

RCW 19.146.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(2) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan, or a residential mortgage loan modification, for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(3) "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.

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

(5) "Designated broker" means an individual designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210(1)(e).

(6) "Director" means the director of financial institutions.

(7) "Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

(8) "Federal banking agencies" means the board of governors of the federal reserve system, comptroller of the currency, director of the office of thrift supervision, national credit union administration, and federal deposit insurance corporation.

(9) "License" means a single license issued under the authority of this chapter.

(10) "Licensee" means a person to whom one or more licenses have been issued. "Licensee" also means any person, whether located within or outside of this state, who fails to obtain a license required by this chapter.

(11)(a) "Loan originator" means an individual who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain (i) takes a residential mortgage loan application, or (ii) offers or negotiates terms of a residential mortgage loan. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a residential mortgage loan. A person who holds himself or herself out to the public as able to obtain a residential mortgage loan is not performing administrative or clerical tasks.

(b) "Loan originator" also includes an individual who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain performs residential mortgage loan

modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

(c) "Loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction;

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in (c) (i) through (iv) of this subsection.

(d) "Loan originator" does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

(e) This subsection does not apply to employees of a housing counseling agency approved by the United States department of housing and urban development unless the employees of a housing counseling agency are required under federal law to be licensed individually as loan originators.

(12) "Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.

(13) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator 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 residential mortgage loan available to that borrower.

(14) "Mortgage broker" means any person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or performs residential mortgage loan modification services or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan or provide residential mortgage loan modification services.

(15) "Mortgage loan originator" has the same meaning as "loan originator."

(16) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors for licensing and registration.

(17) "Person" means an individual, corporation, company, limited liability company, partnership, association, and all other legal entities.

(18) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, corporation, limited liability company, and the owner of a sole proprietorship.

(19) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage, deed of trust or other consensual security interest on a dwelling as defined in the truth in lending act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

(20) "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.

(21) "Residential mortgage loan modification services" includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a residential mortgage loan modification. "Residential mortgage loan modification services" also includes the collection of data for submission to any entity performing mortgage loan modification services.

(22) "S.A.F.E. act" means the secure and fair enforcement for mortgage licensing act of 2008, or 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. Sec. 5101 et seq.

(23) "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 residential mortgage loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

(24) "Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

(25) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry. [2015 c 229 s 5; 2013 c 30 s 1; 2010 c 35 s 13; 2009 c 528 s 1; 2008 c 78 s 3; 2006 c 19 s 2; 1997 c 106 s 1; 1994 c 33 s 3; 1993 c 468 s 2; 1987 c 391 s 3.]

Effective date—2010 c 35: See RCW 31.04.904.

Effective date—License requirement—2009 c 528: "(1) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, sections 4, 6 through 9, 11, 12, 14, and 17 [of this act] are effective January 1, 2010.

(2) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, mortgage loan originators who were previously exempt as exclusive agents under RCW 19.146.020(1)(a)(ii) must obtain a mortgage loan originator license under this chapter before July 1, 2010." [2009 c 528 s 19.]

Implementation—2009 c 528: "The director of financial institutions or the director's designee may take the actions necessary to ensure this act is implemented on July 1, 2010." [2009 c 528 s 20.]

Severability—2008 c 78: See note following RCW 31.04.025.

Severability—1997 c 106: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 106 s 22.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.