

WAC 208-660-510 Director and department powers—Examination authority. (1) **Why is the department authorized to examine my business?** The department is authorized to examine your business to determine your compliance with the act.

(2) **When may the department examine my business?** The department may examine your business at any time.

(3) **Will the department give me advance notice of an examination?**

(a) The department will generally give you advance notice of at least thirty days of a routine examination to allow you to compile the requested documents and prepare for the examiner's arrival. However, you and the department may agree on an earlier date for the examination. Extensions of time beyond that are at the director's discretion.

(b) The department will not give you advance notice of "for cause" examinations. "For cause" means the department may have reason to believe you have violated the act.

(4) **What are the protocols for an examination of my business?** The basic protocols include, but are not limited to:

(a) **Frequency of examinations.** The department's examination frequency will be determined using appropriate measurements of risk and random selection.

The primary purpose for measuring risk to determine the examination schedule and frequency cycle is to help the department identify those mortgage brokers whose compliance practices display potential weaknesses requiring examination attention. These same measurements of risk assist the department in determining the need for expanding the scope of an examination or expanding the initial examination time period. The protocols for measuring risk may include, but are not limited to:

- (i) The history of licensing;
- (ii) Known enforcement issues or problems;
- (iii) The number and severity of complaints;
- (iv) The licensee's responsiveness to department inquiries;
- (v) The licensee's volume of loan activity;
- (vi) The number of licensed locations and staff size;
- (vii) Prior examination or investigation results; and
- (viii) The existence of internal and external systems and controls to ensure compliance.

(b) **Advance notice.** You will generally receive a department notice listing the documents the department will examine at your business. Your preparation before the arrival of the department examiners will help the examination proceed more efficiently. The department will make every effort to minimize the impact of the examination on your business. Information requirements may change to accommodate changes to state or federal law or as risk factors dictate. Any data point compiling system you use should allow flexibility in reporting the data points to meet the changes.

(c) **A preexamination meeting at your business.** The department examiner(s) will meet with you upon arrival at your business location.

(d) **The on-site review at your business.** The department examiner will conduct the examination of your business. When directed to do so by the examiner, you must provide the examiner with requested information.

(e) **An exit meeting after you have provided all the requested information, and the examiner has completed the preliminary analysis.** The examiner(s) may request additional information from you. After re-

ceiving that information and completing the preliminary analysis, the examiner may discuss the preliminary analysis with you.

(f) **Post examination work and report.** The department examiner will prepare an examination report and submit the report and examination file to the review examiner. After making any necessary changes, the department will deliver the report to you unless the violations are deemed serious and the file is delivered to enforcement.

(g) **Notification of violations and opportunity for response.** The department will document in the examination report any violations or deficiencies identified during the examination. You will have an opportunity to respond to the examination findings and any violations or deficiencies unless the violations are deemed serious or are repeat violations and the file is delivered to enforcement.

(h) **A possible referral to enforcement.** While any violation of the act or these rules may be referred to enforcement, it is usually the case that only serious or repeat violations are referred. An enforcement action may result in any, or all, or any combination of the following: A suspension or revocation of your license, the imposition of fines, the payment of restitution, a ban from the mortgage broker industry.

(5) **What is the scope of the examination of my business?** In general, the scope of the examination will include, but is not limited to:

(a) Reviewing trust accounting compliance.

(b) Reviewing loan files.

(c) Conducting interviews to better understand the business, solicitation practices, transactional events, disclosure compliance, and complaint resolution.

(d) Reviewing the business books and records, including employee records.

(6) **When would the department expand the scope of an examination of my business?** If, during an examination, the department finds a clear need to expand the scope of the examination, it may do so. Two examples of a clear need to expand the scope of an examination are:

(a) When the department finds an apparent violation of trust accounting.

(b) When apparent violations of the prohibited practices section of the act are discovered. See RCW 19.146.0201 for prohibited practices.

(c) When there are clear systemic violations requiring greater review than is possible in a routine examination.

These examples are illustrative only and do not limit the circumstances under which the department may decide to expand the scope of an examination.

(7) **Will I receive notice if the department decides to expand the scope of the examination of my business?** Yes. The department will provide you with five business days' written notice if examination findings clearly identify the need to expand the scope of the examination. See subsection (6) of this section for examples of when the department may decide to expand the scope of the examination.

The expanded examination may include a different location and may go beyond the initial five-year time limit.

(8) **Will I have to pay for an examination of my business?**

(a) If you are located in Washington, you do not have to pay for the costs of the examination.

(b) If you are located outside of Washington, you will have to pay for the examiner's travel costs. Travel costs include, but are not

limited to, transportation costs, meals, and lodging. Travel reimbursement rates are established by the Washington state office of financial management.

(c) If your examination was the result of a referral from enforcement, the department may charge an investigative fee. The department will not charge an investigation fee in a complaint investigation or examination if it is determined that no violation occurred, or when the licensee implements a remedy satisfactory to the complainant and the department, and no department order has been issued.

The department will send you an invoice and you will have thirty days to reimburse the department for the examination and the travel costs. See WAC 208-660-550, Department fees and costs.

(9) May the department consider reports made by independent certified professionals instead of conducting their own examination of a mortgage broker business? Yes. Instead of examining a mortgage broker's business, the department may consider the reports of independent certified professionals who have examined the mortgage broker using the same standards used by the department (see the standards in the department's *Mortgage Broker Examination Manual*). The department may then prepare a report of examination that incorporates all or part of the independent certified professional's reports, or the examiner may expand the scope of the examination.

(10) What are the pros and cons of hiring my own independent certified professional versus waiting for a department examination? The department's cost of examination will not be charged to you directly, although you may experience some minor business interruption. If you hire your own independent certified professional, you will incur the cost of that examination; however, you will control the time and manner in which the examination is conducted. The greatest benefits you may derive from hiring your own independent certified professional are:

(a) Early notice of problems you may encounter during an examination;

(b) The ability to correct deficiencies or problems at an early stage when the greatest benefit of correction may be derived;

(c) The early implementation of a sound compliance program; and

(d) The ability to control the timing for your convenience.

(11) If I want the department to consider an independent certified professional's report instead of examining my business, how must I make that request, and who submits the report to the department? When you receive notice from the department that your business is scheduled for an examination, you must notify the department that you wish the department to consider the report of an independent certified professional instead of the department examining your business. The independent certified professional must then submit their report directly to the department, in a form acceptable to the department.

(12) How may the department determine if the independent certified professional's report meets the standards of examination established by the department? The department will consider the sufficiency of the report submitted by the independent certified professional and may require the licensee to provide additional information.

(13) If the independent certified professional's report is missing information, how may the department obtain the missing information? The department may interview, obtain records from, or otherwise contact the licensee, or with the licensee's permission contact the independent certified professional, if additional information is required for the department's review of the report.

(14) **What will the department do if the independent certified professional's report is not sufficient?** If the department determines the report is not sufficient, the department will notify the licensee and schedule an examination of the business.

(15) **What will the department do if the independent certified professional's report is sufficient?** If the department determines the report is sufficient, the department will prepare a report of examination that incorporates all or part of the independent certified professional's report.

(16) **May the department retain professionals or specialists to examine a licensee?** Yes. The department, at its own expense, may retain attorneys, accountants, or other professionals or specialists as examiners, auditors, or investigators to examine a licensee.

(17) **Do I receive any reports from the examination?** Yes.

(a) When you have provided all the requested information, and the examiner has completed the preliminary analysis, the examiner will issue an exit report of examination containing preliminary examination findings.

(b) After additional department review, including the consideration of new information, if any, the department will issue a final report of examination.

(18) **Must I do anything as a result of the examination?** Yes. You will receive instructions from the department on the actions you must take. For example, if adverse findings or deficiencies were cited in the report of examination, you must respond to those findings.

(19) **How do I respond to findings in a report of examination?** You must respond in writing within thirty days of the date the department issues the report of examination. Your response must address any deficiencies noted in the report and describe the corrective actions you have taken.

(20) **What will happen if I do not respond to the report of examination?** If you fail to respond to the report of examination, you may be referred to enforcement where further administrative actions may be taken against you.

[Statutory Authority: RCW 43.320.040 and 19.146.225. WSR 13-24-023, § 208-660-510, filed 11/22/13, effective 1/1/14. Statutory Authority: RCW 43.320.040, 19.146.223, and 2009 c 528. WSR 09-24-091, § 208-660-510, filed 12/1/09, effective 1/1/10. Statutory Authority: RCW 43.320.040, 19.146.223, 2006 c 19. WSR 06-23-137, § 208-660-510, filed 11/21/06, effective 1/1/07.]