

WAC 208-660-006 Definitions. What definitions are applicable to these rules? Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

(1) "Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

(2) "Advertising material" means any form of sales or promotional materials used in connection with the mortgage broker business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; or internet pages or social media pages.

(3) "Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be in writing or electronically submitted, including a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

(4) "Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value range, exclusion of a value, or a minimum value.

(5) "Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker.

(6) "Branch office license" means a branch office license issued by the director allowing the licensee to conduct a mortgage broker business at the location indicated on the license.

(7) "Business day" means Monday through Friday excluding federally recognized bank holidays.

(8) "Compensation or gain" means remuneration, benefits, or an increase in something having monetary value including, but not limited to, moneys, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing moneys that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special or unusual bank or financing terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation. "Compensation or gain" is not evaluated solely on a loan by loan basis.

For example, a realtor advertising that buyers using their services will receive free loan origination assistance is doing so in the anticipation of "compensation or gain" through increased real estate business.

(9) "Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

For purposes of this definition, the CLI system includes computer hardware or software, an internet-based system, or any combination of these, which provides information to consumers about residential mortgage interest rates and other loan terms which are available from another person.

(10) "Computer loan information system provider" or "CLI provider" is any person who provides a computer loan information service, either directly, or as an owner-operator of a CLI system, or both.

(11) "Consumer Protection Act" means chapter 19.86 RCW.

(12) "Control" including the terms "controls," "is controlled by," or "is under common control" means the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person is presumed to control another person if such person is:

((+)) (a) A general partner, officer, director, or employer of another person;

((+)) (b) Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than (~~twenty~~) 20 percent of the voting interests of another person; or

((+)) (c) Has similar status or function in the business as a person in this definition.

(13) "Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:

((+)) (a) Has been convicted of the crime in any jurisdiction;

((+)) (b) Has been convicted of a crime which, if committed within this state would constitute a crime under the laws of this state;

((+)) (c) Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or

((+)) (d) Has been found guilty of a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

(14) "Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

(15) "Discount points" or "points" means a fee paid by a borrower, upfront or at closing, to a lender to reduce the interest rate of a residential mortgage loan. Pursuant to Regulation X, discount points are to be reflected on the good faith estimate or loan estimate and applicable settlement statement as points and as a dollar amount.

(16) "Division of consumer services" means the division of consumer services within the department of financial institutions, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

(17) "Dwelling" means the same as in Regulation Z implementing the Truth in Lending Act which is a residential structure that con-

tains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile or manufactured home, and trailer, if it is used as a residence. See 12 C.F.R. 1026.2.

(18) "Examination" or "compliance examination" means the examination performed by the division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules to determine whether the licensee is in compliance with applicable laws and regulations.

(19) "Federal statutes and regulations" includes, among others, the following:

((+)) (a) "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

((+)) (b) "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 C.F.R. Part 1002.

((+)) (c) "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

((+)) (d) "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 41-58.

((+)) (e) "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

((+)) (f) "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

((+)) (g) "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 C.F.R. Part 203.

((+)) (h) "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

((+)) (i) "Homeowners Protection Act" means the Homeowners Protection Act of 1998 (HPA), 12 U.S.C. Sec. 4901 et seq.

((+)) (j) "MAP" means the Mortgage Acts and Practices - Advertising, Regulation N, 12 C.F.R. Part 1014.

((+)) (k) "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 12 C.F.R. Part 1024.

((+)) (l) "S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289, effective July 30, 2008, codified at 12 U.S.C. 5101; Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

((+)) (m) "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telemarketing Sales Rule, 16 C.F.R. Part 310.

((+)) (n) "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 C.F.R. Part 1026.

(20) "Federally insured financial institution" means a savings bank, savings and loan association, or credit union, whether state or federally chartered, or a federally insured bank, authorized to conduct business in this state.

(21) "Financial misconduct," for the purposes of the act, means a criminal conviction for any of the following:

((+)) (a) Any conduct prohibited by the act;

((+)) (b) Any conduct prohibited by statutes governing mortgage brokers in other states, or the United States, if such conduct would constitute a violation of the act;

((+)) (c) Any conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers; or

((+)) (d) Any conduct commonly known as white collar crime, including, but not limited to, embezzlement, identity theft, mail or wire fraud, insider trading, money laundering, check fraud, or similar crimes.

(22) "License number" means the NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID 12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

(23) "Licensed location" means a main office or branch office, including an individual loan originator's residence, where the licensee conducts business under the act with Washington residents or Washington residential real estate and the licensee has obtained a main or branch license through NMLS for that location.

(24) "Loan originator licensee" means a natural person who is licensed as a loan originator or is subject to licensing under RCW 19.146.200 or who is acting as a loan originator subject to any provisions of the act.

(25) "Loan originator's residence" means a loan originator's primary or secondary residence located in the United States.

(26) "Material litigation" means any litigation that would be relevant to the director's ruling on an application for a license including, but not limited to, criminal or civil action involving dishonesty or financial misconduct.

(27) "Mortgage broker licensee" means a person that is licensed as a mortgage broker or is subject to licensing under RCW 19.146.200 or is acting as a mortgage broker subject to any provisions of the act.

(28) "Mortgage Broker Practices Act" means chapter 19.146 RCW.

(29) "NMLS" means the Nationwide Multistate Licensing System and Registry, Nationwide Mortgage Licensing System, NMLSR, or such other name or acronym as may be assigned to the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in the mortgage and other financial services industries.

(30) "Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

(31) "Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan.

(32) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ((ten)) 10 percent or greater interest in a partnership,

company, association, or corporation, and the owner of a sole proprietorship.

(33) "Rate lock agreement" means an agreement with a borrower made by a mortgage broker, loan originator, or lender in which the mortgage broker, loan originator, or lender agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

(34) "Registered agent" means a person located in Washington appointed to accept service of process for a licensee.

(35) "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of:

(a) A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and

(b) Is registered with, and maintains a unique identifier through, the NMLS.

(36) "Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

(*) (a) Residential real estate includes, but is not limited to:

(-) (i) A single family home;

(-) (ii) A duplex;

(-) (iii) A triplex;

(-) (iv) A fourplex;

(-) (v) A single condominium in a condominium complex;

(-) (vi) A single unit within a cooperative;

(-) (vii) A manufactured home; or

(-) (viii) A fractile, fee simple interest in any of the above.

(*) (b) Residential real estate does not include:

(-) (i) An apartment building or dwelling of five or more units; or

(-) (ii) A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings.

(~~"Table-funding"~~) (37) "Table funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned.

(38) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

(39) "Underwriting" means a lender's detailed credit analysis preceding the offering or making of a loan. The analysis may be based on information furnished by the borrower (employment history, salary, financial statements), the borrower's credit history from a credit report, the lender's evaluation of the borrower's credit needs and abil-

ity to pay, and an assessment of the collateral for the loan. While mortgage brokers may have access to various automated underwriting systems to facilitate an evaluation of the borrower's qualifications, the mortgage broker who qualifies or approves a borrower in this manner is not the underwriter of the loan and cannot charge a fee for underwriting the loan. Third-party charges the mortgage broker incurs in using or accessing an automated system to qualify or approve a borrower may, like other third-party expenses, be passed on to the borrower.

AMENDATORY SECTION (Amending WSR 19-21-142, filed 10/22/19, effective 11/24/19)

WAC 208-660-106 How does the department interpret the definition of loan processor in RCW 19.146.010(12)? "Loan processor" (~~(or "underwriter")~~) means an individual who performs clerical or support duties as an employee (not as an independent contractor) of a person licensed or exempt from licensing and at the direction of and subject to the supervision and instruction of an individual licensed, or exempt from licensing, under this chapter. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms. A loan processor (~~(or underwriter)~~) engaged as an independent contractor by a licensee must hold a mortgage loan originator license. See WAC 208-660-300(13).

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

WAC 208-660-300 Loan originators—General. (1) **May I work as a loan originator for more than one mortgage broker?** Yes.

(2) **How do I obtain approval to work for more than one mortgage broker?** Using the NMLS, the company will submit a sponsorship request. The department will notify you and others associated with your license upon approval of your request. The NMLS will charge a fee for the additional relationship. See also WAC 208-660-550.

(3) **If I work as a loan originator for more than one mortgage broker, may I take an application from a borrower without identifying one specific mortgage broker?** No. You may take an application for only one mortgage broker at a time in any one transaction. Prior to presenting yourself to a specific borrower as licensed to originate mortgage loans, you must state who you represent. You must clearly identify the mortgage broker by name and address on the application, on all disclosures, authorization forms, and other material provided to the borrower. There must be no confusion by the borrower as to which mortgage broker you are representing at any given time.

(4) **May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location(~~(. The licensed~~

~~location can be the main company office, or any licensed branch)) unless you conduct activity under the act from your residence pursuant to WAC 208-660-505.~~

(5) May a loan originator transfer loan files to a mortgage broker other than the mortgage broker the loan originator is associated with? No. Only the borrower may submit a written request to the licensed mortgage broker to transmit the borrower's selected information to another mortgage broker or lender. The licensed mortgage broker must transmit the information within five business days after receiving the borrower's written request.

(6) Who owns loan files? Loan files are the property of the mortgage broker named on the loan application and the mortgage broker must keep the original files and documents.

(7) May I act as a loan originator and a real estate agent or with someone in the same real estate agency in the same transaction or for the same borrower in different transactions? Yes, for required disclosure language see RCW 19.146.0201(14).

(8) As a loan originator, may I be paid directly by the borrower for my services? No. As a loan originator, you may not be paid any compensation or fees directly by the borrower.

(9) May a loan originator charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower? No. A loan originator may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

(10) May a loan originator bring a lawsuit against a borrower for the collection of compensation? No. Only licensed mortgage brokers, or exempt mortgage brokers, may bring collection actions against borrowers to collect compensation.

(11) May I work as a licensed loan originator for a mortgage broker located out of the state? Yes. You may originate loans for any mortgage broker who sponsors you and who is licensed under Washington law.

(12) May a licensed loan originator hire employees or independent contractors to assist in the mortgage broker licensee's activities? No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

(13) Do loan processors have to be licensed as loan originators? W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed mortgage loan originator (including the designated broker) and do not hold themselves out as able to conduct the activities of a licensed mortgage broker or loan originator. Independent contractor loan processing companies must be licensed as a mortgage broker, have a designated broker, and have at least one licensed mortgage loan originator (who can be the designated broker). The W-2 employee loan processors are not then required to be licensed mortgage loan originators. Individual independent contractor loan processors must be licensed as mortgage loan originators, be sponsored by a licensed mortgage broker, and be supervised by that licensee's licensed mortgage loan originator (including the designated broker).

(14) **May loan processors work on files from an unlicensed location?** A loan processor may work on loan files from an unlicensed location under the following circumstances:

(a) The loan files are in electronic format and the loan processor accesses the files directly from the licensed mortgage broker's main computer system. The loan processor may not maintain any electronic files on any computer system other than the system belonging to the licensed mortgage broker.

(b) The loan processor does not conduct any of the activities of a licensed loan originator.

(c) The licensed mortgage broker must have safeguards in place for the computer system that safeguards borrower information.

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-420 Out-of-state mortgage brokers and loan originators. (1) **May I be a licensed mortgage broker in Washington without a physical office in Washington?** Yes. You are not required by the act to have a physical location in Washington.

(2) **May I be a licensed mortgage broker in Washington and have branch offices both in Washington and outside of Washington?** Yes. However, each of your branch offices that offer Washington residential mortgage loans must hold a Washington license, even if the location is outside Washington.

(3) **May my mortgage broker business be conducted entirely on the internet?** Yes. But you must have a license for all locations including those that offer loans by mail or internet.

(4) **May I work as a loan originator in Washington if I do not have a physical location in Washington?** Yes. You may originate Washington loans from any licensed location ((licensed under the act)) or your residence pursuant to WAC 208-660-505, inside or outside of Washington, as long as the company that sponsors you is licensed to do business in Washington.

(5) **May I work as a licensed loan originator for a licensed mortgage broker that is out of the state?** Yes, as long as ((the location from which)) you work ((is)) from a licensed ((under the act)) location or your residence pursuant to WAC 208-660-505.

(6) **If my mortgage broker business is not located in Washington, where must I keep my records?** If your business is located outside of Washington, you may either maintain the books and records at a location in Washington, or pay the department's travel expenses to the out-of-state location to examine the books and records. Travel expenses may include, but are not limited to, transportation, meals, and lodging.

(7) **What additional requirements must I comply with if my business does not have a physical location in Washington?** You must continuously maintain a registered agent in Washington and provide the department, through the NMLS, with the registered agent's name, physical and mailing address, and written consent to be the registered agent.

(8) **How do I change the information about my registered agent?** You must update the information in the NMLS within ~~((ten))~~ 10 business days from the change.

(9) **If I am a registered agent under the act, what must I do to resign as registered agent?**

(a) Provide the department with a statement of resignation at least (~~thirty-one~~) 31 days prior to the intended effective date of your resignation.

(b) Provide a copy of the statement of resignation to the licensed mortgage broker.

(c) The department will terminate your appointment on the (~~thirty-first~~) 31st day after the date on which the statement of resignation was delivered.

NEW SECTION

WAC 208-660-505 What is required for a Washington licensed loan originator to work from their residence without licensing the residence as a branch location? A licensed company may permit a sponsored and licensed loan originator to work from the loan originator's residence without licensing it as a branch location under RCW 19.146.265 and subject to the following conditions:

(1) The company must have written policies and procedures that include appropriate risk-based monitoring and oversight processes for the supervision of loan originators working from their residence without licensing it as a branch location. The loan originator must comply with the licensee's policies and procedures.

(2) Access to the company platforms and customer information must be in accordance with the licensee's comprehensive written information security plan, as required by WAC 208-660-460, which must include safeguards that protect customer information.

(3) Communications that contain a customer's protected personal information must be in compliance with federal and state information security requirements, including the applicable provisions under the Gramm-Leach-Bliley Act and the Safeguards Rule. See WAC 208-660-460 and 208-660-470 for more information.

(4) The loan originator's residence may not be held out in any manner, directly or indirectly, as a licensed main or branch location unless it is licensed as a main or branch location. The following is not allowed at the loan originator's residence unless it is licensed as a main or branch location:

- (a) Conducting in-person customer interactions;
- (b) Storing physical records containing customer information;
- (c) Receiving physical records containing customer information;

and

(d) Advertising the location as a licensed main or branch office.

(5) The NMLS record of the loan originator must designate the licensed main office headquarters or a licensed branch office as their registered location.

(6) The loan originator must use their registered location from NMLS in the "loan originator information" section on residential mortgage loan applications.