

ORDER SUMMARY – Case Number: C-12-1133

Name(s): Kevin Mitchell Fox

Order Number: C-12-1133-13-FO01

Effective Date: 2/14/13

License Number: NMLS #106945
Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)
 If applicable, you must specifically note the ending dates of terms.

License Effect: Application denied

Not Apply Until: _____

Not Eligible Until: _____

Prohibition/Ban Until: February 14, 2018

Investigation Costs	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N		
	No. of Victims:			

Comments: Fox's application is denied and he is prohibited for 5 years

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF INVESTIGATING the
Mortgage Loan Originator License Application
under the Consumer Loan Act of Washington by:

No.: C-12-1133-13-FO01

KEVIN MITCHELL FOX, Loan Originator,
NMLS #106945

FINAL ORDER

Respondent.

I. DIRECTOR'S CONSIDERATION

A. Default. This matter has come before the Director of the Department of Financial Institutions of the State of Washington (Director), through his designee, Consumer Services Division Director Deborah Bortner (Director's designee), pursuant to RCW 34.05.440(1). On January 3, 2013, the Director, through the Director's designee, issued a Statement of Charges and Notice of Intention to Enter an Order to Deny License Application and Prohibit from Industry (Statement of Charges) against Kevin Mitchell Fox (Respondent). A copy of the Statement of Charges is attached and incorporated into this order by this reference. The Statement of Charges was accompanied by a cover letter dated January 4, 2013, a Notice of Opportunity to Defend and Opportunity for Hearing, and a blank Application for Adjudicative Hearing for Respondent (collectively, accompanying documents).

On January 4, 2013, the Department served Respondent with the Statement of Charges and accompanying documents by First-Class mail and Federal Express overnight delivery. On January 7, 2013, the documents sent by Federal Express overnight delivery were delivered. The documents sent by First-Class mail were not returned to the Department by the United States Postal Service.

Respondent did not request an adjudicative hearing within twenty calendar days after the Department served the Notice of Opportunity to Defend and Opportunity for Hearing, as provided for in WAC 208-08-050(2).

1 B. Record Presented. The record presented to the Director's designee for her review and
2 for entry of a final decision included the following: Statement of Charges, cover letter dated January
3 4, 2013, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Application for
4 Adjudicative Hearing for Respondent, with documentation for service.

5 C. Factual Findings and Grounds for Order. Pursuant to RCW 34.05.440(1), the
6 Director's designee hereby adopts the Statement of Charges, which is attached hereto.

7 II. FINAL ORDER

8 Based upon the foregoing, and the Director's designee having considered the record and being
9 otherwise fully advised, NOW, THEREFORE:

10 A. IT IS HEREBY ORDERED, That:

- 11 1. Respondent Kevin Mitchell Fox's application for a mortgage loan originator
12 license is denied.
- 13 2. Respondent Kevin Mitchell Fox is prohibited from participation, in any manner, in
14 the conduct of the affairs of any consumer lender subject to licensure by the
15 Director under chapter 31.04 for a period of five years.

16 B. Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to file a
17 Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition
18 must be filed in the Office of the Director of the Department of Financial Institutions by courier at
19 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia,
20 Washington 98504-1200, within ten (10) days of service of the Final Order upon Respondent. The
21 Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for
22 Reconsideration a prerequisite for seeking judicial review in this matter.

23 A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the
24 date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a
written notice specifying the date by which it will act on a petition.

1 C. Stay of Order. The Director's designee has determined not to consider a Petition to
2 Stay the effectiveness of this order. Any such requests should be made in connection with a Petition
3 for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

4 D. Judicial Review. Respondent has the right to petition the superior court for judicial
5 review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for
6 filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

7 E. Service. For purposes of filing a Petition for Reconsideration or a Petition for Judicial
8 Review, service is effective upon deposit of this order in the U.S. mail, declaration of service
9 attached hereto.

10 DATED this 14th day of February, 2013



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12 STATE OF WASHINGTON
13 DEPARTMENT OF FINANCIAL INSTITUTIONS



14
15 DEBORAH BORTNER
16 Director
17 Division of Consumer Services

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF INVESTIGATING the
Mortgage Loan Originator License Application
under the Consumer Loan Act of Washington by:

KEVIN MITCHELL FOX, loan originator,
NMLS #106945

Respondent.

No.: C-12-1133-12-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER AN
ORDER TO DENY LICENSE APPLICATION
AND PROHIBIT FROM INDUSTRY

INTRODUCTION

Pursuant to RCW 31.04.165 and RCW 31.04.168, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to RCW 31.04.055 and 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Kevin Mitchell Fox (Respondent) submitted an application to the Department of Financial Institutions of the State of Washington (Department) to renew his mortgage loan originator license under Discover Home Loans, Inc. d/b/a DFS HL, Inc., a consumer loan company licensed under the Act. The license application was received by the Department, through the Nationwide Mortgage Licensing System and Registry, on or about November 2, 2012.

1.2 Prior Administrative Action. Respondent had a Final Order entered against him on or about May 5, 2012, by the state of Kentucky for violating the terms of his Consent Order entered on or about January 4, 2012. Under the terms of the Consent Order, Respondent admitted to acting as an unregistered mortgage loan originator and providing services to more than one mortgage broker at a

1 time and agreed to permanently surrender his Kentucky mortgage loan originator license as well as
2 pay a \$7,500 fine. In addition, Respondent had a mortgage loan originator license denied on or about
3 July 11, 2012, by the state of Illinois for not demonstrating the character and general fitness to be
4 licensed as a mortgage loan originator based on Kentucky's Final Order.

5 **1.3 Prior Criminal Acts.** On or about June 6, 2012, respondent was charged in Bardstown,
6 Kentucky, with a crime the Department has identified as a felony. The case is currently pending in
7 the Nelson County Circuit Court.

8 **1.4 Responses to Application Questions.** The "Criminal Disclosure" section of the Uniform
9 Individual Mortgage License/Registration & Consent form (Form MU4) consists of eight questions.
10 The required New Application Checklist includes the following instruction: "Provide complete
11 details of all events or proceedings for any "Yes" answer to any of the disclosure questions on your
12 MU4 filing." Respondent answered "no" to the following questions on the "Criminal Disclosure"
13 section of his form MU4:

- 14 • 2- Are there pending charges against you for a felony?

15 Respondent was obligated by statute to answer questions on the Form MU4 truthfully and to provide
16 the Department with complete details of all events or proceedings. Respondent attested, under
17 penalty of perjury, to the accuracy and completeness of the Form MU4.

18 Respondent updated his MU4 disclosures on three separate occasions after he was charged
19 with the crime identified in paragraph 1.3 without disclosing the pending felony.

20 **1.5 Character and General Fitness.** Respondent has not demonstrated character and general
21 fitness as evidenced by Respondent's prior administrative actions in Kentucky and Illinois and his
22 failure to self-disclose his pending felony charge.

1 **II. GROUNDS FOR ENTRY OF ORDER**

2 **2.1 Requirement to Demonstrate Character and General Fitness.** Based on the Factual
3 Allegations set forth in Section I above, Respondent fails to meet the requirements of RCW
4 31.04.247(1)(e) and WAC 208-620-710(4)(a) by failing to demonstrate character and general fitness
5 such as to command the confidence of the community and to warrant a belief that the business will be
6 operated honestly, fairly, and efficiently within the purposes of the Act.

7 **2.2 Prohibited Practices.** Based on the Factual Allegations set forth in Section I above,
8 Respondent is in apparent violation of RCW 31.04.241(2) and WAC 208-620-550(5) for not
9 furnishing information pertaining to personal history and experience in a form prescribed by the
10 Nationwide Mortgage Licensing System and Registry. Respondent is also in apparent violation of
11 RCW 31.04.027(8) and WAC 208-620-550(5) for negligently making a false statement in connection
12 with the application he filed with the Department.

13 **2.3 Requirement to Provide Information on License Application.** Based on the Factual
14 Allegations set forth in Section I above, Respondent fails to meet the requirements of RCW
15 31.04.234 and RCW 31.04.241(2) by failing to provide an accurate license application in the form
16 prescribed by the Director.

17 **2.4 Requirement to Update NMLS.** Based on the Factual Allegations set forth in Section I
18 above, Respondent is in apparent violation of WAC 208-620-710(28)(a) for not amending NMLS
19 within ten days of the occurrence of a situation that would require an update to his NMLS generated
20 disclosure question answers.

21 **III. AUTHORITY TO IMPOSE SANCTIONS**

22 **3.1 Authority to Deny Application for Loan Originator License.** Pursuant to RCW
23 31.04.247(2), the Director may deny licenses to applicants. Pursuant to RCW 31.04.247(2), the

1 Director shall not issue a license if the conditions of RCW 31.04.247(1) have not been met by the
2 applicant, and shall notify the applicant of the denial.

3 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 31.04.093(6), the Director may
4 issue orders removing from office or prohibiting from participation in the conduct of the affairs of
5 any licensee, or both, any person subject to this chapter for a violation of RCW 31.04.027.

6 **IV. NOTICE OF INTENTION TO ENTER ORDER**

7 Respondent's violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC,
8 as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
9 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.055, RCW 31.04.093, RCW
10 31.04.165, RCW 31.04.168, and RCW 31.04.247. Therefore, it is the Director's intention to ORDER
11 that:

12 **4.1** Respondent Kevin Mitchell Fox's application for a mortgage loan originator license be
13 denied.

14 **4.2** Respondent Kevin Mitchell Fox be prohibited from participation in the conduct of the
15 affairs of any mortgage loan originator subject to licensure by the Director under
16 chapter 31.04, in any manner, for five years.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intention to Enter an Order to Deny License
3 Application and Prohibit from Industry (Statement of Charges) is entered pursuant to the provisions
4 of RCW 31.04.093, RCW 31.04.165, RCW 31.04.168, and RCW 31.04.202, and is subject to the
5 provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondent may make a
6 written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND
7 OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

8
9 Dated this 3rd day of January, 2013



10 [Redacted signature]

11 DEBORAH BORTNER
12 Director
13 Division of Consumer Services
14 Department of Financial Institutions

15 Presented by:

[Redacted signature]

16 DEVON P. PHELPS
17 Financial Legal Examiner

18 Approved by:

[Redacted signature]

19 CHARLES E. CLARK
20 Enforcement Chief