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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-09-459-10-FO01

KENN NICKELL,

FINAL ORDER

Respondent.

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I. DIRECTOR'S CONSIDERATION

A. Default. This matter has come before the Director of the Department of Financial Institutions of the State of Washington (Director), through his designee, Consumer Services Division Director Deborah Bortner, pursuant to RCW 34.05.440(1). On October 19, 2010, the Director, through Consumer Services Division Director Deborah Bortner, entered a Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry, Impose Fine, Order Restitution, and Collect Investigation Fee (Statement of Charges). A copy of the Statement of Charges is attached and incorporated into this order by this reference. The Statement of Charges was accompanied by a cover letter dated October 19, 2010, a Notice of Opportunity to Defend and Opportunity for Hearing, and a blank Application for Adjudicative Hearing for Kenn Nickell. The Department served the Statement of Charges, cover letter dated October 19, 2010, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Application for Adjudicative Hearing for Kenn Nickell on Respondent on October 19, 2010, by First-Class mail and Federal Express overnight delivery. On October 21, 2010, the documents sent via Federal Express overnight delivery were delivered. The documents sent via First-Class mail were not returned to the Department by the United States Postal Service.

1 Respondent Nickell did not request an adjudicative hearing within twenty calendar days after
2 the Department served him with the Notice of Opportunity to Defend and Opportunity for Hearing, as
3 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 following: Statement of Charges, cover letter dated October 19,
6 2010, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Application for
7 Adjudicative Hearing for Kenn Nickell, 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 Statement of Charges, which is attached hereto.

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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 Kenn Nickell is prohibited from participation in the conduct of the affairs
16 of any mortgage broker subject to licensure by the Director, in any manner, for a
17 period of five (5) years;
- 18 2. Respondent Kenn Nickell pay a fine of \$1,500;
- 19 3. Respondent Kenn Nickell pay restitution to all borrowers from whom fees were paid
20 to Respondent Kenn Nickell or Equity Capital Group, LLC, including at least \$3,280
21 restitution to the borrower listed in paragraph 1.2 of the Statement of Charges attached
22 hereto; and
- 23 4. Respondent Kenn Nickell pay an investigation fee of \$1,113.60 calculated at \$48 per
24 hour for twenty-three and two-tenths (23.2) staff hours.

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1 B. Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to file a
2 Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition
3 must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150
4 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia,
5 Washington 98504-1200, within ten (10) days of service of the Final Order upon Respondent. The
6 Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for
7 Reconsideration a prerequisite for seeking judicial review in this matter.

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

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

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

17 E. Non-compliance with Order. If you do not comply with the terms of this order, the
18 Department may seek its enforcement by the Office of Attorney General to include the collection of the
19 fines, fees, and restitution imposed herein.
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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 9th day of December, 2010.



6 STATE OF WASHINGTON
7 DEPARTMENT OF FINANCIAL INSTITUTIONS

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10 DEBORAH BORTNER
11 DIRECTOR
12 DIVISION OF CONSUMER SERVICES

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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:

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KENN NICKELL,

Respondent.

NO. C-09-459-10-SC01

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

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, 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. Kenn Nickell (Respondent Nickell) is known to have conducted the business of a mortgage broker from the following location: 15110 SW Boones Ferry Road, Lake Oswego, Oregon 97035. To date, Respondent Nickell has never applied for, or received, a license from the Department to conduct the business of a mortgage broker from this location. Respondent Nickell conducted business through Equity Capital Group, LLC. Equity Capital Group, LLC, was an Oregon Limited Liability Company with a principal place of business of 15110 SW Boones Ferry Road, Lake Oswego, Oregon 97035. Equity Capital Group, LLC was administratively dissolved on January 23, 2009. Equity Capital Group, LLC has never applied for, or received, a license from the Department to conduct the business of a mortgage broker.

¹ RCW 19.146 (1995)

1 **1.2 Unlicensed Activity.** Between at least September 6, 2006, and October 4, 2006, Respondent Nickell
2 assisted at least one borrower in applying to obtain a residential mortgage loan on property located in the State
3 of Washington from the unlicensed locations discussed in paragraph 1.1. Respondent Nickell assisted this
4 borrower in obtaining a residential mortgage loan. The borrower involved in this residential mortgage loan paid
5 fees to Equity Capital Group, LLC totaling \$3,280.

6 **1.3 Complaint.** On or about September 11, 2007, the Department received a complaint regarding Equity
7 Capital Group, LLC. During the investigation of that complaint, the Department learned that Respondent
8 Nickell and Equity Capital Group, LLC had assisted the above-referenced borrower in obtaining a residential
9 mortgage loan. On or about March 28, 2008, the Department issued a Resolution and Request for Action
10 requesting that Equity Capital Group, LLC and Respondent Nickell undertake corrective action including
11 refunding the fees paid by the borrower. On or about December 9, 2008, the Department sent a letter to
12 Respondent Nickell and Equity Capital Group, LLC again requesting that they take corrective action including
13 refunding their fees to the borrower. On or about August 19, 2009, the Department sent another letter to
14 Respondent Nickell and Equity Capital Group, LLC requesting that they undertake corrective action. This letter
15 was returned as undeliverable by the United States Postal Service. Another letter was sent and delivered to
16 Respondent Nickell on or about August 26, 2009. Finally, on or about March 2, 2010, a letter was sent to
17 Respondent Nickell's attorney requesting that Respondent Nickell propose a resolution to the outstanding
18 complaint. Respondent Nickell has yet to resolve the outstanding complaint and has refunded no money to the
19 borrower.

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

21 **2.1 Definition of Mortgage Broker.** Pursuant to RCW 19.146.010(12) and WAC 208-660-010(29),
22 "Mortgage Broker" means any person who, for compensation or gain, or in the expectation of compensation or
23 gain (a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential
24 mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a
25 person in obtaining or applying to obtain a residential mortgage loan.

1 **2.2 Definition of Borrower.** Pursuant to RCW 19.146.010(2), a “Borrower” is defined as any person who
2 consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information
3 on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself
4 or herself, regardless of whether the person actually obtains such a loan.

5 **2.3 Requirement to Obtain and Maintain License.** Based on the Factual Allegations set forth in Section
6 I above, Respondent is in apparent violation of RCW 19.146.200 for engaging in the business of a mortgage
7 broker without first obtaining and maintaining a license under the Act.

8 **III. AUTHORITY TO IMPOSE SANCTIONS**

9 **3.1 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(2)(e)(i), the Director may
10 issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed
11 mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker
12 or any person subject to licensing under the Act for any violation of RCW 19.146.200.

13 **3.2 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(c)(i) and WAC 208-660-165, the Director
14 may impose fines on a licensee, employee or loan originator of the licensee, or other person subject to the Act
15 for any violation of RCW 19.146.200.

16 **3.3 Authority to Order Restitution.** Pursuant to RCW 19.146.220(d)(ii), the Director may issue orders
17 directing a licensee, its employee or loan originator, or other person subject to the Act to pay restitution to an
18 injured borrower.

19 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2) and WAC 208-660-550(4)²,
20 upon completion of any investigation of the books and records of a licensee or other person subject to the Act, the
21 Department will furnish to the licensee or other person subject to the Act a billing to cover the cost of the
22 investigation. The investigation charge will be calculated at the rate of forty-eight dollars (\$48) per hour that each
23 staff person devoted to the investigation.

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² WAC 208-660-550(4) became effective on January 1, 2010.

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

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

- 6 **4.1** Respondent Kenn Nickell be prohibited from participation in the conduct of the affairs of any mortgage
7 broker subject to licensure by the Director, in any manner, for a period of five (5) years;
- 8 **4.2** Respondent Kenn Nickell pay a fine which as of the date of these charges totals \$1,500;
- 9 **4.3** Respondent Kenn Nickell pay restitution to all borrowers from whom fees were paid to Respondent Kenn
10 Nickell or Equity Capital Group, LLC, including at least \$3,280 restitution to the borrower listed in
11 paragraph 1.2; and
- 4.4** Respondent Kenn Nickell pay an investigation fee which as of the date of these charges totals \$1,113.60
calculated at \$48 per hour for twenty three and two tenths (23.2) staff hours.

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1 **V. AUTHORITY AND PROCEDURE**

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

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9 Dated this 19th day of October, 2010.



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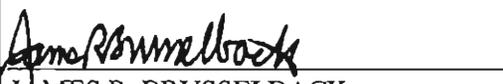
11 DEBORAH BORTNER
12 Director
13 Division of Consumer Services
14 Department of Financial Institutions

15 Presented by:

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17 ROBERT E. JONES
18 Financial Legal Examiner

19 Approved by:

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21 JAMES R. BRUSSELBACK
22 Enforcement Chief