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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  
Consumer Loan Act of Washington by:

LOW VA RATES, LLC f/k/a UNITED  
MILITARY MORTGAGE, LLC d/b/a LOW VA  
RATES, NMLS No. 1109426; ERIC AUSTIN  
KANDELL, President, CEO, and 100% Owner,  
NMLS No. 174769, KC BRYAN SMALLEY,  
Vice-President and Mortgage Loan Originator,  
NMLS No. 296801,

Respondents.

No. C-15-1772-16-SC01

STATEMENT OF CHARGES and  
NOTICE OF INTENT TO ENTER AN  
ORDER TO CEASE AND DESIST, TAKE  
AFFIRMATIVE ACTION, IMPOSE FINE,  
COLLECT INVESTIGATION FEE, and  
RECOVER COSTS AND EXPENSES OF  
PROSECUTION

**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 Charles E. Clark, institutes this proceeding and finds as follows:

**I. FACTUAL ALLEGATIONS**

**1.1 Respondents.**

A. **Respondent Low VA Rates, LLC f/k/a United Military Mortgage, LLC d/b/a Low VA Rates** (Low VA Rates) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a consumer loan company on or about February 21, 2014, under the name United Military Mortgage, LLC. Effective October 9, 2016, United Military

1 Mortgage, LLC changed its name to Low VA Rates, LLC. Low VA Rates continues to be licensed to  
2 date.

3 B. **Respondent Eric Austin Kandell** (Kandell) has been the president, CEO, and 100%  
4 owner of Low VA Rates since at least February 21, 2014, and continues to be president, CEO, and  
5 100% owner of Low VA Rates to date. As president, CEO, and 100% owner of Low VA Rates,  
6 Kandell is responsible for Low VA Rates' marketing and compliance.

7 C. **Respondent KC Bryan Smalley** (Smalley) has been vice-president of Low VA Rates  
8 since at least February 21, 2014, and continues to be vice-president to date. As vice-president of Low  
9 VA Rates, Smalley is responsible for Low VA Rates' marketing and compliance. Smalley was  
10 licensed as a mortgage loan originator on or about February 21, 2014, and continues to be licensed to  
11 date. At all relevant times, Smalley's mortgage loan originator's license was sponsored by Low VA  
12 Rates.

13 **1.2 VA Mortgage Loan Advertising.** Between at least April 11, 2014, and June 26, 2015, Low  
14 VA Rates distributed over 100 direct mail solicitations to consumers in Washington State. The  
15 majority of these solicitations advertised adjustable rate mortgages (ARMs) guaranteed by the U.S.  
16 Department of Veterans Affairs (VA).

17 **1.3 2014 Limited-Scope Investigation.** Between about August 25, 2014, and October 21, 2014,  
18 the Department conducted a limited-scope investigation of Low VA Rates' advertising practices.  
19 During the limited-scope investigation, the Department reviewed Low VA Rates' direct mail  
20 solicitations advertising VA-guaranteed ARMs. The Department determined that Low VA Rates  
21 violated the Act by making deceptive statements regarding the financing terms or conditions of a  
22 residential mortgage loan and failing to make certain disclosures required by Part 1026 of Title 12 of  
23 the Code of Federal Regulations (Regulation Z). The Department notified Low VA Rates of these  
24 violations on or about September 29, 2014.

1 **1.4 2015 Limited-Scope Investigation.** Between about February 10, 2015, and March 16, 2015,  
2 the Department conducted a second limited-scope investigation of Low VA Rates' advertising  
3 practices. During the second limited-scope investigation, the Department reviewed a direct mail  
4 solicitation advertising a VA-guaranteed ARM. The Department again determined that Low VA  
5 Rates violated the Act by making deceptive statements regarding the financing terms or conditions of  
6 a residential mortgage loan and failing to make certain disclosures required by Regulation Z. The  
7 Department notified Low VA Rates of these violations on or about March 16, 2015.

8 **1.5 Repeat Violations.** After the Department notified Low VA Rates of the violations referenced  
9 in paragraphs 1.3 and 1.4 above, the Department received information that Low VA Rates continued  
10 to violate the Act by making deceptive statements regarding the finance terms or conditions of  
11 residential mortgage loans and failing to make certain disclosures required by Regulation Z in direct  
12 mail solicitations advertising VA-guaranteed ARMs.

13 **1.6 June 2015 ARM Direct Mail Solicitation.** On or about June 15, 2016, Low VA Rates mailed  
14 a direct mail solicitation to almost 16,000 Washington State consumers. The direct mail solicitation  
15 advertised a VA-guaranteed ARM with a 2.25% simple interest rate, a 2.38 annual percentage rate  
16 (APR), and an estimated monthly payment of \$1,054.25. The solicitation also claimed that there  
17 were "NO CLOSING COST options available." The solicitation:

- 18 A. Did not state the fact that the APR may increase after consummation of the loan.  
19 B. Did not disclose each simple annual interest rate that would apply over the term of the  
20 loan and the period of time during which each simple annual interest rate would apply.  
21 C. Did not disclose the amount of each payment that would apply over the term of the loan  
22 and the period of time during which each payment would apply.  
23 D. Did not clearly and conspicuously disclose the fact that estimated monthly payment did  
24 not include amounts for taxes and insurance premiums and that actual payment  
obligations would be greater.

- 1 E. Did not clearly and conspicuously disclose the terms of repayment over the full term of  
2 the loan.
- 3 F. Advertised an interest rate that was bought down without disclosing the cost of buying  
4 down the interest rate.
- 5 G. Claimed that there were “NO CLOSING COST options available” while advertising a  
6 bought-down interest rate.
- 7 H. Advertised that there were “NO CLOSING COST options available” even though the loan  
8 product advertised has a VA funding fee of ½% of the loan amount for all consumers  
9 except those who meet exceptions for certain disabled veterans and certain surviving  
10 spouses of veterans.

11 **1.7 On-Going Investigation.** The Department’s investigation into the alleged violations of the  
12 Act by Low VA Rates, Kandell, and Smalley (Respondents) continues to date.

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

14 **2.1 Unfair or Deceptive Practice.** Based on the Factual Allegations set forth in Section I above,  
15 Respondents are in apparent violation of RCW 31.04.027(2) for directly or indirectly engaging in  
16 any unfair or deceptive practice toward any person, and by being in apparent violation of WAC 208-  
17 620-550(5) and WAC 208-620-640.

18 **2.2 False or Deceptive Statements or Representations.** Based on the Factual Allegations set  
19 forth in Section I above, Respondents are in apparent violation of RCW 31.04.027(7) for making, in  
20 any manner, any false or deceptive statement or representation with regard to the rates, points, or  
21 other financing terms for a residential mortgage loan.

22 **2.3 Violations of Applicable Federal Law.** Based on the Factual Allegations set forth in Section  
23 I above, Respondents are in apparent violation of RCW 31.04.027(13) for violating any applicable  
24 federal laws relating to the activities governed by the Act, including but not limited to the  
advertising prohibitions contained in the Federal Trade Commission Act, 15 U.S.C. §§ 41-58; the  
Truth in Lending Act, 15 U.S.C. § 1601 and Regulation Z, 12 C.F.R. Part 1026; and the Mortgage  
Acts and Practices – Advertising (MAP) rule, Regulation N, 12 C.F.R. Part 1014.

1 **2.4 False, Misleading, or Deceptive Advertisements.** Based on the Factual Allegations set forth  
2 in Section I above, Respondents are in apparent violation of RCW 31.04.135 for advertising, in any  
3 manner whatsoever, any statement or representation with regard to the rates, terms, or conditions for  
4 the lending of money that is false, misleading, or deceptive.

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

6 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 31.04.093(5)(a), the  
7 Director may issue orders directing a licensee, its employee, loan originator, or other person subject  
8 to the Act to cease and desist from conducting business in a manner that is injurious to the public or  
9 violates any provision of the Act.

10 **3.2 Authority to Order Affirmative Action.** Pursuant to RCW 31.04.093(5)(b), the Director  
11 may issue an order directing a licensee, its employee, loan originator, or other person subject to the  
12 Act to take such affirmative action as is necessary to comply with the Act.

13 **3.3 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of  
14 up to one hundred dollars per day, per violation, upon the licensee, its employee or loan originator, or  
15 any other person subject to the Act for any violation of the Act.

16 **3.4 Authority to Charge Investigation Fee.** Pursuant to RCW 31.04.145(3) and WAC 208-620-  
17 590, every licensee investigated by the Director or the Director's designee shall pay for the cost of  
18 the investigation, calculated at the rate of \$69.01 per staff hour devoted to the investigation.

19 **3.5 Authority to Recover Costs and Expenses.** Pursuant to RCW 31.04.205(2), the Director  
20 may recover the state's costs and expenses for prosecuting violations of the Act.

### 21 **IV. NOTICE OF INTENT TO ENTER ORDER**

22 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC,  
23 as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose  
24

1 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and  
2 RCW 31.04.205. Therefore, it is the Director's intention to ORDER that:

3 **4.1** Respondents Low VA Rates, LLC, Eric Austin Kandell, and KC Bryan Smalley cease  
4 and desist distributing direct mail solicitations offering Washington State consumers  
5 VA residential mortgage loans until such time as it is able to demonstrate to the  
6 Department's satisfaction that it has in place compliance policies, procedures, and  
7 testing systems reasonably designed to detect and prevent the distribution of false,  
8 deceptive, or misleading direct mail solicitations in Washington.

9 **4.2** Respondents Low VA Rates, LLC, Eric Austin Kandell, and KC Bryan Smalley take  
10 affirmative action as is necessary to comply with the Act, including:

11 A. Within thirty days of the entry of a Final Order in this matter, review  
12 Respondent's policies and procedures and make necessary changes to ensure  
13 the existing direct mail compliance systems are reasonably designed to detect  
14 and prevent the distribution of false, deceptive, or misleading direct mail  
15 solicitations in Washington State; and

16 B. Within sixty days of the entry of a Final Order in this matter, provide the  
17 Department with a report of Respondent's review of its policies and  
18 procedures and any changes made to ensure the direct mail compliance  
19 systems are reasonably designed to detect and prevent the distribution of false,  
20 deceptive, or misleading direct mail solicitations in Washington State.

21 **4.3** Respondents Low VA Rates, LLC, Eric Austin Kandell, and KC Bryan Smalley  
22 jointly and severally pay a fine in the amount of \$100,000.00.

23 **4.4** Respondents Low VA Rates, LLC, Eric Austin Kandell, and KC Bryan Smalley  
24 jointly and severally pay an investigation fee. As of the date of this Statement of  
Charges, the investigation fee totals \$3,961.17.

**4.5** Respondents Low VA Rates, LLC, Eric Austin Kandell, and KC Bryan Smalley  
jointly and severally pay the Department's costs and expenses for prosecuting  
violations of the Act in an amount to be determined at hearing or by declaration with  
supporting documentation in event of default by Respondents.

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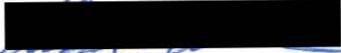
1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, Take  
3 Affirmative Action, Impose Fine, Collect Investigation Fee, and Recover Costs and Expenses of  
4 Prosecution (Statement of Charges) is entered pursuant to the provisions of RCW 31.04.093, RCW  
5 31.04.165, RCW 31.04.202, and RCW 31.04.205, and is subject to the provisions of chapter 34.05  
6 RCW, the Administrative Procedure Act. Respondents may make a written request for a hearing as  
7 set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING  
8 accompanying this Statement of Charges.

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10 Dated this 14<sup>th</sup> day of October, 2016.



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CHARLES E. CLARK  
Director  
Division of Consumer Services  
Department of Financial Institutions

15 Presented by:

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AMANDA J. HERNDON  
Financial Legal Examiner

19 Approved by:

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STEVEN C. SHERMAN  
Enforcement Chief

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