny Lee Tobacco hereby authorizes entry of a judgment under the following
3 terms:

4 **Factual Basis for Judgment**

5 The State of Washington, Department of Financial Institutions and Penny Lee Tobacco
6 have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-07-
7 034-07-SC01 (Statement of Charges), entered December 28, 2007. Penny Lee Tobacco has
8 agreed to enter into a Confession of Judgment, pursuant to Chapter 4.60 RCW, in the amount
9 of \$8,496.00, which she shall pay to the Department of Financial Institutions for the cost of its
10 investigation.

11 **Authorization for Entry of Judgment**

12 I, Penny Lee Tobacco, being duly sworn upon oath, acknowledge my debt of \$8,496.00
13 to the Department of Financial Institutions and I authorize entry of judgment against me for the
14 amount set forth in the judgment summary above.

15 DATED this 14 day of Aug, 2009.

16 Penny Lee Tobacco
17 Penny Lee Tobacco

18 SUBSCRIBED AND SWORN TO before me in 4th Benton Washington this
19 14th day of August, 2009.



E. L. Anderson
E. L. Anderson
Notary Public in and for the State of
Washington, residing at Renton
Washington.
My Commission expires: 1-9-10

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Order for Entry

The above Confession of Judgment having been presented to this Court for entry in accordance with RCW 4.60.070, the Court having found said Confession of Judgment to be sufficient, now, therefore, it is hereby

ORDERED that the Clerk of this Court shall forthwith enter Judgment against Penny Lee Tobacco, in accordance with the terms of the Confession of Judgment.

DONE IN OPEN COURT this ___ day of _____, 2009.

JUDGE/COURT COMMISSIONER

Presented by:

ROBERT M. MCKENNA
Attorney General

CHAD C. STANDIFER
Assistant Attorney General
WSBA No. 29724
Attorneys for State of Washington
Department of Financial Institutions

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

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

PENNY LEE TOBACCO,
aka PENNY LEE KANZLER,
aka PENNY SOUZA

Respondent.

NO. C-07-034-07-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO DENY LICENSE APPLICATION,
IMPOSE FINE, PROHIBIT FROM INDUSTRY,
AND COLLECT INVESTIGATION FEE

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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)¹. After having conducted an investigation pursuant to RCW 19.146.235 of both the 1994 and 2007 Acts and RCW 19.146.310 of the 2007 Act, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

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I. FACTUAL ALLEGATIONS

1.1 Respondent Penny Lee Tobacco, aka Penny Lee Kanzler, aka Penny Souza (Respondent Tobacco) submitted an application to the Department of Financial Institutions of the State of Washington (Department) for a loan originator license under Evergreen Pacific Services, Inc. (Evergreen)² and Mortgage Lending Inc. (MLI)³. The on-line application was received by the Department on or about January 23, 2007 and the Form MU4 portion of the application was received by the Department on or about January 2, 2007. On

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¹ The Act, effective in 1994, was amended in 2006, with the changes effective January 1, 2007. Alleged violations referenced in this Statement of Charges that occurred prior to 2007 are cited as violating the 1994 Act; those that occurred in 2007 are cited as violating the 2007 Act.

² Evergreen is a mortgage broker licensed under the Act.

³ MLI is a mortgage broker licensed under the Act.

1 or about June 15, 2007, the Department received a letter from Respondent Tobacco dated April 9, 2007 stating
2 that she had terminated her relationship with MLI and intended to establish a new relationship with Washington
3 Financial Group, Inc. (WFG)⁴. On or about August 31, 2007, the Department received a Form MU4
4 establishing a new relationship between Respondent Tobacco and WFG. According to Respondent Tobacco's
5 license application, in addition to operating as a loan originator under Evergreen since at least January 2005, she
6 also operated as a loan originator under American Residential Funding (Amres)⁵ from March 2002 through
7 April 2004, and under RFA, LLC (RFA)⁶ from January 2005 through December 2006.

8 **1.2 Residential Mortgage Loans.**

9 **A. Transaction 1** – In or around September 2003, Respondent Tobacco assisted Borrower 1 in
10 obtaining a \$299,250 residential mortgage loan to purchase property located at 3910 Lucile Street, Seattle, WA
11 (3910 Lucile property) from Seattle Development LLC (Seattle Development)⁷. In this transaction, Respondent
12 Tobacco and Amres obtained approximately \$1,500 in fees for originating the loan, Respondent Tobacco
13 obtained \$500 in processing fees under the name America West Services, and Seattle Development obtained
14 approximately \$51,000 as the seller.

15 **B. Transaction 2** – In or around April 2004, Respondent Tobacco assisted Borrower 2 in
16 attempting to obtain a residential mortgage loan to refinance property located at 3912 Lucile Street, Seattle, WA
17 (3912 Lucile property). No residential mortgage loan was obtained for Borrower 2.

18 **C. Transaction 3** – In or around December 2004, Respondent Tobacco assisted Borrower 3 in
19 obtaining a \$225,000 residential mortgage loan to refinance property located at 201 Summer Place, Enumclaw,
20 WA (Summer property). In this transaction, Respondent Tobacco and Evergreen obtained approximately
21 \$10,000 in mortgage broker fees and Respondent Tobacco obtained \$500 in processing fees under the name
22 America West Services.

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24 ⁴ WFG is a mortgage broker licensed under the Act.

⁵ Amres was a Consumer Loan company licensed by the Department under the Consumer Loan Act during the period
25 indicated.

⁶ RFA was a mortgage broker licensed under the Act during the period indicated.

⁷ According to Respondent Tobacco's license application, she is the owner of Seattle Development.

1 **D. Transaction 4** – In or around January 2005, Respondent Tobacco assisted Borrower 4 in
2 obtaining a \$187,000 residential mortgage loan to purchase property located at 202 Clay Street NW, Auburn,
3 WA (Clay property). In this transaction, Respondent Tobacco and Evergreen obtained approximately \$9,800 in
4 mortgage broker fees and Respondent Tobacco obtained \$500 in processing fees under the name America West
5 Services.

6 **E. Transaction 5** – In or around May 2005, Respondent Tobacco assisted Borrower 3 in obtaining
7 two residential mortgage loans totaling \$330,000 to purchase the 3910 Lucile property from Borrower 1. In this
8 transaction, Respondent Tobacco and Evergreen obtained approximately \$9,300 in mortgage broker fees,
9 Respondent Tobacco obtained \$750 in processing fees under the name Pacific NW Services⁸, and Respondent
10 Tobacco obtained approximately \$3,800 under the name Legendary Construction⁹.

11 **F. Transaction 6** – In or around August 2005, Respondent Tobacco assisted Borrower 5 in
12 obtaining two residential mortgage loans totaling \$576,000 to purchase property located at 802-804 19th
13 Avenue, Seattle, WA. In this transaction, Respondent Tobacco and RFA obtained approximately \$6,750 in
14 mortgage broker fees and Respondent Tobacco obtained \$500 in processing fees under the name Pacific NW
15 Services.

16 **G. Transaction 7** – In or around September 2005, Respondent Tobacco assisted Borrower 3 in
17 obtaining two residential mortgage loans totaling \$257,000 to purchase property located at 10730 SE 166th
18 Street, Renton, WA (166th St property). In this transaction, Respondent Tobacco and RFA obtained
19 approximately \$10,700 in mortgage broker fees and Respondent Tobacco obtained an additional \$427 when
20 Borrower 3 endorsed his escrow refund check from the closing agent over to Respondent Tobacco.
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23 ⁸ According to Respondent Tobacco's license application, she is the owner of Pacific NW Services, LLC. Pacific NW
Services is also a legal dba of Seattle Development.

24 ⁹ During a deposition conducted September 19, 2006 for the lawsuit discussed in paragraph 1.8B below, Respondent
25 Tobacco stated under oath that she had nothing to do with the Legendary Construction invoice (pp. 346-347). However, in
or around May 2005, Respondent Tobacco sent the closing agent a fax stating there would be a \$4,000 bill for Legendary
Construction to be paid by the seller, submitted two Legendary Construction invoices to the closing agent, and endorsed
the check the closing agent issued to Legendary Construction.

1 **H. Transaction 8** – In or around October 2005, Respondent Tobacco assisted Borrower 3 in
2 obtaining a \$292,300 residential mortgage loan to refinance the Summer property. In this transaction,
3 Respondent Tobacco and RFA obtained approximately \$12,400 in mortgage broker fees.

4 **I. Transaction 9** – In or around March 2006, Respondent Tobacco assisted Borrower 3 in
5 obtaining a \$256,500 residential mortgage loan to purchase the Clay property from Borrower 4. In this
6 transaction, Respondent Tobacco and RFA obtained approximately \$11,750 in mortgage broker fees, and
7 Respondent Tobacco obtained \$500 in processing fees.

8 **1.3 Non-Residential Mortgage Loans.**

9 **A. Transaction A** – In or around May 2004, Borrower 2 conveyed and quit claimed the 3912
10 Lucile property to Seattle Development for and in consideration of “love and affection.” In or around March
11 2007, Respondent Tobacco provided the Department with an agreement dated May 30, 2004 and signed by
12 Respondent Tobacco as a representative for Seattle Development and purportedly signed by Borrower 2. This
13 agreement stated that Borrower 2 was receiving approximately \$134,000 in value from Seattle Development in
14 this transaction including the payoff of approximately \$106,000 in liabilities due to Borrower 2’s current lender,
15 a one year lease agreement for Borrower 2 to live in the 3912 Lucile property from June 1, 2004 through June
16 30, 2005 with rent credited at \$1,019 per month (no rent would actually be collected), and \$16,000 in cash from
17 Seattle Development to Borrower 2 at the end of the lease. In or around June 2004, Seattle Development
18 obtained a \$160,000 business loan secured by the 3912 Lucile property. After paying off Borrower 2’s existing
19 \$99,000 residential mortgage loan, Seattle Development obtained approximately \$47,000 in cash.

20 **B. Transaction B** – In or around December 2004, Respondent Tobacco assisted Borrower 3 in
21 obtaining a \$297,000 mortgage loan to purchase the 3912 Lucile property from Seattle Development.
22 Respondent Tobacco represented to the lender in this transaction that Borrower 3 was purchasing the 3912
23 Lucile property for investment purposes. Respondent Tobacco and Borrower 3 had an unwritten agreement to
24 act as partners in the operation of the 3912 Lucile property as a rental property. In this transaction, Respondent
25 Tobacco and Evergreen obtained approximately \$3,000 in mortgage broker fees, Respondent Tobacco obtained

1 \$500 in processing fees under the name America West Services, and Seattle Development obtained
2 approximately \$79,000 as the seller after the payment of approximately \$235,000 for existing liens (\$164,000 to
3 the lender from Transaction A and \$71,000 for two Deeds of Trust recorded in favor of Start Corporation of
4 America between June 2004 and December 2004).

5 **1.4 Misrepresentations of Owner Occupancy.** Respondent Tobacco misrepresented Borrower 3's intent
6 to occupy certain properties as his primary residence¹⁰.

7 **A. Transaction 3.** In or around December 2004, Respondent Tobacco represented to the lender in
8 Transaction 3 that the Summer property was Borrower 3's primary residence and would continue to be
9 following the refinance.

10 **B. Transaction 5.** In or around May 2005, Respondent Tobacco represented to the lender in
11 Transaction 5 that the Summer property was Borrower 3's primary residence, that Borrower 3 would be
12 occupying the 3910 Lucile property as his primary residence once he purchased it, and that the Summer
13 property and the 3912 Lucile property were or would become rental properties.

14 **C. Transaction 7.** In or around September 2005, Respondent Tobacco represented to the lender
15 in Transaction 7 that the Summer property was Borrower 3's primary residence, that Borrower 3 would be
16 occupying the 166th St property as his primary residence once he purchased it, and that the 201 Summer
17 property and the 3910 Lucile property and the 3912 Lucile property were or would become rental properties.
18 Respondent Tobacco provided the lender with a Residential Lease Agreement representing that Borrower 3
19 would be leasing the Summer property out for \$1,500 per month for one year beginning September 1, 2005.
20 Respondent Tobacco did not disclose to the lender that she was also assisting Borrower 3 in obtaining a
21 residential mortgage loan from another lender to refinance the Summer property, and that Respondent Tobacco
22 was representing to that other lender that Borrower 3 would be occupying the Summer property as his primary
23 residence (see following discussion of Transaction 8). In or around October 2005, Borrower 3 quit claimed the
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25 ¹⁰ Generally, lenders provide more favorable interest rates and loan terms to borrowers who are going to occupy property as their primary residence.

1 property to Pacific NW Services, LLC to "transfer into LLC." Respondent Tobacco signed the quit claim deed
2 as both the grantor and the grantee.

3 **D. Transaction 8.** In or around October 2005, Respondent Tobacco represented to the lender in
4 Transaction 8 that the Summer property was Borrower 3's primary residence and would continue to be
5 following the refinance, and that the 3910 Lucile property and the 3912 Lucile property were rental properties.
6 Respondent Tobacco did not disclose to the lender that she was also assisting Borrower 3 in obtaining a
7 residential mortgage loan to purchase the 166th St property, and that Respondent Tobacco was representing to
8 that other lender that Borrower 3 would be occupying the 166th St property as his primary residence and that the
9 Summer property had been leased out as of September 1, 2005 (see preceding discussion of Transaction 7).

10 **E. Transaction 9.** In or around March 2006, Respondent Tobacco represented to the lender in
11 Transaction 9 that the Summer property was Borrower 3's primary residence, that Borrower 3 would be
12 occupying the Clay property as his primary residence once he purchased it, and that the Summer property and
13 the 3910 Lucile property and the 3912 Lucile property and the 166th St property were or would become rental
14 properties.

15 **1.5 Misrepresentations of Borrowers' Information.** In at least six residential mortgage loan transactions,
16 Respondent Tobacco misrepresented borrowers' information to lenders in order to assist borrowers in obtaining
17 residential mortgage loans. Such information included income, assets, liabilities, and down payments.

18 **A. Transaction 3.** In or around December 2004, Respondent Tobacco represented to the lender in
19 Transaction 3 that Borrower 3 earned \$8,500 per month as the owner of Quantum Group. Respondent Tobacco
20 did not disclose to the lender that, while in the process of assisting Borrower 3 in obtaining a \$275,000
21 residential mortgage loan to refinance the Summer property, she was also in the process of assisting Borrower 3
22 in obtaining an additional \$297,000 liability in the form of an investment mortgage loan to purchase the 3912
23 Lucile property.

24 **B. Transaction 4.** In or around January 2005, Respondent Tobacco represented to the lender in
25 Transaction 4 that Borrower 4 would be receiving approximately \$9,300 as a gift from Borrower 3, a relative of

1 Borrower 4, toward the approximately \$23,600 down payment required to complete the purchase of the Clay
2 property. The Purchase and Sale Agreement contained an addendum that the seller would pay \$28,050 to
3 Quantum Group (owned by Borrower 3) out of the seller's proceeds from the sale. Respondent Tobacco did not
4 provide the lender with a fully executed Purchase and Sale Agreement and did not disclose to the lender that,
5 after Borrower 3 gave Borrower 4 the \$28,050 shortly after closing¹¹, the net effect of the transaction was that
6 Borrower 4 did not provide any money as a down payment and that over \$4,000 of the \$187,000 residential
7 mortgage loan the lender was funding was going back to Borrower 4.

8 **C. Transaction 5.** In or around May 2005, Respondent Tobacco represented to the lender in
9 Transaction 5 that Borrower 3 earned \$18,500 per month as the owner of Quantum Group, that the Summer
10 property was a rental property with a total mortgage liability of \$224,000 and generating \$1,600 in gross rental
11 income per month, and that the 3912 Lucile property was a rental property generating \$1,800 in gross rental
12 income per month.

13 **D. Transaction 7.** In or around September 2005, Respondent Tobacco represented to the lender
14 in Transaction 7 that Borrower 3 earned \$12,000 per month as the owner of Quantum Group, that the Summer
15 property was a rental property with a total mortgage liability of \$227,000, that the 3910 Lucile property was a
16 rental property with a total mortgage liability of \$319,000 and generating \$1,850 in gross rental income per
17 month, and that the 3912 Lucile property was a rental property generating \$1,900 in gross rental income per
18 month. Respondent Tobacco provided the lenders in Transactions 7 and 8 with the same Verification of
19 Deposit form for a bank account to verify available funds for each Transaction. Respondent Tobacco did not
20 disclose to the lender that, while in the process of assisting Borrower 3 in obtaining \$257,000 in residential
21 mortgage loans to purchase the 166th St property, she was also in the process of assisting Borrower 3 in
22 obtaining an additional \$292,300 liability in the form of a residential mortgage loan to refinance the existing
23 \$235,000 residential mortgage loan on the Summer property.

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25 ¹¹ During a deposition conducted May 8, 2006 for the lawsuit discussed in paragraph 1.8B, Borrower 3 stated under oath
that he gave all \$28,050 to Borrower 4 after the transaction was completed (pp. 250-252 & 262).

1 **E. Transaction 8.** In or around October 2005, Respondent Tobacco represented to the lender in
2 Transaction 8 that Borrower 3 earned \$8,500 per month as the owner of Quantum Group and his wife earned
3 \$5,000 as a secretary for Quantum Group, that the 3910 Lucile property was a rental property generating \$1,850
4 in gross rental income per month, and that the 3912 Lucile property was a rental property generating \$1,900 in
5 gross rental income per month. Respondent Tobacco provided the lenders in Transactions 7 and 8 with the
6 same Verification of Deposit form for a bank account to verify available funds for each Transaction.
7 Respondent Tobacco did not disclose to the lender that, while in the process of assisting Borrower 3 in
8 obtaining a \$292,300 residential mortgage loan to refinance the Summer property, she was also in the process of
9 assisting Borrower 3 in obtaining an additional \$257,000 liability in the form of two residential mortgage loan
10 to purchase the 166th St property.

11 **F. Transaction 9.** In or around March 2006, Respondent Tobacco represented to the lender in
12 Transaction 9 that Borrower 3 earned \$8,500 per month as the owner of Quantum Group and his wife earned
13 \$5,000 as a secretary for Quantum Group, that the Summer property was a rental property generating \$1,750 in
14 gross rental income per month, that the 3910 Lucile property was a rental property generating \$1,850 in gross
15 rental income per month, that the 3912 Lucile property was a rental property generating \$1,900 in gross rental
16 income per month, and that the 166th St property was a rental property with a total mortgage liability of
17 \$205,600 and generating \$1,975 in gross rental income per month. Respondent Tobacco represented to the
18 lender that Borrower 3 would be providing approximately \$30,000 as a down payment to complete the purchase
19 of the Clay property and Borrower 4 would be receiving approximately \$75,000 in proceeds as the seller.
20 Respondent Tobacco did not disclose to the lender that Borrower 3 did not provide any money as a down
21 payment and Borrower 4 received approximately \$45,000 in proceeds as the seller.

22 **1.6 Residential Mortgage Loan Disclosures.**

23 **A.** In at least six residential mortgage loan transactions (Transactions 3-8), Respondent Tobacco
24 failed to provide borrowers with full written disclosures in connection with obtaining a residential mortgage
25 loan, containing the annual percentage rate, finance charge, amount financed, total amount of all payments,

1 number of payments, amount of each payment, amount of points or prepaid interest and the conditions under
2 which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate,
3 the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase,
4 and an example of the payment terms resulting from an increase.

5 **B.** In at least 6 residential mortgage loan transactions (Transactions 3-5 and 7-9), Respondent
6 Tobacco failed to provide borrowers with Good Faith Estimates completed in compliance with the Real Estate
7 Settlement Procedures Act and Regulation X.

8 **C.** In at least six residential mortgage loan transactions (Transactions 3-8), Respondent Tobacco
9 failed to provide Truth in Lending disclosures completed in compliance with the Truth in Lending Act and
10 Regulation Z.

11 **1.7 Regulatory Actions.**

12 **A. Department Case Number 99-098.** On or about October 2, 1998, Respondent Tobacco filed
13 an application for a Mortgage Broker license with the Department for her company, America West Mortgage
14 Services, Inc. On or about March 30, 1999, the Department issued a Statement of Charges and Notice of
15 Intention to Enter an Order to Cease and Desist, to Revoke License, and to Remove from Industry against
16 Respondent Tobacco and America West Mortgage Services, Inc. alleging violations of the Mortgage Broker
17 Practices Act. On or about March 15, 2000, the Department entered a Consent Order with Respondent
18 Tobacco, the terms of which included Respondent Tobacco's removal from office and prohibition from
19 participating in the conduct of the affairs of a licensed mortgage broker, or any person subject to licensing under
20 the Act, as an officer, principal, employee, or loan originator, for a period of three years.

21 **B. Washington State Department of Licensing (DOL) Case Number 5577.** On or about
22 September 9, 1991, DOL entered an Order of Revocation of License containing Conclusions of Law that
23 Respondent Tobacco had violated RCW 18.85, the law related to real estate brokers and salespersons, by:

- 24
- Participating in conduct constituting equity skimming;
 - Knowingly making and authorizing the making of false statements, descriptions and promises of
25 such a character as to reasonably induce others to act thereon when she knew, or by the exercise of

1 reasonable care and inquiry, could have known, the falsity of the statements, descriptions and
2 promises;

- 3 • Knowingly committing and being a party to material frauds, misrepresentations, concealments,
4 conspiracies, collusions, tricks, schemes and devises whereby others lawfully relied upon her
5 words, representations and conduct;
- 6 • Participating in conduct constituting conversion;
- 7 • Committing acts of fraudulent or dishonest dealing; and
- 8 • Demonstrating bad faith, dishonesty and untrustworthiness in real estate transactions.

9 The Order of Revocation of License revoked Respondent Tobacco's real estate salesperson's license and
10 determined Respondent Tobacco was not eligible to reapply for such license for ten years.

11 **1.8 Civil Litigation.**

12 **A. Cause Number 06-2-20888-9.** On or about June 28, 2006, Borrower 5 filed a civil lawsuit in
13 King County Superior Court against Respondent Tobacco and other parties involved in Transaction 6. The
14 complaint alleged, among other things, that Respondent Tobacco had violated the Mortgage Broker Practices
15 Act and the Consumer Protection Act (RCW 19.86). As of the date of this Statement of Charges, this lawsuit is
16 still pending.

17 **B. Cause Number 05-2-17291-6.** On or about May 24, 2005, Borrower 2 filed a civil lawsuit in
18 King County Superior Court against Respondent Tobacco, Seattle Development, and Borrower 3 related to
19 Transactions A and B. The complaint alleged, among other things, that Respondent Tobacco had violated the
20 Mortgage Broker Practices Act, the Truth in Lending Act (15 U.S.C. Sec. 1601 et seq), and the Consumer
21 Protection Act. On or about August 21, 2005, Borrower 2 filed an amended complaint adding Evergreen and an
22 appraiser as Defendants. On or about March 12, 2007, a Default Order was entered against Respondent
23 Tobacco in this lawsuit.

24 **C. Cause Number 88-2-19855-1.** On or about October 19, 1988, the State of Washington filed a
25 civil lawsuit in King County Superior Court against Respondent Tobacco alleging, among other things, that
Respondent Tobacco had violated the Consumer Protection Act in a real property equity-skimming scheme. On
or about March 14, 1990, a Stipulated Judgment and Decree was entered in the lawsuit:

- 1 • Concluding as a matter of law that Respondent Tobacco's conduct constituted unfair and deceptive
2 acts and practices and an unfair method of competition in violation of the Consumer Protection Act;
- 3 • Enjoining Respondent Tobacco from certain activities relating to real property, mobile homes, and
4 personal property constituting equity skimming; and
- 5 • Ordering Respondent Tobacco to pay over \$79,000 in consumer restitution.

5 **1.9 False Statements and Omissions of Material Facts on License Application.** Respondent Tobacco
6 was obligated by statute to answer questions on the on-line loan originator license application truthfully and to
7 provide the Department with complete details of all events or proceedings.

8 **A. Regulatory Action Disclosure.** The "Regulatory Action Disclosure" section of the on-line
9 loan originator license application contains the following questions:

10 Has any State or federal regulatory agency or foreign financial regulatory authority ever:

- 11 1 – Found you to have made a false statement or omission or been dishonest, unfair or unethical?
- 12 2 – Found you to have been involved in a violation of a financial services-related regulation(s) or
13 statute(s)?
- 14 4 – Entered an order against you in connection with a financial services-related activity?
- 15 5 – Denied, suspended, or revoked your registration or license, disciplined you, or otherwise by
16 order, prevented you from associating with a financial services-related business or restricted
17 your activities?
- 18 6 – Barred you from association with an entity regulated by such commission, authority, agency,
19 or officer, or from engaging in a financial services-related business?
- 20 7 – Issued charges or an order based on violations of any law or regulations that prohibit
21 fraudulent, manipulative, or deceptive conduct?

22 Respondent Tobacco answered "Yes" to these questions and provided information related to the
23 Department's action discussed in paragraph 1.7A above, but did not provide any information about the
24 DOL action discussed in paragraph 1.7B above.

25 **B. Civil Judicial Disclosure.** The "Civil Judicial Disclosure" section of the on-line loan
originator license application contains the following questions:

Has any domestic or foreign court ever:

- 1 – Enjoined you in connection with any financial services-related activity?

1
2 2 – Found that you were involved in a violation of any financial services-related
statute(s)/regulation(s)?

3 4 – Are you named in any pending financial services-related civil action that could result in a
4 “yes” answer to [question 2]?

5 Respondent Tobacco responded “No” to these questions.

6 **C. Arbitration/Civil Litigation Disclosure.** The “Arbitration/Civil Litigation Disclosure” section
7 of the on-line loan originator license application contains the following question:

8 Have you ever been named as a respondent/defendant in a financial services-related consumer-
9 initiated arbitration or consumer-initiated civil litigation which:

10 1 – Is still pending?

11 Respondent Tobacco responded “No” to this question.

12 **1.10 Incomplete License Application.**

13 **A. Individual Information.** In or around October 1998, Respondent Tobacco submitted an
14 application to the Department for a mortgage broker license and disclosed that she had also been known as
15 “Penny Souza.” The “Individual Information” section of the on-line loan originator application instructs
16 applicants to “List all other name(s) you have used or are using, or by which you are know [sic] or have been
17 known, other than your legal name, since the age 18. This field should include nicknames, aliases, and names
18 used before or after marriage.” The Form MU4 contains the same instruction. Respondent Tobacco did not
19 disclose the last name Souza on her on-line application or on any of the Form MU4s she submitted to the
20 Department in relation to her loan originator license application.

21 **B. Employment History.** During at least the period from in or around September 2003 through in
22 or around May 2005, Respondent Tobacco collected money at the closing of residential mortgage loans for
23 services provided under the names America West Services and Legendary Construction (see paragraph 1.2
24 above). The “Employment History” section of the on-line license application instructs applicants to “Provide
25 complete employment history for the past 10 years.” Respondent Tobacco did not disclose America West
Services or Legendary Construction in her employment history. Respondent did disclose America West

1 Mortgage Services in her employment history, but disclosed the dates of employment as May 1998 through
2 March 1999.

3 **1.11 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by
4 Respondent Tobacco continues to date.

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

7 **2.1 Definition of Mortgage Broker.** Pursuant to RCW 19.146.010(12) of the 1994 Act, "Mortgage
8 Broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a)
9 makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage
10 loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in
11 obtaining or applying to obtain a residential mortgage loan.

12 **2.2 Definition of Loan Originator.** Pursuant to RCW 19.146.010(10) of the 1994 Act, "Loan Originator"
13 means a person employed, either directly or indirectly, or retained as an independent contractor by a person
14 required to be licensed as a mortgage broker, or a natural person who represents a person required to be licensed
15 as a mortgage broker, in the performance of any act specified in RCW 19.146.010(12) of the 1994 Act (see
16 paragraph 2.1 above).

17 **2.3 Definition of Borrower.** Pursuant to RCW 19.146.010(2) of the 1994 Act, "Borrower" means any
18 person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or
19 information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons
20 including himself or herself, regardless of whether the person actually obtains such a loan.

21 **2.4 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondent Tobacco is
22 in apparent violation of:

- 23 • RCW 19.146.0201(1) of the 1994 Act for directly or indirectly employing a scheme, device or artifice
24 to defraud or mislead borrowers or lenders or any person;

- 1 • RCW 19.146.0201(2) of the 1994 Act for engaging in an unfair or deceptive practice toward any
2 person;
- 3 • RCW 19.146.0201(3) of the 1994 Act for obtaining property by fraud or misrepresentation;
- 4 • RCW 19.146.0201(6) of the 1994 Act for failing to make disclosures to loan applicants as required by
5 RCW 19.146.030 of the 1994 Act and any other applicable state or federal law;
- 6 • RCW 19.146.0201(8) of both the 1994 and 2007 Acts for negligently making any false statement or
7 knowingly and willfully making any omission of material fact in connection with any reports filed by a
8 mortgage broker or in connection with any investigation conducted by the department;
- 9 • RCW 19.146.0201(10) of the 1994 Act for failing to comply with the disclosure requirements of the
10 Truth in Lending Act, 15 U.S.C. Sec. 1601, Regulation Z, 12 C.F.R. Sec. 226, the Real Estate
11 Settlement Procedures Act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec. 3500;
- 12 • RCW 19.146.0201(14) of the 1994 Act for failing to comply with any provision of RCW 19.146.030
13 through 19.146.080 of the 1994 Act.

14 **2.5 Requirement to Disclose Residential Mortgage Loan Fees.** Based on the Factual Allegations set
15 forth in Section I above, Respondent Tobacco is in apparent violation of RCW 19.146.030 of the 1994 Act for
16 failing to provide borrowers with full written disclosures in connection with obtaining a residential mortgage
17 loan, containing the annual percentage rate, finance charge, amount financed, total amount of all payments,
18 number of payments, amount of each payment, amount of points or prepaid interest and the conditions under
19 which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate,
20 the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase,
21 and an example of the payment terms resulting from an increase.

22 **2.6 Requirement to Provide Information on License Application.** Based on the Factual Allegations set
23 forth in Section I above, Respondent Tobacco fails to meet the requirements of RCW 19.146.300(1) and (2) and
24 RCW 19.146.310(1)(b) of the 2007 Act by failing to provide an accurate and complete license application in the
25 form prescribed by the Director.

1 **2.7 Requirement to Demonstrate Character and General Fitness.** Based on the Factual Allegations set
2 forth in Section I above, Respondent Tobacco fails to meet the requirements of RCW 19.146.310(1)(g) of the
3 2007 Act and WAC 208-660-350(2)(a) by failing to demonstrate character and general fitness such as to
4 command the confidence of the community and to warrant a belief that the business will be operated honestly
5 and fairly within the purposes of the Act.

6 III. AUTHORITY TO IMPOSE SANCTIONS

7 **3.1 Authority to Deny Application for License.** Pursuant to RCW 19.146.220(1) of the 2007 Act, the
8 Director may deny licenses to loan originators. Pursuant to RCW 19.146.220(2)(e) of the 2007 Act, the
9 Director may deny licenses for any violation of the Act. Pursuant to RCW 19.146.310(2) of the 2007 Act and
10 WAC 208-660-350(7), the Director shall not issue a loan originator license if the conditions of RCW
11 19.146.310(1) of the 2007 Act have not been met by the applicant, and shall notify the loan originator applicant
12 and any mortgage brokers listed on the application of the denial.

13 **3.2 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(c) of the 1994 Act and RCW
14 19.146.220(3)(a) of the 2007 Act, the Director may impose fines on an employee, loan originator, independent
15 contractor, or agent of the licensee, or other person subject to the Act for any violation of RCW 19.146.0201(1)
16 through (9) of both the 1994 and 2007 Acts, or RCW 19.146.030 through RCW 19.146.080 of both the 1994
17 and 2007 Acts.

18 **3.3 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(2)(e) of the 1994 Act and
19 RCW 19.146.220(5)(a) of the 2007 Act, the Director may issue orders removing from office or prohibiting from
20 participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal,
21 employee, or loan originator of any licensed mortgage broker or any person subject to licensing under the Act
22 for any violation of RCW 19.146.0201(1) through (9) of both the 1994 and 2007 Acts, or RCW 19.146.030
23 through RCW 19.146.080 of both the 1994 and 2007 Acts.

1 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2) of the 2007 Act and WAC 208-
2 660-550(a), the Department may charge forty-eight dollars (\$48.00) per hour for an examiner's time devoted to an
3 investigation of the books and records of a licensee or other person subject to the Act.

4
5 **IV. NOTICE OF INTENTION TO ENTER ORDER**

6 Respondent Tobacco's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as
7 set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions,
8 constitute a basis for the entry of an Order under RCW 19.146.220, RCW 19.146.221, RCW 19.146.223, and RCW
9 19.146.310 of the 2007 Act. Therefore, it is the Director's intention to ORDER that:

- 10 **4.1** Respondent Penny Lee Tobacco's application for a loan originator license be denied.
11 **4.2** Respondent Penny Lee Tobacco pay a fine. As of the date of this Statement of Charges, the fine totals
12 \$54,000.
13 **4.3** Respondent Penny Lee Tobacco be prohibited from participation in the conduct of the affairs of any
14 mortgage broker subject to licensure by the Director, in any manner, for a period of ten (10) years.
15 **4.4** Respondent Penny Lee Tobacco pay an investigation fee. As of the date of this Statement of Charges, the
16 investigation fee totals \$8,496.

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V. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Deny License Application, Impose Fine, Order Restitution, Prohibit from Industry, and Collect Investigation Fee (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230 of the 2007 Act, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

Dated this 28th day of December, 2007.

Deborah Bortner
DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

Mark T. Olson

MARK T. OLSON
Financial Examiner



Approved by:

James R. Brusselback

JAMES R. BRUSSELBACK
Enforcement Chief