

## Terms Completed

### ORDER SUMMARY – Case Number: C-07-127

**Name(s):** NovaStar Mortgage, Inc.

**Order Number:** C-07-127-08-CO01

**Effective Date:** March 25, 2009

**License Number:** DFI: 18027

**Or NMLS Identifier [U/L]** (Revoked, suspended, stayed, application denied or withdrawn)  
If applicable, you must specifically note the ending dates of terms.

**License Effect:** None

**Not Apply Until:** n/a

**Not Eligible Until:** \_\_\_\_\_

**Prohibition/Ban Until:** March 25, 2011

<b>Investigation Costs</b>	\$5,775.30	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Fine</b>	\$80,000	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Assessment(s)</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Restitution</b>	\$2,085.80	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Judgment</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Satisfaction of Judgment Filed?</b>		<input type="checkbox"/> Y <input type="checkbox"/> N		
No. of Victims:				

**Comments:** Exam Fees: 33,437.47 -paid

Licensing Unit should accept Respondent's voluntary surrender of its license effective August 13, 2007

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

IN THE MATTER OF DETERMINING  
Whether there has been a violation of the  
Consumer Loan Act of Washington by:

NO. C-07-127-08-CO01

NovaStar Mortgage, Inc.,

CONSENT ORDER

Respondent.

COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and NovaStar Mortgage, Inc., (hereinafter Respondent NovaStar); by and through its attorney John D. Socknat, Weiner Brodsky Sidman Kider, PC, 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 31.04 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 NovaStar have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-07-127-08-SC01 (Statement of Charges), entered May 16, 2008, (copy attached hereto).

1 Pursuant to chapter 31.04 RCW, the Consumer Loan Act (Act), and RCW 34.05.060 of the  
2 Administrative Procedure Act, Respondent hereby agrees to the Department's entry of this Consent Order  
3 and further agrees that the issues raised in the above captioned matter may be economically and  
4 efficiently settled by entry of this Consent Order. The parties intend this Consent Order to fully resolve  
5 the Statement of Charges and all other issues which may be pending between the parties as of the date of  
6 this Consent Order. Respondent is agreeing not to contest the Statement of Charges in consideration of  
7 the terms of this Consent Order.

8 Based upon the foregoing:

9  
10 A. **Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter of  
11 the activities discussed herein.

12 B. **Waiver of Hearing.** It is AGREED that Respondent has been informed of the right to a  
13 hearing before an administrative law judge, and Respondent has waived its right to a hearing and any and  
14 all administrative and judicial review of the issues raised in this matter, or of the resolution reached  
15 herein. Accordingly, Respondent agrees to withdraw its appeal and to inform the Office of  
16 Administrative Hearings in writing of its withdrawal.

17 C. **No Admission of Liability.** It is AGREED that Respondent does not admit to any violations  
18 of the Act by entry of this Consent Order.

19 D. **License Surrender.** It is AGREED that Respondent voluntarily surrendered its consumer  
20 loan license effective August 13, 2007, and that upon the entry of this Consent Order, Respondent's  
21 obligation to maintain a surety bond shall be terminated.  
22  
23  
24  
25

1 E. **Fine.** It is AGREED that Respondent shall pay to the Department a fine of \$80,000 in the  
2 form of a cashier's check made payable to the "Washington State Treasurer" upon entry of this Consent  
3 Order.

4 F. **Examination Fee.** It is AGREED that Respondent shall pay to the Department an  
5 examination fee of \$33,437.47 in the form of a cashier's check made payable to the "Washington State  
6 Treasurer" upon entry of this Consent Order.

7 G. **Investigation Fee.** It is AGREED that Respondent shall pay to the Department an  
8 investigation fee of \$5,775.30 in the form of a cashier's check made payable to the "Washington State  
9 Treasurer" upon entry of this Consent Order. The above fine and fees may be paid in the form of a single  
10 cashier's check made payable to the "Washington State Treasurer" upon entry of this Consent Order.  
11

12 H. **Restitution.** It is AGREED that Respondent paid restitution to the following borrowers in  
13 the amount indicated:

14	T.A.	██████████	\$ 530.00
15	E.M.	██████████	\$ 460.00
16	J.H.	██████████	\$ 580.00
17	S.W.	██████████	\$ 345.80
18	T.N.	██████████	\$ 170.00

19 Payment was made to each individual borrower in the form of a cashier's check and mailed to the  
20 borrower. Respondent provided the Department with a copy of each payment check, and notified the  
21 Department of all checks which were returned as undeliverable within five days of receiving the returned  
22 check. If an address for delivery of any returned check could not be obtained within thirty days of its  
23 return, Respondent turned over all such amounts to the Washington Department of Revenue as  
24 unclaimed property in accordance with their procedures.  
25

1           **I. Prohibition from Industry.** It is AGREED that Respondent is prohibited from participating  
2 in the conduct of the affairs of any consumer lender licensed by the Department or subject to licensure or  
3 regulation by the Department for two years from the date of entry of this Consent Order in any capacity,  
4 including but not limited to: (1) any financial capacity whether active or passive, or (2) any direct or  
5 indirect ownership, management, or control.

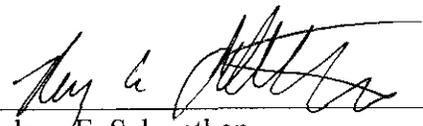
6           **J. Authority to Execute Order.** It is AGREED that the undersigned have represented and  
7 warranted that they have the full power and right to execute this Consent Order on behalf of Respondent,  
8 and that there is no legal impediment to Respondent's entry into this Consent Order.

9           **K. Non-Compliance with Order.** It is AGREED that Respondent understands that failure to  
10 abide by the terms and conditions of this Consent Order may result in further legal action by the  
11 Director. In the event of such legal action, Respondent may be responsible to reimburse the Director  
12 for the cost incurred in pursuing such action, including but not limited to, attorney fees.

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

15           **M. Completely Read, Understood, and Agreed.** It is AGREED that Respondent's  
16 representatives have read this Consent Order in its entirety and fully understand and agree to all of the  
17 same.  
18

19           **RESPONDENT:**  
20           **NovaStar Mortgage, Inc.**

21           By:   
22           \_\_\_\_\_  
23           Rodney E. Schwatken  
24           Senior Vice President

\_\_\_\_\_  
Date

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

*John D. Socknat*

John D. Socknat  
Attorney at Law  
Attorney for Respondent

2/24/09  
Date

**DO NOT WRITE BELOW THIS LINE**

THIS ORDER ENTERED THIS 25<sup>th</sup> DAY OF March, 2009.

*Deborah Bortner*

DEBORAH BORTNER  
Director  
Division of Consumer Services  
Department of Financial Institutions

Presented by:

*Steven C. Sherman*

STEVEN C. SHERMAN  
Financial Legal Examiner



Approved by:

*James R. Brusselback*

JAMES R. BRUSSELBACK  
Enforcement Chief

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

IN THE MATTER OF DETERMINING  
Whether there has been a violation of the  
Consumer Loan Act of Washington by:

NO. C-07-127-08-SC01

NovaStar Mortgage, Inc.,

Respondent.

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

**INTRODUCTION**

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to RCW 31.04.145, 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:

**I. FACTUAL ALLEGATIONS**

**1.1 Respondent.** NovaStar Mortgage, Inc., (Respondent) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Consumer

1 Loan Company on December 1, 1998. Respondent surrendered its license effective August 13, 2007.  
2 At the time of surrender, Respondent was licensed to conduct business as a Consumer Loan Company  
3 at the following locations:

4 Main Office:

5 8140 Ward Park Way, Ste 300, Kansas City, MO 64114.

6 Branch Offices:

7 25520 Commerce Centre Dr., Lake Forest, CA 92630  
8 2375 E. Camelback Rd., Ste 500, Phoenix, AZ 85016  
9 4343 N. Scottsdale Rd., Ste 390, Scottsdale, AZ 85251  
10 11555 N. Meridian St., Ste 540, Carmel, IN 460320  
11 1475 E. Woodfield Rd., Ste 805, Schaumburg, IL 60173  
12 532 Broadhollow Rd., Ste 117, Melville, NY 11747  
13 985 Damonte Ranch Park Way, Ste 220, Reno, NV 89511  
14 12655 Olive Blvd, Ste 340, St. Louis, MO 64114  
15 7070 Samuel Morse Dr., Columbia, MD 21046  
16 6200 Oak Tree Blvd, 3<sup>rd</sup> Fl, Independence, OH 44131

17 **1.2 Reports of Examination.** Between 2002 and 2007, the Department conducted three  
18 compliance examinations of Respondent pursuant to the Act. The Department's examiners noted  
19 violations of the Act during each examination, and noted repeat violations of the Act during the 2004  
20 and 2007 examinations.

21 **A. 2002 Report of Examination.** The Department conducted an on-site examination of  
22 Respondent from May 13, 2002, through May 17, 2002, at Respondent's main office located at 1901  
23 West 47<sup>th</sup> Place, Suite 105, Westwood, Kansas (2002 examination). The scope of the 2002  
24 examination included a review of Respondent's business practices for the prior twenty-four month  
25 period ending April 30, 2002.

The Department's examiners identified fifty-one violations of the Act. Those violations  
included conducting Washington business from an unlicensed location, charging unlawful fees, failure  
to pay proper annual assessments to the Department, failure to keep adequate records, failure to

1 accurately disclose fees and costs, failure to provide proper notices, and failure to provide proper  
2 disclosures.

3 The Department's examiners conducted an exit review with Respondent on May 17, 2002. The  
4 exit review detailed the violations the examiners discovered and provided recommendations and  
5 requirements Respondent needed to complete to come into compliance with the Act. On July 19, 2002,  
6 the Department sent Respondent a copy of the 2002 examination report that detailed the violations the  
7 examiners discovered and provided recommendations and requirements Respondent needed to  
8 complete to come into compliance with the Act.

9 **B. 2004 Report of Examination.** The Department conducted an on-site examination of  
10 Respondent from April 12, 2004, through April 15, 2004, at Respondent's new main office located at  
11 8140 Ward Parkway, Kansas City, Missouri (2004 examination). The scope of the 2004 examination  
12 included a review of Respondent's business practices for the period of May 1, 2002, through March  
13 31, 2004.

14 The Department's examiners identified sixty-nine violations of the Act, including the failure to  
15 properly disclose fees and costs to borrowers, charging of unlawful fees, failure to keep adequate  
16 records, failure to pay the complete annual assessments, failure to comply with applicable federal law,  
17 failure to properly disclose finance charges, failure to provide adequate Good Faith Estimates, and the  
18 failure to properly record the broker's fee on the HUD-1 settlement forms; all which were repeat  
19 violations of those noted in the Department's 2002 Report of Examination.

20 **C. 2007 Report of Examination.** The Department conducted an on-site examination from  
21 April 9, 2007, through April 18, 2007, at Respondent's main office location at 8140 Ward Parkway,  
22 Kansas City, Missouri (2007 examination). The scope of the 2007 examination included a review of  
23

1 Respondent's business practices for the period of April 1, 2004 through January 1, 2007. The

2 Department's examiners reviewed eighty-one loan files and noted the following violations:

- 3 • Failure to pay the correct annual assessment
- 4 • Failure to maintain an adequate surety bond
- 5 • Providing deceptive Truth-in-Lending (TIL) disclosures
- 6 • Failure to disclose fees and costs within three days of application
- 7 • Charging fees not allowed by the Act
- 8 • Failure to maintain adequate recordkeeping
- 9 • Inclusion of a prepayment penalty on a junior lien mortgage
- 10 • Failure to provide the initial variable rate mortgage disclosure within three days of application
- 11 • Failure to provide the servicing disclosure within three days of application
- 12 • Failure to provide the Affiliated Business Arrangement Disclosure
- 13 • Failure to provide a Right of Rescission notice
- 14 • Improper completion of a Good Faith Estimate (GFE) and HUD1 Settlement Statement
- 15 • Failure to properly disclose a finance charge
- 16 • Failure to provide the Notice of Action Taken within required timeframes
- 17 • Conducting Washington business from an unlicensed location

18 Seven of the violations from the 2007 examination were repeat violations of those noted in the

19 2004 examination and included:

- 20 • Failure to pay the correct annual assessment
- 21 • Failure to disclose fees and costs within three days of application
- 22 • Charging fees not allowed by the Act
- 23 • Failure to maintain adequate recordkeeping
- 24 • Inclusion of a prepayment penalty on a junior lien mortgage
- 25 • Failure to provide the initial variable rate mortgage disclosure within three days of application
- 26 • Improper completion of a Good Faith Estimate (GFE) and HUD1 Settlement Statement

27 Six of the violations from the 2007 examination were repeat violations of those noted in the

28 2002 examination and included:

- 29 • Failure to pay the correct annual assessment
- 30 • Charging fees not allowed by the Act
- 31 • Failure to maintain adequate recordkeeping
- 32 • Failure to provide the initial variable rate mortgage disclosure within three days of application
- 33 • Improper completion of a Good Faith Estimate (GFE) and HUD1 Settlement Statement
- 34 • Conducting Washington business from an unlicensed location

1 **1.3 Failure to Comply with the Director's Authority.** During the course of the 2007

2 examination, the Department's examiners issued a "Manager's Questionnaire" to Respondent  
3 requesting certain specific information and documentation more specifically set forth therein.

4 Thereafter, the examiners made multiple verbal requests for the following specific information and  
5 documentation, but they were not provided by Respondent:

- 6 • The Agency Home Mortgage Disclosure Act Loan/Application Register.
- 7 • Managers Questionnaire question O: The date of origination, date of payoff, charges on payoff  
and prepayment penalty charge for ALL loans originated in the State of Washington.
- 8 • Managers Questionnaire Question 9: report needs to reflect all loans originated in the State of  
Washington.
- 9 • Managers Questionnaire page 12 question I: Please provide a copy of the Internal Audit report.
- 10 • Managers Questionnaire page 16 question U: "All loans serviced" report needs to reflect all  
loans originated in the State of Washington.
- 11 • Managers Questionnaire page 16 V: A list of repossessions, foreclosures, REOs, and  
judgments outstanding report needs to reflect all loans originated in the State of Washington.
- 12 • Managers Questionnaire page 17 Z: The most recent audit reports from any governmental  
agency (ies) or entity (ies) for which the licensee originates or services loans.

13 Based upon Respondent's failure to comply with these requests, the Department was compelled to  
14 issue a subpoena to obtain the documents.

15 **1.4 Underpaid Annual Assessments.** Though Respondent filed its annual assessment reports for  
16 the years 2004, 2005, and 2006 as required by RCW 31.04.085, Respondent did not include  
17 assessments due on residential loans with annual percentage rates (APRs) below 12%. This resulted in  
18 an underpayment of the annual assessment fees for those years in the following amounts:

Year	Loan production	Assessment Due	Assessment Paid	Balance Due
2004	\$39,448,097.80	\$7,111.34	\$2,903.78	\$ 4,207.56
2005	\$75,304,147.10	\$13,575.15	\$119.34	\$13,455.81
2006	\$71,967,725.70	\$12,968.17	\$63.93	\$12,904.24

21 This is a repeat violation of both the 2002 and 2004 examinations.

22 **1.5 Failure to Maintain Adequate Surety Bond.** At the time of the 2007 examination,  
23

24 Respondent was licensed to conduct business from its main office and from ten branch locations.

1 Additionally, Respondent was conducting Washington business from one unlicensed location at 12655  
2 Olive Boulevard, Suite 340, St Louis, Missouri. The Act requires a bond with a penal sum of  
3 \$400,000 for the main office, plus \$100,000 for each of the next four locations, and \$10,000 for each  
4 location thereafter. Respondent should have maintained a minimum bond in the amount of \$860,000  
5 for eleven locations, but Respondent's bond was only \$850,000.

6 **1.6 Failure to Provide Accurate Truth in Lending Act Disclosures.** During the 2007  
7 examination, the Department's examiners identified four loan files in which Respondent provided  
8 inaccurate Truth in Lending Act (TIL) disclosures to the borrowers. The borrowers received a TIL for  
9 an adjustable rate mortgage that disclosed a payment stream for a fixed rate mortgage.

10 **1.7 Failure to Disclose Fees and Costs.** During the 2007 examination, the Department's  
11 examiners were unable to find any evidence that Respondent had provided any of the disclosures  
12 required by RCW 31.04.102(2) and (3) within three business days following receipt of a loan  
13 application to forty-nine borrowers. This is a repeat violation from both the 2002 and 2004  
14 examinations.

15 **1.8 Charging Unlawful Fees.** During the 2007 examination, the Department's examiners  
16 identified three loan files in which Respondent charged a loan discount fee for junior lien mortgage  
17 loans.

18 **1.9 Failure to Maintain Adequate Records.** During the 2007 examination, the  
19 Respondent was unable to locate and provide two entire loan files. Additionally, the Department's  
20 examiners identified two additional loan files in which Respondent was the lender but failed to retain  
21 the Final HUD 1. This is a repeat violation from both the 2002 and 2004 examinations.

22 **1.10 Imposing an Unlawful Prepayment Penalty.** During the 2007 examination, the  
23 Department's examiners identified one file in which Respondent made a junior lien mortgage loan to a

1 borrower which contained a prepayment penalty provision in the note. This is a repeat violation from  
2 the 2004 examination.

3 **1.11 Failure to Provide Timely Initial Variable Rate Mortgage Disclosures.** During the 2007  
4 examination, the Department's examiners identified twenty-three loan files in which Respondent did  
5 not provide the variable rate mortgage program disclosure within three days of receipt of a loan  
6 application. This is a repeat violation from the 2004 examination.

7 **1.12 Failure to Provide Timely Servicing Disclosure Statements.** During the 2007 examination,  
8 the Department's examiners identified eighteen loan files in which Respondent did not provide initial  
9 servicing disclosure statements within three business days following receipt of a loan application.

10 **1.13 Failure to Provide Affiliated Business Arrangements Disclosures.** During the 2007  
11 examination, the Department's examiners identified three loan files in which Respondent did not  
12 provide an Affiliated Business Arrangement disclosure. This is a repeat violation of the 2002  
13 examination.

14 **1.14 Failure to Provide a Right of Rescission Notice.** During the 2007 examination, the  
15 Department's examiners identified one loan file in which Respondent did not provide the required  
16 Right of Rescission Notice. This is a repeat violation from the 2002 examination.

17 **1.15 Failure to Accurately Complete Good Faith Estimates and HUD-1 Settlement Forms.**  
18 During the 2007 examination, the Department's examiners identified eleven loan files in which  
19 Respondent used lines 801 or 802 of the Good Faith Estimate and HUD1/1A Settlement Statement to  
20 display fees paid to the mortgage broker. This is a repeat violation from both the 2002 and 2004  
21 examinations.

22 **1.16 Failure to Accurately Disclose Finance Charges.** During the 2007 examination, the  
23 Department's examiners identified two loan files in which Respondent disclosed finance charges on

1 the TIL that were understated by more than \$100. This is a repeat violation from both the 2002 and  
2 2004 examinations.

3 **1.17 Failure to Provide a Timely Notice of Action Taken.** During the 2007 examination, the  
4 Department's examiners identified one loan file in which Respondent did not provide the borrower  
5 within thirty days of a creditor's approval of, counter offer to, or adverse action related to an  
6 application.

7 **1.18 Unlicensed Activity.** During the 2007 examination, the Department's examiners determined  
8 that Respondent had conducted Washington business from its branch office located at 12655 Olive  
9 Boulevard, St. Louis, Missouri, prior to that office being licensed by the Department. This is a repeat  
10 violation from the 2002 examination.

11 **1.19 On-Going Investigation.** The Department's investigation into the alleged violations of the  
12 Act by Respondent continues to date.

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

14 **2.1 Requirement to Comply With Director's Authority.** Based on the Factual Allegations set  
15 forth in Section I above, Respondent is in apparent violation of 31.04.145(1) for failure to provide  
16 examiners with required documents at the time of the 2007 Examination and for failure to provide  
17 documents required by subpoena.

18 **2.2 Requirement to Calculate and Pay Annual Assessment Fees.** Based on the Factual  
19 Allegations set forth in Section I above, Respondent is in apparent violation of RCW 31.04.085,  
20 former WAC 208-620-190(3), former WAC 208-620-220(1), and WAC 208-620-440 for failing to  
21 report the total loan volumes and pay the Department the associated annual assessment fees.

1 **2.3 Requirement to Maintain Adequate Surety Bond.** Based on the Factual Allegations set  
2 forth in Section I above, Respondent is in apparent violation of RCW 31.04.045(3) for failure to  
3 maintain a surety bond in the required amount.

4 **2.4 Requirement to Provide Accurate Truth in Lending Disclosures.** Based on the Factual  
5 Allegations set forth in Section I above, Respondent is in apparent violation of RCW 31.04.027(2),  
6 (6), (7), and (10), RCW 31.04.102(2) and (3), WAC 208-620-505, and WAC 208-620-510 for failing  
7 to make accurate Truth in Lending disclosures.

8 **2.5 Requirement to Disclose Fees and Costs.** Based on the Factual Allegations set forth in  
9 Section I above, Respondent is in apparent violation of RCW 31.04.027(1), (2), (3), (6), (10), RCW  
10 31.04.102(2) and (3), WAC 208-620-505, and WAC 208-620-510 for failing to provide each  
11 borrower, within three business days following receipt of a loan application, a written disclosure  
12 containing an itemized estimation and explanation of all fees and costs that the borrower is required to  
13 pay in connection with obtaining a loan.

14 **2.6 Charging Unlawful Fees.** Based on the Factual Allegations set forth in Section I above,  
15 Respondent is in apparent violation of RCW 31.04.027(2) and (3) and RCW 31.04 105(2) for charging  
16 loan discount fees on junior mortgages.

17 **2.7 Requirement to Maintain Adequate Records.** Based on the Factual Allegations set forth in  
18 Section I above, Respondent is in apparent violation of RCW 31.04.155 for failing to maintain  
19 sufficient records to enable the Director to determine whether the licensee is complying with the Act.

20 **2.8 Imposing an Unlawful Prepayment Penalty.** Based on the Factual Allegations set forth in  
21 Section I above, Respondent is in apparent violation of RCW 31.04.027(1), (2), and (3) and WAC  
22 208-620-130(7) for making a junior lien loan to a borrower which contained a prepayment penalty  
23 provision in the note.

1 **2.9 Requirement to Provide Timely Initial Variable Rate Mortgage Disclosures.** Based on the  
2 Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW  
3 31.04.027(1), (2), (6), (7), and (10), RCW 31.04.102(2) and (3), WAC 208-620-505, and WAC 208-  
4 620-510 for failing to provide variable rate mortgage program disclosures within three business days  
5 of receipt of a loan application.

6 **2.10 Requirement to Provide Timely Servicing Disclosure Statements.** Based on the Factual  
7 Allegations set forth in Section I above, Respondent is in apparent violation of RCW 31.04.027(2),  
8 (6), and (10), RCW 31.04.102(2), WAC 208-620-505, and WAC 208-620-510 for failing to provide  
9 initial servicing disclosure statements within three business days following receipt of a loan  
10 application.

11 **2.11 Requirement to Provide Affiliated Business Arrangements Disclosures.** Based on the  
12 Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW  
13 31.04.027(2), (6), and (10), RCW 31.04.102(2), WAC 208-620-505, and WAC 208-620-510 for  
14 failing to provide Affiliated Business Arrangement Disclosures.

15 **2.12 Requirement to Provide Right of Rescission Notice.** Based on the Factual Allegations set  
16 forth in Section I above, Respondent NMI is in apparent violation of 31.04.027(2), (6), and (10), RCW  
17 31.04.102(2), WAC 208-620-505, and WAC 208-620-510 for failing to provide a borrower with a  
18 Right of Rescission Notice.

19 **2.13 Requirement to Accurately Complete Good Faith Estimates and HUD-1 Settlement**  
20 **Forms.** Based on the Factual Allegations set forth in Section I above, Respondent is in apparent  
21 violation of RCW 31.04.027(2), (6), and (10), RCW 31.04.102(2), WAC 208-620-505, and WAC 208-  
22 620-510 for using used line 801 and 802 of the Good Faith Estimate and HUD1/1A Settlement  
23 Statement to display fees paid to the mortgage broker.

1 **2.14 Requirement to Accurately Disclose Finance Charges.** Based on the Factual Allegations set  
2 forth in Section I above, Respondent is in apparent violation of RCW 31.04.027(2), (6), and (10),  
3 RCW 31.04.102(2), and (3), WAC 208-620-505, and WAC 208-620-510 for disclosing a finance  
4 charge that was understated by more than \$100.

5 **2.15 Requirement to Provide a Timely Notice of Action Taken.** Based on the Factual  
6 Allegations set forth in Section I above, Respondent is in apparent violation of RCW 31.04.027(2),  
7 (6), and (10), RCW 31.04.102(2), WAC 208-620-505, and WAC 208-620-510 for failure to provide a  
8 timely Notice of Action Taken.

9 **2.16 Unlicensed Activity.** Based upon the Factual Allegations set forth in Section I above,  
10 Respondent is in apparent violation of RCW 31.04.075 for conducting Washington business from an  
11 unlicensed branch location.

### 12 13 **III. AUTHORITY TO IMPOSE SANCTIONS**

14 **3.1 Authority to Prohibit from the Industry.** Pursuant to RCW 31.04.093(6) (d) and (e), the  
15 Director may issue an order prohibiting from participation in the affairs of any licensee, any officer,  
16 principal, employee, or any other person subject to the Act for failure to comply with any order or  
17 subpoena issued under the Act or for any violation of RCW 31.04.027.

18 **3.2 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of  
19 up to one hundred dollars per day upon the licensee, its employee, or any other person subject to the  
20 Act for any violation of the Act or failure to comply with any order or subpoena issued by the Director  
21 under the Act.

1 **3.3 Authority to Order Restitution.** Pursuant to RCW 31.04.093(5), the Director may issue an  
2 order directing a licensee, its employee, or any other person subject to the Act to make restitution to a  
3 borrower or other person who is damaged as a result of a violation of the Act.

4 **3.4 Authority to Charge Examination Fee and Investigation Fee.** Pursuant to RCW  
5 31.04.145(3) and WAC 208-620-590, every licensee examined or investigated by the Director or the  
6 Director's designee shall pay for the cost of the examination or investigation, calculated at the rate of  
7 sixty-nine dollars and one cent (\$69.01) per staff hour devoted to the examination or investigation, and  
8 shall pay travel costs if the licensee maintains its records outside the state.

9 **IV. NOTICE OF INTENTION TO ENTER ORDER**

10 Respondent's violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as  
11 set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose  
12 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and RCW  
13 31.04.205. Therefore, it is the Director's intention to ORDER that:

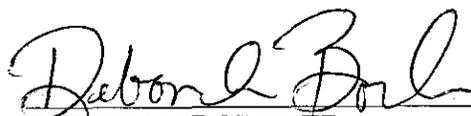
- 14 4.1 Respondent NovaStar Mortgage, Inc., be prohibited from participation in the conduct of the  
15 affairs of any licensed consumer loan company, in any manner, for a period of five years; and
- 16 4.2 Respondent NovaStar Mortgage, Inc., pay a fine which as of the date of these charges totals  
17 \$350,000 for the violations set forth above; and
- 18 4.3 Respondent NovaStar Mortgage, Inc., pay restitution in the aggregate amount of \$32,517.11  
19 as set forth in Appendix A; and
- 20 4.4 Respondent NovaStar Mortgage, Inc., pay \$30,567.61 for the late Annual Assessment fees  
21 for 2004, 2005, and 2006; and
- 22 4.5 Respondent NovaStar Mortgage, Inc., pay the costs of the 2007 examination in the amount of  
23 \$33,437.47, consisting of an examination fee of \$25,412.70, calculated at \$69 per hour for 366  
24 staff hours devoted to the examination, and \$8,024.77 for travel expenses; and
- 25 4.6 Respondent NovaStar Mortgage, Inc., pay an investigation fee which as of the date of these  
charges totals \$5,775.30 calculated at \$69 per hour for 83.7 staff hours devoted to the  
investigation to date; and

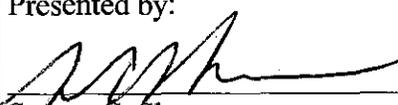
1 4.7 Respondent NovaStar Mortgage, Inc., maintain records in compliance with the Act and  
2 provide the Director with the location of the books, records, and other information relating to  
3 Respondent NovaStar Mortgage, Inc.'s consumer loan company business, and the name,  
4 address, and telephone number of the individual responsible for maintenance of such records  
5 in compliance with the Act.

4 **V. AUTHORITY AND PROCEDURE**

5 This Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry,  
6 Impose Fine, Order Restitution, Collect Examination Fee, and Collect Investigation Fee (Statement of  
7 Charges) is entered pursuant to the provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.202,  
8 and RCW 31.04.205, and is subject to the provisions of chapter 34.05 RCW (The Administrative  
9 Procedure Act). Respondent may make a written request for a hearing as set forth in the NOTICE OF  
10 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this  
11 Statement of Charges.

12  
13 Dated this 16<sup>th</sup> day of May, 2008.

14   
15 DEBORAH BORTNER  
16 Director  
17 Division of Consumer Services  
18 Department of Financial Institutions

17 Presented by:  
18   
19 Steven C. Sherman  
20 Financial Legal Examiner

21 Approved by:  
22   
23 James R. Brusselback  
24 Enforcement Chief

