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NO. C-09-194-09-FO01

FINAL ORDER TO CEASE AND DESIST

Respondent.

I. DIRECTOR'S CONSIDERATION

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1 Respondent Ernest Edward Weatherly, Jr. did not request an adjudicative hearing within 20
2 calendar days after the Department served him with the Notice of Opportunity to Defend and
3 Opportunity for Hearing, as provided for in WAC 208-08-050(2).

4 B. Record Presented. The record presented to the Director's designee for her review and
5 for entry of a final decision included the Temporary Order to Cease and Desist, cover letter dated July
6 13, 2009, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Application for
7 Adjudicative Hearing for Ernest Edward Weatherly, Jr., with documentation of service.

8 C. Factual Findings and Grounds For Order. Pursuant to RCW 34.05.440(1), the
9 Director's designee hereby adopts the Temporary Order to Cease and Desist, which is attached hereto.
10

11 II. FINAL ORDER

12 Based upon the foregoing, and the Director's designee having considered the record and
13 being otherwise fully advised, NOW, THEREFORE:

14 A. IT IS HEREBY ORDERED, That:

15 1. Respondent Ernest Edward Weatherly, Jr. shall permanently cease and desist from all
16 activity requiring a mortgage broker license from the Department, including but not limited to: making a
17 residential mortgage loan on property located in the State of Washington; assisting any person in
18 obtaining or applying to obtain a residential mortgage loan on property located in the State of
19 Washington; holding himself out to the public as being able to perform any of these activities.
20

21 2. Respondent Ernest Edward Weatherly, Jr. shall permanently cease and desist from all
22 activity requiring a loan originator license from the Department, including but not limited to: taking a
23 residential mortgage loan application for a mortgage broker; offering or negotiating terms of a mortgage
24 loan; holding himself out to the public as able to perform any of these activities.

3. Ernest Edward Weatherly, Jr. shall permanently cease and desist from collecting any fee, commission, or compensation from or on behalf of any borrower for any activity requiring a mortgage broker or loan originator license issued by the Department.

B. Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to file a Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia, Washington 98504-1200, within ten days of service of the Final Order upon Respondent. The Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in this matter.

A timely Petition for Reconsideration is deemed denied if, within 20 days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on a petition.

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

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

E. Non-compliance with Order. If Respondent does not comply with the terms of this Order, the Department may seek its enforcement by the Office of the Attorney General.

1 F. Service. For purposes of filing a Petition for Reconsideration or a Petition for
2 Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service
3 attached hereto.

4 DATED this 26th day of August, 2009.



5 STATE OF WASHINGTON
6 DEPARTMENT OF FINANCIAL INSTITUTIONS

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8 DEBORAH BORTNER
9 DIRECTOR
10 DIVISION OF CONSUMER SERVICES

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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:

ERNEST EDWARD WEATHERLY, JR.,

Respondent.

NO. C-09-194-09-TD01

TEMPORARY ORDER TO
CEASE AND DESIST

THE STATE OF WASHINGTON TO:

ERNEST EDWARD WEATHERLY, JR.

COMES NOW the Director of the Department of Financial Institutions of the State of Washington (Director), by and through his designee, Division of Consumer Services Director Deborah Bortner, and finding that the public is likely to be substantially injured by delay in issuing a cease and desist order, enters this temporary order to cease and desist pursuant to chapter 19.146 RCW, the Mortgage Broker Practices Act (Act), based on the following findings:

I. FACTUAL FINDINGS

1.1 Respondent Ernest Edward Weatherly, Jr. does not hold a license to conduct the business of a mortgage broker or a loan originator from the Department of Financial Institutions of the State of Washington (Department).

1.2 Unlicensed Activity. From at least in or around November 2008 through the date of this Order, Respondent has conducted business as a mortgage broker or loan originator without being licensed by the Department to do so.

A. From at least in or around November 2008 through the date of this Order, Respondent has held himself out to the public as being able to assist people in obtaining or applying to obtain residential mortgage loans on property located in the State of Washington.

- Respondent provided at least one borrower with a business card purporting that "Ernie Weatherly" was a "Commercial Loan Specialist" for "Lakeside Mortgage, LLC" with "Home Mortgages Available."

- One of the results of a www.google.com internet search using the terms "Weatherly" and "Lakeside Mortgage" is the web site www.zillow.com/profile/Ernie-Weatherly/. This web site states that "Ernie Weatherly" has been a member since 11/5/08, lists "Lakeside Mortgage LLC," "1303 Ivy Road #34, Bremerton, WA," and "206-852-1160" under "Professional Information," and lists "Specialties" as "Home Equity," "Purchase Loan," and "Refinancing."

B. From at least in or around December 2008 through at least in or around April 2009, Respondent assisted at least one borrower in applying to obtain a residential mortgage loan on property located in the State of Washington. Respondent took at least two residential mortgage loan applications from this borrower and forwarded these applications to a licensed loan originator associated with America One Finance, Inc, a mortgage broker licensed by the Department. During the origination of this residential mortgage loan, Respondent accepted over \$2,000 from or on behalf of this borrower for Respondent's services and for third-party provider services. This residential mortgage loan did not close. Respondent provided this borrower with a written promise to return these funds by May 31, 2009, but did not return these funds to this borrower.

1.3 Failure to Maintain Funds From Borrower for Payment of Third-Party Providers in Trust. From in or around December 2008 through in or around March 2009, Respondent received money from the borrower discussed in paragraph 1.2B for the payment of third-party provider services. Respondent did not deposit these trust funds in a trust account of a federally insured financial institution located in this state prior to the end of the third business day following receipt of these trust funds.

II. GROUNDS FOR ENTRY OF ORDER

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

2.2 Definition of Loan Originator. Pursuant to RCW 19.146.010(10), "Loan Originator" means a natural person who (a) takes a residential mortgage loan application for a mortgage broker, or (b) offers or negotiates terms of a mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect

1 compensation or gain. "Loan originator" also includes a person who holds themselves out to the public as able
2 to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or
3 clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks"
4 means the receipt, collection, and distribution of information common for the processing of a loan in the
5 mortgage industry and communication with a borrower to obtain information necessary for the processing of a
6 loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing
7 administrative or clerical tasks.

8 **2.3 Definition of Borrower.** Pursuant to RCW 19.146.010(3), "Borrower" means any person who consults
9 with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on
10 obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or
11 herself, regardless of whether the person actually obtains such a loan.

12 **2.4 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondent is in
13 apparent violation of:

- 14 • RCW 19.146.0201(1) for directly or indirectly employing a scheme, device or artifice to defraud or
15 mislead borrowers or lenders or any person;
- 16 • RCW 19.146.0201(2) for engaging in an unfair or deceptive practice toward any person;
- 17 • RCW 19.146.0201(3) for obtaining property by fraud or misrepresentation;
- 18 • RCW 19.146.0201(13) for collecting, charging, attempting to collect or charge or using or proposing to
19 use any agreement purporting to collect or charge any fee prohibited by RCW 19.146.070; and
- 20 • RCW 19.146.0201(15) for failing to comply with any provision of RCW 19.146.030 through
21 19.146.080 or any rule adopted under those sections.

22 **2.5 Requirement to Maintain Funds From Borrower for Payment of Third-Party Providers in Trust.**

23 Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW
24 19.146.050, WAC 208-660-155(8), and WAC 208-660-410 for failing to deposit funds received from or on
25 behalf of at least one borrower for payment of third-party provider services in a trust account of a federally

insured financial institution located in this state, prior to the end of the third business day following receipt of such monies.

2.6 Prohibited Fee, Commission, or Compensation. Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.070, WAC 208-660-155(6) and (7), and WAC 208-660-300(7) and (8) for receiving a fee, commission, or compensation of any kind from or on behalf of at least one borrower in connection with the preparation, negotiation, and brokering of a residential mortgage loan and for receiving fees for a third-party provider of goods or services.

2.7 Requirement to Obtain and Maintain a Mortgage Broker or Loan Originator License. Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.200 and WAC 208-660-155(1) for engaging in the business of a mortgage broker or loan originator without first obtaining and maintaining a license under the Act.

III. AUTHORITY TO ISSUE TEMPORARY ORDER TO CEASE AND DESIST

Pursuant to RCW 19.146.227, the Director is authorized to issue a temporary order to cease and desist whenever the Director determines that the public is likely to be substantially injured by delay in issuing a cease and desist order. Based on the Factual Findings and Grounds for Entry of Order set forth above, Respondent is unlawfully conducting business as a mortgage broker or loan originator, Respondent received a fee, commission, or compensation as a mortgage broker or loan originator from or on behalf of at least one borrower for the origination of a residential mortgage loan which did not close, and Respondent failed to deposit trust funds received from or on behalf of at least one borrower for payment of third-party services into an authorized trust account within three business days of receipt of such trust funds.

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IV. ORDER TO CEASE AND DESIST

Based on the above Factual Findings, Grounds for Entry of Order, and Authority to Issue Temporary Order to Cease and Desist, and pursuant to RCW 19.146.227, the Director determines that the public is likely to be substantially harmed by a delay in entering a cease and desist order. Therefore, the Director ORDERS that:

4.1 Respondent Ernest Edward Weatherly, Jr. shall immediately cease and desist from all activity requiring a mortgage broker license from the Department, including but not limited to: making a residential mortgage loan on property located in the State of Washington; assisting any person in obtaining or applying to obtain a residential mortgage loan on property located in the State of Washington; holding himself out to the public as being able to perform any of these activities.

4.2 Respondent Ernest Edward Weatherly, Jr. shall immediately cease and desist from all activity requiring a loan originator license from the Department, including but not limited to: taking a residential mortgage loan application for a mortgage broker; offering or negotiating terms of a mortgage loan; holding himself out to the public as able to perform any of these activities.

4.3 Respondent Ernest Edward Weatherly, Jr. shall immediately cease and desist from collecting any fee, commission, or compensation from or on behalf of any borrower for any activity requiring a mortgage broker or loan originator license from the Department.

4.4 This order shall take effect immediately and shall remain in effect unless set aside, limited, or suspended in writing by an authorized court.

V. NOTICE

PURSUANT TO CHAPTER 19.146 RCW, YOU ARE ENTITLED TO A HEARING WITHIN 14 DAYS OF REQUEST TO DETERMINE WHETHER THIS ORDER SHALL BECOME PERMANENT. IF YOU DESIRE A HEARING, THEN YOU MUST RETURN THE ATTACHED APPLICATION FOR ADJUDICATIVE HEARING INCORPORATED HEREIN BY THIS REFERENCE. FAILURE TO COMPLETE AND RETURN THE APPLICATION FOR ADJUDICATIVE HEARING FORM SO THAT IT IS RECEIVED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS WITHIN 20 DAYS OF THE

1 DATE THAT THIS ORDER WAS SERVED ON YOU WILL CONSTITUTE A DEFAULT AND WILL
2 RESULT IN THE LOSS OF YOUR RIGHT TO A HEARING. SERVICE ON YOU IS DEFINED AS
3 POSTING IN THE U.S. MAIL, POSTAGE PREPAID, TO YOUR LAST KNOWN ADDRESS. BE
4 ADVISED THAT DEFAULT WILL RESULT IN THIS ORDER TO CEASE AND DESIST BECOMING
5 PERMANENT ON THE TWENTY-FIRST DAY FOLLOWING SERVICE OF THIS ORDER ON YOU.

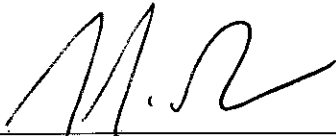
6 WITHIN TEN DAYS AFTER YOU HAVE BEEN SERVED WITH THIS TEMPORARY ORDER TO
7 CEASE AND DESIST, YOU MAY APPLY TO THE SUPERIOR COURT IN THE COUNTY OF YOUR
8 PRINCIPAL PLACE OF BUSINESS FOR AN INJUNCTION SETTING ASIDE, LIMITING, OR
9 SUSPENDING THIS ORDER PENDING THE COMPLETION OF THE ADMINISTRATIVE
10 PROCEEDINGS PURSUANT TO THIS NOTICE.

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12 Dated this 13th day of July, 2009.

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

19 Presented by:

20 

21 MARK T. OLSON
22 Financial Examiner



23 Approved by:

24 
25 JAMES R. BRUSSELBACK
Enforcement Chief