

Chapter 19.144 RCW
MORTGAGE LENDING AND HOMEOWNERSHIP

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RCW 19.144.005 Findings—2008 c 108. The legislature finds that responsible mortgage lending and homeownership are important to the citizens of the state of Washington. The legislature declares that protecting our residents and our economy from the threat of widespread foreclosures and providing homeowners with access to residential mortgage loans on fair and equitable terms is in the public interest. The legislature further finds that chapter 108, Laws of 2008 is necessary to encourage responsible lending, protect borrowers, and preserve access to credit in the residential real estate lending market. [2008 c 108 s 1.]

RCW 19.144.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adjustable rate mortgage" or "ARM" means a payment option ARM or a hybrid ARM (commonly known as a 2/28 or 3/27 loan).

(2) "Application" means the same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500, as used in an application for a residential mortgage loan.

(3) "Borrower" means any person who consults with or retains a person subject to this chapter in an effort to seek information about obtaining a residential mortgage loan, regardless of whether that person actually obtains such a loan.

(4) "Department" means the department of financial institutions.

(5) "Director" means the director of the department of financial institutions.

(6) "Financial institution" means commercial banks and alien banks subject to regulation under Title 30A RCW, savings banks subject to regulation under Title 32 RCW, savings associations subject to regulation under Title 33 RCW, credit unions subject to regulation under chapter 31.12 RCW, consumer loan companies subject to regulation

under chapter 31.04 RCW, and mortgage brokers and lenders subject to regulation under chapter 19.146 RCW.

(7) "Fully indexed rate" means the index rate prevailing at the time a residential mortgage loan is made, plus the margin that will apply after the expiration of an introductory interest rate.

(8) "Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan or residential mortgage loan modification including, but not limited to, solicitation, application, or origination; negotiation of terms; third-party provider services; underwriting; signing and closing; and funding of the loan. Documents involved in the mortgage lending process include, but shall not be limited to, uniform residential loan applications or other loan applications, appraisal reports, settlement statements, supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, payroll stubs, and any required disclosures.

(9) "Negative amortization" means an increase in the principal balance of a loan caused when the loan agreement allows the borrower to make payments less than the amount needed to pay all the interest that has accrued on the loan. The unpaid interest is added to the loan balance and becomes part of the principal.

(10) "Person" means individuals, partnerships, associations, limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.

(11) "Residential mortgage loan" means an extension of credit secured by residential real property located in this state upon which is constructed or intended to be constructed, a single-family dwelling or multiple-family dwelling of four or less units. It does not include a reverse mortgage or a borrower credit transaction that is secured by rental property. It does not include a bridge loan. It does not include loans to individuals making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment. For purposes of this subsection, a "bridge loan" is any temporary loan, having a maturity of one year or less, for the purpose of acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

(12) "Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include, but are not limited to, forbearances; repayment plans; changes in interest rates, loan terms, or loan types; capitalizations of arrearages; or principal reductions.

(13) "The interagency guidance on nontraditional mortgage product risks" means the guidance document issued in September 2006 by the office of the comptroller of the currency, the board of governors of the federal reserve system, the federal deposit insurance corporation, the office of thrift supervision, and the national credit union administration, and the guidance on nontraditional mortgage product risks released in November 2006 by the conference of state bank supervisors and the American association of residential mortgage regulators.

(14) "The statement on subprime mortgage lending" means the guidance document issued in June 2007 by the office of the comptroller of the currency, the board of governors of the federal reserve system, the federal deposit insurance corporation, the office of thrift supervision, and the national credit union administration, and the statement on subprime mortgage lending released in July 2007 by the

conference of state bank supervisors, the American association of residential mortgage regulators, and the national association of consumer credit administrators. [2015 c 229 s 2; 2008 c 108 s 2.]

RCW 19.144.020 Disclosure requirements—Department duties. (1)

In addition to any other requirements under federal or state law, a residential mortgage loan may not be made unless a disclosure summary of all material terms, as adopted by the department in subsection (2) of this section, is placed on a separate sheet of paper and has been provided by a financial institution to the borrower within three business days following receipt of a loan application. If any material terms of the residential mortgage loan change before closing, a new disclosure summary must be provided to the borrower within three days of any such change or at least three days before closing, whichever is earlier.

(2) The department shall adopt, by rule, a disclosure summary form with a content and format containing simple, plain-language terms that are reasonably understandable to the average person without the aid of third-party resources and shall include, but not be limited to, the following items: Fees and discount points on the loan; interest rates of the loan; broker fees; the broker's yield spread premium as a dollar amount; whether the loan contains prepayment penalties; whether the loan contains a balloon payment; whether the property taxes and property insurance are escrowed; whether the loan payments will adjust at the fully indexed rates; and whether there is a price added or premium charged because the loan is based on reduced documentation.

(3) The director may, at his or her discretion, require by rule other information relating to a residential mortgage loan to be included in the disclosure summary if the director determines that it is necessary to protect consumers. The director may adopt rules creating a standard form of disclosure summary to be used as a guide by financial institutions in fulfilling the requirements of this section.

(4) Disclosure in compliance with the real estate settlement procedures act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec. 3500, as it exists on June 7, 2012, shall be deemed to comply with the disclosure requirements of this section. If needed, the director may adopt rules to implement and incorporate other changes in the disclosure summary as necessary due to federal law. [2012 c 17 s 18; 2008 c 108 s 3.]

RCW 19.144.030 Interagency guidance on nontraditional mortgage product risks and the statement on subprime mortgage lending. (1) The department shall apply the interagency guidance on nontraditional mortgage product risks and the statement on subprime mortgage lending to financial institutions.

(2) (a) Financial institutions subject to this chapter shall adopt and adhere to internal policies and procedures that are reasonably intended to achieve the objectives set forth in the interagency guidance on nontraditional mortgage product risks and the statement on subprime mortgage lending.

(b) The department shall adopt rules as required to implement this section. [2008 c 108 s 4.]

RCW 19.144.040 Prepayment penalty or fee—Limitation. A financial institution may not make or facilitate the origination of a residential mortgage loan that includes a prepayment penalty or fee that extends beyond sixty days prior to the initial reset period of an adjustable rate mortgage. [2008 c 108 s 5.]

RCW 19.144.050 Negative amortization—Limitation. A financial institution may not make or facilitate a residential mortgage loan that includes any provisions that impose negative amortization and which are subject to the interagency guidance on nontraditional mortgage product risks and the statement on subprime mortgage lending. [2008 c 108 s 6.]

RCW 19.144.060 Risk grade determination. A person licensed or subject to licensing, or otherwise subject to regulation pursuant to chapter 19.146 RCW, or a consumer loan company licensed or subject to licensing under chapter 31.04 RCW may not steer, counsel, or direct any borrower to accept a residential mortgage loan product with a risk grade less favorable than the risk grade that the borrower would qualify for based on the licensee or other regulated person's then current underwriting guidelines, prudently applied, considering the information available to the licensee or other regulated person, including the information provided by the borrower. A licensee or other regulated person has not violated this requirement if the risk grade determination applied to a borrower is reasonably based on the licensee or other regulated person's underwriting guidelines for the borrower's appropriate risk grade category and the borrower is offered choices of residential mortgage loan products within the borrower's appropriate risk grade category. [2008 c 108 s 7.]

RCW 19.144.070 Rule-making authority. The department may adopt rules necessary to implement this chapter, including but not limited to the authority to identify which sections of chapter 108, Laws of 2008 apply to open-end credit plans. [2008 c 108 s 8.]

RCW 19.144.080 Unlawful actions—Fraud, misrepresentation, deceptive practices. (1) It is unlawful for any person in connection with the mortgage lending process to directly or indirectly:

(a) (i) Employ any scheme, device, or artifice to defraud or materially mislead any borrower during the lending process; (ii) defraud or materially mislead any lender, defraud or materially mislead any person, or engage in any unfair or deceptive practice toward any person related to the mortgage lending process; or (iii) obtain property by fraud or material misrepresentation during the mortgage lending process;

(b) Knowingly make any misstatement, misrepresentation, or omission related to the mortgage lending process knowing that it may be relied on by a mortgage lender, borrower, or any other party related to the mortgage lending process;

(c) Use or facilitate the use of any misstatement, misrepresentation, or omission, knowing the same to contain a misstatement, misrepresentation, or omission, related to the mortgage

lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party related to the mortgage lending process;

(d) Receive any proceeds or anything of value in connection with a residential mortgage closing that such person knew resulted from a violation of subsection (1), (2), or (3) of this section [(a), (b), or (c) of this subsection];

(e) File or cause to be filed with the county recorder or the official registrar of deeds of any county of this state any document such person knows to contain a material misstatement, misrepresentation, or omission;

(f) Violate RCW 31.04.297(3); or

(g) Knowingly alter, destroy, shred, mutilate, or conceal a record, document, or other object, or attempt to do so, with the intent to impair the investigation and prosecution of this crime.

(2) Each crime prosecuted under this section shall be punished separately under chapter 9.94A RCW, unless it is the same criminal conduct as any other crime under RCW 9.94A.589.

(3) Every person who, in the commission of mortgage fraud as described in this section, commits any other crime may be punished for that other crime in addition to mortgage fraud, and may be prosecuted for each crime separately. [2015 c 229 s 3; 2010 c 35 s 12; 2008 c 108 s 9.]

Effective date—2010 c 35: See RCW 31.04.904.

RCW 19.144.090 Criminal penalties—Dates of limitation—Venue—Civil penalties and damages—Correction of public record. (1) Any person who knowingly violates RCW 19.144.080 or who knowingly aids or abets in the violation of RCW 19.144.080 is guilty of a class B felony punishable under RCW 9A.20.021(1)(b). Mortgage fraud is a serious level III offense per chapter 9.94A RCW.

(2) No information may be returned more than (a) five years after the violation, or (b) three years after the actual discovery of the violation, whichever date of limitation is later.

(3) For purposes of venue under this chapter, any violation of RCW 19.144.080 and 31.04.297(3), is considered to have been committed:

(a) In the county in which the residential property for which a residential mortgage loan is being sought is located; (b) in any county in which any act was performed in furtherance of the violation; or (c) in any county in which a document containing a misstatement, misrepresentation, or omission of a material fact is filed with the county recorder or the official registrar of deeds.

(4) Any person who violates this chapter is subject to civil forfeiture statutes.

(5) Any person who violates RCW 19.144.080 or 31.04.297(3) is liable for civil damages of five thousand dollars or actual damages, whichever is greater, including costs to repair the victim's credit record and quiet title on the residential property that is involved in the prosecution, and reasonable attorneys' fees as determined by the court.

(6) In a proceeding under RCW 19.144.080 in which there has been a conviction, the sentencing court may issue such orders as necessary to correct a public record that contains false information resulting

from a violation of the referenced sections. [2015 c 229 s 4; 2008 c 108 s 10.]

RCW 19.144.100 Unlawful actions—Proceeds and interest in real property—Criminal penalties. (1)(a) It is unlawful for a person to use or invest proceeds, or any part of proceeds, knowing that the proceeds, or any part of the proceeds, were derived, directly or indirectly, from a pattern of mortgage fraud activity, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(b) A violation of this subsection is a class B felony.

(2)(a) It is unlawful for a person to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property knowing the interest or control was obtained through a pattern of mortgage fraud.

(b) A violation of this subsection is a class B felony.

(3)(a) It is unlawful for a person to knowingly conspire or attempt to violate subsection (1) or (2) of this section.

(b) A violation of this subsection is a class C felony. [2008 c 108 s 11.]

RCW 19.144.110 Civil and administrative penalties. Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law. [2008 c 108 s 12.]

RCW 19.144.120 Director—Powers—Enforcement of chapter. The director or the director's designee may, at his or her discretion, take such actions as provided for in Titles *30, 32, and 33 RCW, and chapters 31.12, 31.04, and 19.146 RCW, to enforce, investigate, or examine persons covered by this chapter. [2008 c 108 s 13.]

***Reviser's note:** Title 30 RCW was recodified and/or repealed pursuant to 2014 c 37, effective January 5, 2015.