

# Terms Completed

## ORDER SUMMARY – Case Number: C-07-159

**Name(s):** Merrie Margaret Kroll

**Order Number:** C-07-159-07-FO01

**Effective Date:** December 19, 2008

**License Number:** DFI: 39396 [NMLS: 885802]

**Or NMLS Identifier [U/L]** (Revoked, suspended, stayed, application denied or withdrawn)

**License Effect:** Denial  
If applicable, you must specifically note the ending dates of terms.

**Not Apply Until:** May 24, 2009

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

**Prohibition/Ban Until:** \_\_\_\_\_

|  |    |   |   |      |
|--|----|---|---|------|
| <b>Investigation Costs</b>             | \$ | Due   | Paid<br><input type="checkbox"/> Y <input type="checkbox"/> N | Date |
|  |    |   |   |      |
| <b>Fine</b>                            | \$ | Due   | Paid<br><input type="checkbox"/> Y <input type="checkbox"/> N | Date |
|  |    |   |   |      |
| <b>Assessment(s)</b>                   | \$ | Due   | Paid<br><input type="checkbox"/> Y <input type="checkbox"/> N | Date |
|  |    |   |   |      |
| <b>Restitution</b>                     | \$ | Due   | Paid<br><input type="checkbox"/> Y <input type="checkbox"/> N | Date |
|  |    |   |   |      |
| <b>Judgment</b>                        | \$ | Due   | Paid<br><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<br>Victims:                     |    |   |   |      |

**Comments:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF INVESTIGATING  
The Loan Originator License Application  
under the Mortgage Broker Practices Act of  
Washington by:

MERRIE MARGARET KROLL,

Respondent.

OAH Docket No. 2007-DFI-0034

No. C-07-159-07-FO01

FINAL DECISION & ORDER  
CONFIRMING ORDER ON MOTION FOR  
SUMMARY JUDGMENT

THIS MATTER has come before the Director ("hereinafter, "Director") of the Department of Financial Institutions (hereinafter, "Department") in the above-enumerated administrative action pursuant to Order on Motion for Summary Judgment (hereinafter, "Initial Order") based upon a Statement of Charges and Notice of Intention to Enter an Order to Deny License Application and Prohibit from Industry (hereinafter, "Statement of Charges") issued by the Division of Consumer Services (hereinafter, "Division") on or about June 8, 2007, under the authority of the Mortgage Broker Practices Act, Ch. 19.146 RCW (hereinafter, "MBPA").

The Respondent, MERRIE MARGARET KROLL (hereinafter, "Respondent") timely requested an Administrative Hearing to contest the Statement of Charges, and this matter was assigned to the Office of Administrative Hearings (hereinafter, "OAH"), which designated Administrative Law Judge Rynold C. Fleck (hereinafter, "Administrative Law Judge") to hear the case. The Division filed a Motion for Summary Judgment (hereinafter, "Summary Judgment Motion"), by and through its counsel, Assistant Attorney General, Charles Clark (hereinafter, "Division Counsel"), on or about October 9, 2007. Despite clear notice to Respondent pursuant to an Order on Prehearing Conference dated August 30, 2007 (hereinafter, "Prehearing Order"), Respondent failed to provide any response by October 26, 2007, the date set for filing of all responses to motions for summary judgment as specified in

1 the Prehearing Order. Then, on November 20, 2007, the Administrative Law Judge issued  
2 Initial Order granting summary judgment. The Initial Order contained Findings of Fact  
3 (hereinafter, "FOF") and Conclusions of Law (hereinafter, "COL").

4 More than twenty (20) days has elapsed since the entry and service of the Initial Order.  
5 Respondent has not filed any petition for review of the Initial Order.

6 The Director subsequently received and has now considered the entire OAH Record.  
7 This Final Decision and Order are based upon a consideration of the entire OAH Record,  
8 including, without limitation, the following:  
9

- 10 1. License application dated December 30, 2006 (hereinafter, "Application");
- 11 2. Statement of Charges;
- 12 3. Application for Adjudicative Hearing;
- 13 4. Summary Judgment Motion of Division Counsel;
- 14 5. Declaration of William J. Halstead (hereinafter, "Halstead Declaration"); and
- 15 6. The Initial Order.

16 This record is hereinafter referred to collectively as "Record on Review."

17 1.0 Summary of the Case

18 This case concerns whether Respondent is automatically disqualified from obtaining a  
19 Loan Originator License (hereinafter, "License") by reason of having been convicted of a  
20 felony within 7 years of the date of Application. A prospective licensee is automatically  
21 disqualified from obtaining a License if convicted of any type of felony or a gross  
22 misdemeanor involving dishonesty or financial misconduct within 7 years of the date of  
23 application for a loan originator license.<sup>1</sup>

24 2.0 Preliminary Considerations

25 2.1 Standards for Summary Judgment in Administrative Actions. The Director  
26 takes note preliminarily of the following standards which are to be applied to motions for  
27 summary judgment in an administrative action under the Administrative Procedures Act,  
28 Chapter 34.05 RCW (hereinafter, "APA") :

29 2.1.1 Standards for Granting Summary Judgment. The Department has  
30 adopted the Model Rules of Procedure, Chapter 10-08 WAC, except to the extent of any  
31  
32

33  
34 <sup>1</sup> RCW 19.146.310(1) (d and (2) and WAC 208-660-350(2)(c).

1 conflict with the Department's Rules of Procedure.<sup>2</sup> WAC 10-08-135 sets forth the standards  
2 to be followed by the Department and the Administrative Law Judge, as its agent, when  
3 considering the Summary Judgment Motion and the Summary Judgment Response, and  
4 declares that "[a] motion for summary judgment may be granted and an order issued [only] if  
5 the written record shows that there is no genuine issue as to any material fact and that the  
6 moving party is entitled to judgment as a matter of law." In evaluating the application of this  
7 standard, the Director may rely on applicable law from sources other than WAC 10-08-135  
8 itself and must be respectful of the constitutional rights of respondents.<sup>3</sup> To that end, the  
9 Director is required to weigh on review all pleadings, evidence and argument in a light most  
10 favorable to the non-moving party.<sup>4</sup> If there is any inference of a triable issue of fact, then  
11 summary judgment is inappropriate.<sup>5</sup> Litigants are entitled to a dispositive hearing on all issues  
12 of fact and law.<sup>6</sup> These principles apply equally to the Administrative Law Judge and to the  
13 Director evaluating the Initial Order.<sup>7</sup>

14  
15       2.2     Proper Consideration by Director Absent Petition for Review. Respondent did  
16 not file a petition for review contesting the Initial Order. However, even when a party has *not*  
17 filed a petition for review, the Director still has the authority and duty, prior to entering a Final  
18 Decision and Order, to consider whether any part of the Initial Order is *not* supported by the  
19 record<sup>8</sup> and whether confirmation of the Initial Order, without modification, would be an error  
20 of law. Indeed, with regard to the COL as contained in the Initial Order, the Director is  
21 obliged, in the manner of a reviewing court, to consider the statutes and implementing  
22

23  
24  
25 <sup>2</sup> WAC 208-08-020(1) declares: "The department adopts the model rules of procedure as set forth in WAC 10-08-035 through 10-08-230. If  
26 there is a conflict between the model rules and this chapter, the rules in this chapter shall govern. Wherever the term 'agency' appears in the  
27 model rules it means the department of financial institutions."

28 <sup>3</sup> WAC 10-08-220 declares: "Nothing in chapter 10-08 WAC is intended to diminish the constitutional rights of any person or to limit or  
29 modify additional requirements imposed by statute, including the Administrative Procedure Act."

30 <sup>4</sup> *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998).

31 <sup>5</sup> *Davis v. W. One Auto. Group*, 140 Wn. App. 449, 456 (2007).

32 <sup>6</sup> *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300-01, 45 P.3d 1068 (2002), citing *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124  
33 (2000).

34 <sup>7</sup> *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

<sup>8</sup> See RCW 34.05.464(4); see also *Northwest Steelhead v. Washington State Department of Fisheries*, 78 Wn. App. 778, 896 P.2d 1292 (1995);  
see also *Towle v. Department of Fish and Wildlife*, 94 Wn.App. 196, 971 P.2d 591 (1999).

1 regulations of the Division under the error of law standard, which permits the Director to  
2 substitute his judgment for that of the Statement of Charges and the Administrative Law  
3 Judge's Initial Order.<sup>9</sup>

4 3.0 Director's Consideration of FOF and COL. After due consideration of the entire record  
5 on review and in a light most favorable to Respondent, the Director is of the decided view that  
6 the Initial Order is appropriate in its entirety. Respondent did not deny she was convicted of a  
7 felony within 7 years of Application, and the Halstead Declaration establishes that fact to a  
8 legal certainty.

9  
10 4.0 Findings of Fact. Now, therefore, the Director re-affirms FOF 1 through FOF 4,  
11 inclusive, at pages 1-2 of the Initial Order.

12 5.0 Conclusions of Law. Now, therefore, the Director re-affirms: COL 1 through COL 5,  
13 inclusive, at page 2 of the Initial Order.

14 6.0 Final Order. Having made Findings of Fact and Conclusions of Law as set forth above,  
15 IT IS HEREBY ORDERED AS FOLLOWS:

16 6.1 Denial of License. The application of Respondent, MERRIE MARGARET  
17 KROLL, for a Loan Originator License is DENIED.

18 6.2 Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to  
19 file a Petition for Reconsideration stating the specific grounds upon which relief is requested.  
20 The Petition must be filed in the Office of the Director of the Department of Financial  
21 Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail  
22 at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of this  
23 Final Order upon Respondent. The Petition for Reconsideration shall not stay the effectiveness  
24 of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in  
25 this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days  
26 from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the  
27 parties with a written notice specifying the date by which it will act on a petition.  
28  
29  
30  
31  
32

33  
34 <sup>9</sup> See *Aponte v. Dep't of Soc. & Health Servs.*, 92 Wn. App. 604, 616-17, 965 P.2d 626 (1998), *review denied*, 137 Wn.2d 1028 (1999); cited in Nationscapital at p. 737.

1           6.3    Stay of Order.       The Director has determined not to consider a Petition to  
2 Stay the effectiveness of this order. Any such requests should be made in connection with a  
3 Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

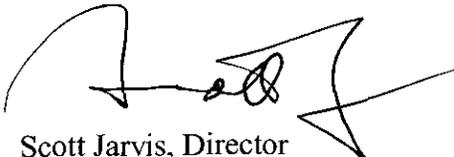
4           6.4    Judicial Review.       Respondent has the right to petition the superior court for  
5 judicial review of this agency action under the provisions of chapter 34.05 RCW. For the  
6 requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

7           6.5    Service.       For purposes of filing a Petition for Reconsideration or a Petition  
8 for Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of  
9 service attached hereto.

10          6.6    Effectiveness and Enforcement of Final Order. Pursuant to the Administrative  
11 Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective  
12 immediately upon deposit in the United States Mail.

13           Dated at Tumwater, Washington, on this 19<sup>th</sup> day of December, 2008.

14  
15  
16 WASHINGTON STATE DEPARTMENT  
17 OF FINANCIAL INSTITUTIONS

18  
19 By: 

20 Scott Jarvis, Director  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34

1 **NOTICE TO THE PARTIES**

2 In accordance with RCW 34.05.470 and WAC 10-08-215, any Petition for  
3 Reconsideration of the FINAL DECISION & ORDER CONFIRMING ORDER ON MOTION  
4 FOR SUMMARY JUDGMENT must be filed with the Director within ten (10) days of service  
5 of such FINAL DECISION & ORDER. It should be noted that Petitions for Reconsideration do  
6 not stay the effectiveness of the FINAL DECISION & ORDER. Judicial Review of the FINAL  
7 DECISION & ORDER is available to a party according to provisions set out in the Washington  
8 Administrative Procedure Act, RCW 34.05.570.

9 This is to certify that the FINAL DECISION AND ORDER has been served upon the  
10 following parties on December 19, 2008, by depositing a copy of  
11 same in the United States mail, postage prepaid.

12 WASHINGTON STATE DEPARTMENT  
13 OF FINANCIAL INSTITUTIONS

14 By: 

15 Susan Putzier

16 Executive Assistant to the Director

17 **Mailed to the following:**

18 Merrie Margaret Kroll  
19 10018 N.E. 127<sup>th</sup> Place #B210  
20 Kirkland, WA 98034

Charles Clark, AAG  
Office of the Attorney General  
PO Box 40100  
Olympia WA 98504-0100

21  
22 James R. Brusselback  
23 Chief of Enforcement  
24 Division of Consumer Services  
25 Department of Financial Institutions  
26 P.O. Box 41200  
27 Olympia, WA 98504-1200  
28  
29  
30  
31  
32  
33  
34

1  
2  
3  
4  
5  
6  
7  
8  
9

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

IN THE MATTER OF INVESTIGATING  
the Loan Originator License Application under the  
Mortgage Broker Practices Act of Washington by:

MERRIE MARGARET KROLL,  
  
Respondent.

NO. C-07-159-07-SC01

STATEMENT OF CHARGES and  
NOTICE OF INTENTION TO ENTER  
AN ORDER TO DENY LICENSE APPLICATION

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**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)<sup>1</sup>. After having conducted an investigation pursuant to RCW 19.146.310, 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 Merrie Margaret Kroll (Respondent Kroll)** submitted an application to the Department of Financial Institutions of the State of Washington (Department) for a loan originator license under Affordable Mortgage Solutions, LLC, a mortgage broker licensed under the Act. The on-line application was received by the Department on or about December 30, 2006.

**1.2 Prior Criminal Acts.** On March 28, 2002, the Respondent Kroll was convicted of the felony Unlawful Possession of a Controlled Substance (Cocaine) pursuant to RCW 69.50.401, in the Superior Court of Washington for King County (Cause No. 02-1-504-3).

---

<sup>1</sup> RCW 19.146 (Amended 2006; Effective January 1, 2007)

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

2 **2.1 Requirement of No Prior Convictions.** Based on the Factual Allegations set forth in Section I above,  
3 Respondent Kroll fails to meet the requirements of RCW 19.146.310(1)(d) and WAC 208-660-350(2)(c) by  
4 having been convicted of a felony within seven years of the filing of the present application.

5  
6 **III. AUTHORITY TO IMPOSE SANCTIONS**

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

12  
13 **IV. NOTICE OF INTENTION TO ENTER ORDER**

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

18  
19 **4.1** Respondent Merrie Margaret Kroll's application for a loan originator license be denied.

20  
21 **V. AUTHORITY AND PROCEDURE**

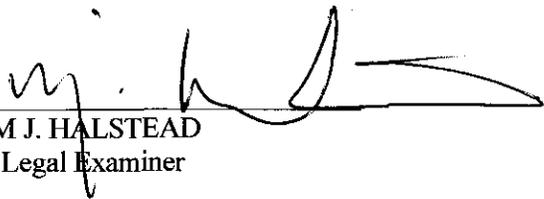
22 This Statement of Charges and Notice of Intention to Enter an Order to Deny License Application  
23 (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW  
24 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative  
25 Procedure Act). Respondent may make a written request for a hearing as set forth in the NOTICE OF

1 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of  
2 Charges.

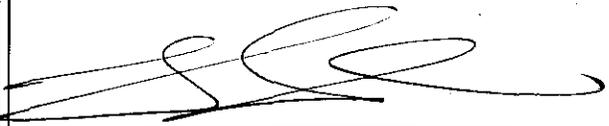
3 Dated this 8<sup>th</sup> day of JUNE, 2007.  
4

5   
6 DEBORAH BORTNER  
7 Director  
8 Division of Consumer Services  
9 Department of Financial Institutions

10 Presented by:

11   
12 WILLIAM J. HALSTEAD  
13 Financial Legal Examiner

14 Approved by:

15   
16 FATIMA BATIE  
17 Financial Legal Examiner Supervisor



25