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Hearing Unit
Office of the Insurance Commissioner
P.O. Box, 40255
Olympia, WA 98504-0255

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

RE: Denial of Application for Insurance License; Demand for Hearing

Dear Sir or Madam:

The purpose of this letter is to demand a hearing to contest the decision of the Office of the Insurance Commissioner ("OIC"), dated January 16, 2014, which denied my application for an insurance producer's license. Although I passed the requisite producer's exam, the Commissioner denied my application pursuant to RCW 48.17.530(h) and RCW 48.17.530(i). The Office indicated that the decision was based on the two actions taken by the Department of Financial Institutions ("DFI").

I am aggrieved because the denial of my application prevents me from earning a living in my chosen occupation in order to support my family. I have successfully passed the insurance producer's license examination, and have been offered employment subject to being issued a license.

INTRODUCTION

RCW 48.17.530 authorizes the Commissioner to deny Applicant's application for "any one or more of the following causes": "...(h) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere; (i) having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory."

Briefly stated, my grounds for seeking a reversal of OIC's denial of my license application are (1) that RCW 48.17.530(1)(i) is not applicable in this case, (2) a factual explanation of the circumstances surrounding the Orders entered in the two DFI proceedings against me will show that the proceedings do not establish that I have used fraudulent, coercive, or dishonest practice, or have demonstrated incompetence, untrustworthiness, or financial irresponsibility, as required by RCW 48.17.530(1)(h), and (3) there are countervailing considerations that demonstrate my professionalism, trustworthiness, competence, and honesty.

1. RCW 48.17.530(i) Should not be Applied as a Grounds for Denial

As an initial matter, I respectfully submit that subsection (i) is not applicable in this instance. As indicated in the Orders issued by the Department of Financial Institutions, my license as an escrow agent was temporarily suspended. Although grounds for suspension are relevant to my application for an insurance producer's license, an escrow agent's license is not "an insurance producer's license, or its equivalent." In addition, the language of the statute appears to indicate that "or its equivalent" is intended to capture the potential of an equivalent – though differently named – license in another state or jurisdiction.

Since the suspension of my escrow agent's license is not equivalent to an insurance producer's license, subsection (i) is not a proper grounds for refusal of my application.

2. Explanation of Factual Situations Surrounding the DFI Proceedings

With regard to subsection (h), the Commissioner has relied on the actions taken by DFI as a basis for denial. However, these actions do not establish that I have used fraudulent, coercive, or dishonest practices, or have demonstrated incompetence, untrustworthiness, or financial irresponsibility, as required by the statute. I believe that a close examination and analysis of the factual situation surrounding these two DFI proceedings will establish that this is the case.

α. DFI Case No. C-08066-08SC01 (Office of Administrative Hearings Docket No. 2009-DFI-0045)

This case arose out of transactions which took place at Western States Mortgage Corp. ("WSMC"), a mortgage brokerage company which I owned, and for which I was the licensed mortgage broker. WSMC was exempt from certain provisions of the Washington Mortgage Broker Practices Act by virtue of being an approved "Fannie Mae" and "Freddie Mac" lender. This DFI proceeding involved three separate substantive charges:

1. That I sent an email to an individual stating my position that no Washington State Loan Officer license was required to work for WSMC ("Loan Officer Solicitation"). Findings of Fact 4.3-4.9, Amended Findings of Fact, Conclusions of Law, and Initial Order, at page 3.
2. That a borrower from WSMC was not given appropriate truth in lending and good faith estimate documents by Troy Bowers, the loan originator and a WSMC employee ("Wade Complaint"). Findings of Fact 4.10-4.23, Amended Findings of Fact, Conclusions of Law, and Initial Order, at pages 3-5.
3. That a borrower from WSMC made payments on her loan to WSMC after the loan had been transferred to Countrywide Home Loans, Inc. and that WSMC failed to transfer the payments to Countrywide ("Schroeder Complaint"). Findings of Fact 4.24-4.36, Amended Findings of Fact, Conclusions of Law, and Initial Order, at pages 5-6.

i. Loan Officer Solicitation.

State mortgage broker licensing requirements were undergoing significant changes in the fall of 2006. At one point during this period the DFI website stated that loan officers employed by exempt mortgage brokers did not have to be licensed. See page 13 of the attached Proposed Rule Making, posted on DFI's website as of September 31, 2006 (see attached print-screen, also available at <http://web.archive.org/web/20060913213204/http://dfi.wa.gov/resources/rulemaking.htm>).

I relied on this information when I made the statement in the email, which is the subject of the DFI charge. I do not believe that my statement made in reliance on the information contained on the DFI website rises to the level of "fraudulent, coercive, or dishonest practices," under RCW 48.17.530(1)(h), nor does it constitute "incompetence, untrustworthiness, or financial irresponsibility."

ii. Wade Complaint

The Wade Complaint involved a claim by a borrower that she had not been given required disclosures by the WSMC loan originator handling her file, Troy Bowers. See, e.g., Findings of Fact 4.10-4.23, Amended Findings of Fact, Conclusions of Law, and Initial Order. I was not personally involved with this transaction. While I accept responsibility for Mr. Bowers' actions because he was WSMC's employee, I do not believe RCW 48.17.530(1)(h) applies, since I was not personally involved in the Wade transaction.

iii. Schroeder Complaint

WSMC made a loan to Schroeder, and then sold that loan to Countrywide Home Loans, Inc. Schroeder apparently did not receive notice from WSMC that her loan had been sold to Countrywide, and she made some mortgage payments to WSMC. By the time WSMC was made aware of the error, the nationwide housing bubble had burst, and WSMC was insolvent. However, Countrywide gave Schroeder credit for the payments she had made to WSMC, so that Schroeder did not suffer loss.

Although WSMC's record keeping was admittedly sloppy with respect to the way the Schroeder loan assignment was handled, there was no allegation in the DFI statement of charges that I personally did anything wrong. Again, I believe a close look at the Schroeder Complaint will confirm that my conduct was not in violation of RCW 48.17.50(1)(h).

b. DFI Case No. C-080-245-12-F001 (Office of Administrative Hearings Docket No. 2009-DFI-0045)

This matter involved Vintage Escrow, Inc., d/b/a Bellevue Escrow ("Bellevue Escrow"), of which I was the licensed designated escrow officer. The DFI charges resulted from an audit of Bellevue's Escrow books, which found a handful of technical violations. At the time, Bellevue Escrow was struggling, and its administrative staff was diminishing. At the same time, Bellevue Escrow was transitioning its financial accounts from one bank to another. As a result of these transitions, several clerical errors occurred, which resulted in the technical violations that are the subject of this DFI case.

There were no customer complaints, and no customer of Bellevue Escrow lost any funds. In its Final Decision, DFI acknowledged in its Finding of Facts no. 26 that "the Department acknowledges that Respondents' violations do not reflect any fraud or deceptive practice."

Based on the circumstances of this case, I do not believe this case can fairly be relied upon as evidence of "fraudulent, coercive, or dishonest practices," under RCW 48.17.530(1)(h), nor does demonstrate constitute "incompetence, untrustworthiness, or financial irresponsibility."

3. Other Considerations

Over the last 40 years, from 1976 to 2011, I have held several professional licenses for which moral character is evaluated. Over that time, aside from the DFI proceedings mentioned above, I have had no complaints against me that resulted in disciplinary action being taken against my professional license, nor has my personal character been put into question. In addition, under these licenses, I managed both property and funds in trust. A list of these professional licenses are provided below, and verification of each can be found on the website of the agency overseeing each.

- WA Real Estate Broker
- OR Real Estate Broker
- Escrow Officer

- WA Mortgage Broker
- WA Consumer Lending

Despite maintaining a virtually unblemished record for decades, the DFI proceedings were initiated in 2007 and 2009, threaten to keep me from a professional occupation, even in unrelated industries, for the indefinite future. The professional licenses that were at issue in those proceedings expired in 2008. Thus, coupled with the suspension required in the Orders, I have been effectively prohibited to work in the loan, escrow, and mortgage industries for 7 years. Should my application to pursue an insurance producer's license also be denied, the prohibition from engaging in the loan, escrow, and mortgage industries will be extended to the insurance industry, and the disciplinary action taken by one agency will be extended by another. This would significantly impair my ability to provide for my family in the occupation of my own choosing.

CONCLUSION

Since a Loan Originator License, Mortgage Broker License, and Escrow Agent and Officer's Licenses do not correspond to an insurance producer's license, RCW 48.17.50(1)(i) is not an appropriate basis for denial of my application.

In addition, the charges against me in both DFI proceedings involve either technical rule violations or activities in which I had no direct involvement. None of the charges claim that I personally used fraudulent, coercive, or dishonest practices. DFI even acknowledged that I did not engage in any fraud or deceptive practices. Accordingly, RCW 48.17.50(1)(h) should not be used as a basis for denial either.

Finally, other considerations, including my long career as a licensed professional without incident and the possible inequity of denying an unrelated professional license, even though I have met all other qualifications, weigh in favor of granting my application for an insurance producer's license.

Sincerely:



Steven W. Lusa

NEW SECTION

WAC 208-660-008 Exemption from licensing. (1) If I am licensed as an insurance agent under RCW 48.17.060, must I have a separate license to act as a loan originator or mortgage broker? Yes. You will need a separate license as a loan originator or mortgage broker if you are a licensed insurance agent and you do any of the following:

(a) Take a residential mortgage loan application for a mortgage broker;

(b) Offer or negotiate terms of a mortgage loan for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;

(c) Make a residential mortgage loan, or assist a person in obtaining or applying to obtain a residential mortgage loan, for compensation or gain; or

(d) Hold yourself out as being able to perform any of the above services.

(2) **Are insurance companies exempt from the Mortgage Broker Practices Act?** Yes. Insurance companies authorized to transact the business of insurance in this state by the Washington state office of the insurance commissioner are exempt from the Mortgage Broker Practices Act.

(3) **If I make residential mortgage loans under the Consumer Loan Act, chapter 31.04 RCW, am I exempt from the Mortgage Broker Practices Act?** If you are licensed under the Consumer Loan Act, any loans covered by that act are exempt from the Mortgage Broker Practices Act. Complying with the Consumer Loan Act includes abiding by the requirements and restrictions of that act and counting all loans originated and made under that act for purposes of your annual assessment.

(4) **If I am an exempt mortgage broker because my business has been approved by and is subject to audit by Fannie Mae or Freddie Mac, am I subject to licensing or any other sections of the act?** You are not required to have a license, but you are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. You are also subject to the investigation and enforcement authority of the director.

(5) If I am an exempt mortgage broker because my business has been approved by and is subject to audit by Fannie Mae or Freddie Mac, are my loan originators subject to licensing or any other sections of the act? Your loan originator employees are not required to have a license, but they are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. Your loan originator employees are also subject to the investigation and enforcement authority of the director.

Your independent contractor loan originators are not exempt under this section.

(6) Am I exempt from the Mortgage Broker Practices Act if I make or acquire residential mortgage loans solely with my own funds for my own investment without intending to resell the residential mortgage loans? You are exempt from the licensing requirements, but you are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. You are also subject to the investigation and enforcement authority of the director.

For purposes of this section, intent to resell residential mortgage loans is determined by your ability and willingness to hold the residential mortgage loans, indicated by, but not limited to, such measures as whether you have sold loans in the past, whether the loans conform to established secondary market standards for the sale of loans, and whether your financial condition would reasonably allow you to hold the residential mortgage loans.

(7) If I am an exempt mortgage broker because I am making or acquiring residential mortgage loans solely with my own funds for my own investment without intending to resell the residential mortgage loans, are my loan originators subject to licensing or any other sections of the act? Your loan originator employees are not required to have a license, but they are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the

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Washington State Department of Financial Institutions

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Rulemaking Activity

Welcome! This page provides information about new rules or changes in existing rules proposed by the Department of Financial Institutions.

Find rulemaking activity for individual divisions by using the links below:

- [Division of Banks](#)
- [Division of Consumer Services](#)
- [Division of Credit Unions](#)
- [Division of Securities](#)

You may read proposed rules drafts and comment on these drafts using our online comment form.

For detailed information, read [RCW 34.05 The Administrative Procedures Act](#), which governs agency rulemaking and [RCW 19.85 The Regulatory Fairness Act](#) which identifies when an agency must complete a Small Business Economic Impact Statement (SBEIS).

Generally, rulemaking takes place in three distinctive steps based on filings required by the Office of the Code Reviser:

1. A **CR-101 Pre-proposal Statement of Inquiry** is prepared. At this stage, proposed text is usually not available. Comment is invited on whether rules in the areas identified in the CR-101 are needed and, if so, the content of those rules.
2. A **CR-102 Rulemaking Proposal** is filed if it is decided to proceed. Proposed text is filed with the CR-102 and a comment period and public hearing are scheduled.
3. After the comment period and public hearing, a **CR-103 Rulemaking Order** will be filed if it is decided to proceed with the rule. The final text is included with the CR-103. The newly adopted rules are generally effective 31 days after filing with the Code Reviser.

Once a rule has been adopted, it becomes a part of the Washington Administrative Code (WAC).

Division of Banks

Rule Subject	Rule Status	Send a Comment	Upcoming Public Meeting Date
None at this time.			



Rule Subject	Rule Status	Send a Comment	Upcoming Public Meeting Date
Mortgage Brokers and Loan Originators	<p><u>House Bill 2340</u> signed March 9, 2006.</p> <p><u>CR-101 (PDF)</u> - Pre-proposal Statement of Inquiry</p> <p>Final rulemaking panel meeting held August 9, 2006.</p> <p>Rulemaking documents submitted September 2006:</p> <ul style="list-style-type: none"> • <u>CR-102 Cover Letter (PDF)</u> • <u>CR-102 (PDF)</u> • <u>Proposed Rules (PDF)</u> • <u>Small Business Economic Impact Statement (PDF)</u> 	<u>Comment</u>	<p>Rules Hearing - Thursday, October 26, 1-3 p.m., House of Representatives, John L. O'Brien Building, Hearing Room C, Olympia.</p> <p>See <u>Mortgage Broker Rulemaking</u> for additional information and background.</p>
Check Cashers, Check Sellers, Small Loan Lenders	<p><u>CR-102</u> - Proposed text modernizing, clarifying and updating <u>WAC 208-630</u>.</p> <p><u>CR-103</u> - Rulemaking Order [effective 11/17/2005], <u>cover memo</u>, and <u>text</u>.</p>	Comment period is over.	Meeting was held October 17, 2005.
Consumer Loan Companies	<p><u>CR-102</u> - Memo and proposed text updating and clarifying <u>WAC 208-620</u>.</p> <p><u>CR-103</u> - Rulemaking Order [effective 03/01/2006], <u>cover memo</u>, and <u>text</u></p>	Comment period is over.	Meeting was held January 24, 2006.
Escrow Rules - Exam Fees: Allows hourly audit fee.	<p><u>CR-101</u> - Pre-proposal Statement of Inquiry</p> <p><u>CR-101</u> - Proposed Text Amending WAC 208-680G-050</p> <p><u>CR-102</u> - Proposed Rule Making</p> <p><u>CR-102</u> - Supplement</p> <p><u>CR-102</u> - Economic Impact Statement</p> <p><u>CR-102</u> - Proposed Rule Making (continuance of hearing)</p>	Comment period is over.	

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[CR-103](#) - Rule Making Order
 [Effective 2/10/2005]

Escrow Rules - Quarterly Reports, E&O Alternatives and Unfair Practices: Rule concerning periodic reporting.

[CR-101](#) - Pre-proposal Statement of Inquiry

[CR-101](#) - Proposed Text Amending WAC 208-680E-025

Comment period is over.

[CR-101](#) - Proposed Text Amending WAC 208-680F-020

[CR-101](#) - Proposed Text Amending WAC 208-680G-060

[CR-102](#) - Proposed Rule Making

[CR-102](#) - Supplement

[CR-102](#) - Proposed Rule Making (continuance of hearing)

[CR-102](#) - Supplement (continuance of hearing)

[CR-103](#) - Rule Making Order
 [Effective 2/10/2005]

Note: You may also view the [Concise Explanatory Statement](#) pertaining to the above escrow rulemaking, which explains the reasons for adopting the rules, describes and explains the difference between the rules as proposed and adopted, and summarizes and responds to comments received on the proposed rules.

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Division of Credit Unions

Rule Subject	Rule Status	Send a Comment	Upcoming Public Meeting Date
Credit Union Private Share Insurance	CR-101 - Pre-proposal Statement of Inquiry submitted June 30, 2006 (PDF)	Comment	To be determined

[Introductory Letter](#) to Credit Unions (PDF)

Note: When the Division of Credit Unions files a CR-101, -102, or -103 form, it promptly distributes a copy of the filing to each state-chartered credit union.

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Division of Securities

Note: Beginning July 1, 2006, the Division of Consumer Services administers the Escrow Agent Registration Act, [RCW](#)

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Rule Subject	Rule Status	Send a Comment	Public Meeting Date
Multijurisdictional Disclosure System Rule Changes: Proposes to amend WAC 460-11A to maintain uniformity with other states concerning the registration of certain Canadian issuers. (<u>WAC 460-11A</u>)	<u>CR-101</u> - Pre-proposal Statement of Inquiry	Comment	
	<u>CR-102</u> - Proposed Rule Making	Comment period is over.	
Toronto Stock Exchange: Exchange and national market system exemption.	<u>CR-103</u> - Rule Making Order [Effective 4/9/2004]		
IA Custody Rule: Proposes to amend WAC 460-24A-105, concerning requirements imposed on investment advisers who take custody of client funds or securities.	<u>CR-101</u> - Pre-proposal Statement of Inquiry	Comment period is over.	

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DFI