

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 649

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO HOME LOANS; ENACTING THE HOME LOAN PROTECTION ACT;
PROHIBITING CERTAIN PRACTICES BY CREDITORS; PROVIDING CIVIL
REMEDIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 14 of this act may be cited as the "Home Loan
Protection Act".

Section 2. [NEW MATERIAL] FINDINGS. -- The legislature
finds that:

A. abusive mortgage lending has become an
increasing problem in New Mexico, exacerbating the loss of
equity in homes and causing the number of foreclosures to
increase in recent years;

B. one of the most common forms of abusive lending

1 is the making of loans that are equity-based, rather than
2 income-based;

3 C. the financing of points and fees in these loans
4 provides immediate income to the originator and encourages
5 creditors to repeatedly refinance home loans; and

6 D. while the marketplace appears to operate
7 effectively for conventional mortgages, too many homeowners
8 find themselves victims of overreaching creditors who provide
9 loans with high costs and terms that are unnecessary to secure
10 repayment of the loan.

11 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
12 Home Loan Protection Act:

13 A. "bona fide discount points" means loan discount
14 points that are knowingly paid by the borrower for the express
15 purpose of reducing, and which in fact do result in a bona fide
16 reduction of, the annual percentage rate otherwise applicable
17 to the home loan; provided, however that discount points are
18 not "bona fide discount points" if the annual percentage rate
19 otherwise applicable to the home loan exceeds the conventional
20 mortgage rate by more than:

21 (1) one and one-half percentage points for a
22 home loan secured by a first lien; or

23 (2) three percentage points for a home loan
24 secured by a junior lien;

25 B. "borrower" means a natural person obligated to

1 repay a home loan, including a co-borrower, cosigner or
2 guarantor;

3 C. "bridge loan" means a loan for the initial
4 construction of a borrower's principal dwelling on land owned
5 by the borrower with a maturity of less than eighteen months
6 that only requires the payment of interest until the entire
7 unpaid balance is due and payable;

8 D. "conventional mortgage rate" means the most
9 recently published annual yield on conventional mortgages
10 published by the board of governors of the federal reserve
11 system as of the fifteenth day of the month immediately
12 preceding the month in which the application for the extension
13 of credit is received by the creditor;

14 E. "creditor" means a person who makes a home loan
15 and includes a loan broker;

16 F. "high-cost home loan" means a home loan in
17 which:

18 (1) the contract rate exceeds the rates
19 threshold; or

20 (2) the total points and fees exceed the total
21 points and fees threshold;

22 G. "home loan" means a loan, including an open-end
23 credit plan, other than a reverse mortgage transaction or a
24 bridge loan, where the loan is secured by:

25 (1) a mortgage or deed of trust on real estate

1 in this state upon which there is located or there is to be
2 located a structure:

3 (a) designed principally for occupancy
4 by one to four families; and

5 (b) that is or will be occupied by a
6 borrower as the borrower's principal residence; or

7 (2) a security interest on a ~~manufactured home~~
8 that is or will be occupied by a borrower as the borrower's
9 principal residence;

10 H. "manufactured home" means a structure,
11 transportable in one or more sections, which in the traveling
12 mode is eight body feet or more in width or forty body feet or
13 more in length or, when erected on site is three hundred twenty
14 or more square feet and which is built on a permanent chassis
15 and designed to be used as a dwelling with a permanent
16 foundation when erected on land secured in conjunction with the
17 real property on which the ~~manufactured home~~ is located and
18 connected to the required utilities and includes the plumbing,
19 heating, air conditioning and electrical systems contained
20 therein. "Manufactured home" includes any structure that meets
21 all the requirements of this subsection except the size
22 requirements and with respect to which the manufacturer
23 voluntarily files a certification required by the secretary of
24 the United States department of housing and urban development
25 and complies with the standards established under the federal

1 National Manufactured Housing Construction and Safety Standards
 2 Act of 1974. "Manufactured home" does not include rental
 3 property or second homes or manufactured homes when not secured
 4 in conjunction with the real property on which the manufactured
 5 home is located;

6 I. "points and fees" means:

7 (1) all amounts payable by a borrower at or
 8 before the closing of a home loan, exclusive of any time-price
 9 differential due at closing on the loan proceeds, including:

10 (a) loan discount points or other
 11 discounts;

12 (b) loan fees, finder's fees or similar
 13 charges;

14 (c) fees for preparation of loan-related
 15 documents; and

16 (d) all compensation paid directly or
 17 indirectly to a mortgage broker, including a broker that
 18 originates a loan in its own name in a table-funded
 19 transaction; but does not include fees for the following
 20 purposes, if the amounts are bona fide and reasonable and paid
 21 to a person other than the creditor or an affiliate of the
 22 creditor: 1) service or carrying charges; 2) credit reports;
 23 3) title exam, title insurance or similar purposes; 4) escrow
 24 charges for future payments of taxes and insurance; 5) fees for
 25 notarizing deeds and other documents; 6) appraisals, including

. 146834. 2

underscoring material = new
 [bracketed material] = delete

1 fees related to any pest infestation or flood hazard
2 inspections conducted prior to closing; 7) inspection performed
3 prior to closing; 8) attorney fees, if the borrower has the
4 right to select the attorney from an approved list or
5 otherwise; 9) fire and hazard insurance and flood insurance
6 premiums if the conditions in 12 C.F.R. s. 226.4(d)(2) are met;
7 10) tax payment services; 11) surveys; 12) flood certification;
8 and 13) pest infestation and flood determination;

9 (2) the maximum prepayment fees and penalties
10 that may be charged or collected under the terms of the loan
11 documents;

12 (3) all prepayment fees or penalties that are
13 incurred by the borrower if the loan refinances a previous loan
14 made or currently held by the same creditor or an affiliate of
15 the creditor;

16 (4) the cost of all premiums financed by the
17 creditor, directly or indirectly, for any credit life, credit
18 disability, credit unemployment or credit property insurance,
19 or any other life or health insurance, or any payments financed
20 by the creditor, directly or indirectly, for any debt
21 cancellation or suspension agreement or contract, except that
22 insurance premiums calculated and paid on a monthly basis shall
23 not be considered financed by the creditor; and

24 (5) for open-end loans, the points and fees
25 included in Paragraph (1) of this subsection that are known at

1 or before closing plus the minimum additional fees the borrower
2 would be required to pay to draw down an amount equal to the
3 total credit line;

4 J. "rate threshold" means:

5 (1) for a first lien mortgage home loan, an
6 interest rate equal to seven percentage points over the weekly
7 average yield on comparable United States treasury securities
8 on the fifteenth day of the month immediately preceding the
9 month in which the loan is made; and

10 (2) for a subordinate mortgage lien, an
11 interest rate equal to nine percentage points over the weekly
12 average yield on comparable United States treasury securities
13 on the fifteenth day of the month immediately preceding the
14 month in which the loan is made;

15 K. "total points and fees" means the result
16 obtained by subtracting the bona fide discount points paid from
17 the sum of the points and fees, except that if the number of
18 bona fide discount points paid exceeds two points, then only
19 the amount that represents two bona fide discount points shall
20 be subtracted; and

21 L. "total points and fees threshold" means:

22 (1) for a home loan in which the total
23 principal loan amount is twenty thousand dollars (\$20,000) or
24 more, an amount equal to five percent of the total principal
25 loan amount; and

. 146834. 2

1 (2) for a home loan in which the total
2 principal loan amount is less than twenty thousand dollars
3 (\$20,000), an amount equal to the lesser of one thousand
4 dollars (\$1,000) or eight percent of the total principal loan
5 amount.

6 Section 4. [NEW MATERIAL] PROHIBITED PRACTICES AND
7 PROVISIONS REGARDING HOME LOANS. --

8 A. No creditor shall finance, directly or
9 indirectly, credit life, credit disability, credit unemployment
10 or credit property insurance, or any other life or health
11 insurance, or any payments directly or indirectly for any debt
12 cancellation or suspension agreement or contract, provided that
13 nothing in this subsection prohibits the payment or receipt of
14 insurance premiums or debt cancellation or suspension fees
15 calculated on the unpaid balance of a home loan and paid on a
16 monthly basis or prohibits bona fide credit property insurance
17 required by the federal housing administration or the United
18 States department of agriculture to be paid in a single premium
19 to the respective federal agency. As used in this subsection,
20 "credit property insurance" means property insurance written in
21 connection with credit transactions under which the creditor is
22 the primary beneficiary.

23 B. No creditor shall engage in the practice of
24 flipping a home loan. As used in this subsection, "flipping a
25 home loan" means the making of a home loan to a borrower that

1 refinances an existing home loan when the new loan does not
 2 have reasonable, tangible net benefit to the borrower
 3 considering all of the circumstances, including the terms of
 4 both the new and refinanced loans, the cost of the new loan and
 5 the borrower's circumstances.

6 C. No creditor shall fail to provide access to the
 7 same loan products at the same rates to similarly situated
 8 borrowers, without regard to which affiliate, broker or lender
 9 the borrower approaches or is approached by.

10 Section 5. [NEW MATERIAL] LIMITATIONS AND PROHIBITED
 11 PRACTICES FOR HIGH-COST HOME LOANS. --

12 A. No creditor making a high-cost home loan shall
 13 directly or indirectly finance any points or fees in excess of
 14 two percent of the principal loan amount.

15 B. No creditor shall make a high-cost home loan
 16 that contains a scheduled payment that is more than twice as
 17 large as the average of earlier scheduled payments, provided
 18 that this provision does not apply when the payment schedule is
 19 adjusted to the seasonal or irregular income of a borrower.

20 C. No creditor shall make a high-cost home loan
 21 that includes payment terms under which the outstanding
 22 principal balance will increase at any time over the course of
 23 the loan because the regular periodic payments do not cover the
 24 full amount of interest due.

25 D. No creditor shall make a high-cost home loan

underscored material = new
 [bracketed material] = delete

1 that contains a provision that increases the interest rate
2 after default, provided that this provision does not apply to
3 interest rate changes in a variable rate loan otherwise
4 consistent with the provisions of the loan documents if the
5 change in the interest rate is not triggered by the event of
6 default or the acceleration of the indebtedness.

7 E. No creditor shall make a high-cost home loan
8 that includes terms under which more than two periodic payments
9 required under the loan are consolidated and paid in advance
10 from the loan proceeds provided to the borrower.

11 F. No creditor shall make a high-cost home loan
12 that may be subject to a mandatory arbitration clause that
13 limits in any way the right of the borrower to seek relief
14 through the judicial process for any and all claims and
15 defenses the borrower may have against the creditor, broker or
16 other party involved in the loan transaction.

17 G. No creditor shall make a high-cost home loan
18 without first receiving certification from a counselor approved
19 by the United States department of housing and urban
20 development, the New Mexico mortgage finance authority or the
21 director of the financial institutions division of the
22 regulation and licensing department that the borrower has
23 received counseling on the advisability of the loan
24 transaction.

25 H. No creditor shall make a high-cost home loan

1 without due regard to repayment ability. A creditor who
 2 follows debt-to-income ratios and the residual income
 3 guidelines established by rule of the financial institution
 4 division of the regulation and licensing department shall
 5 benefit from a rebuttable presumption that the creditor made
 6 the loan with due regard to repayment ability.

7 I. No creditor shall pay a contractor under a home-
 8 improvement contract from the proceeds of a high-cost home loan
 9 unless:

10 (1) the creditor is presented with a signed
 11 and dated completion certificate showing that the home
 12 improvements have been completed; and

13 (2) the instrument is payable jointly to the
 14 borrower and the contractor, or, at the election of the
 15 borrower, through a third-party escrow agent in accordance with
 16 terms established in a written agreement signed by the
 17 borrower, the creditor and the contractor prior to the
 18 disbursement.

19 J. No creditor shall charge a borrower any fees or
 20 other charges, other than those that are bona fide, reasonable
 21 and actual, to modify, renew, extend or amend a high-cost home
 22 loan.

23 K. No creditor shall charge a borrower more than
 24 seventy-five dollars (\$75.00) to defer any payment due under
 25 the terms of a high-cost home loan.

. 146834. 2

underscored material = new
 [bracketed material] = delete

1 L. No creditor shall recommend or encourage default
2 on an existing loan or other debt prior to and in connection
3 with the closing or planned closing of a high-cost home loan
4 that refinances all or any portion of the existing loan or
5 debt.

6 M. No creditor shall make a high-cost home loan
7 that provides for a late payment fee except as follows:

8 (1) the late payment fee shall not be in
9 excess of five percent of the amount of the payment past due;

10 (2) the late payment fee shall only be
11 assessed for a payment past due for fifteen days or more;

12 (3) the late payment fee shall not be imposed
13 more than once with respect to a single late payment and no
14 late payment fee shall be charged with respect to a subsequent
15 payment that would have been a full payment but for the
16 previous default or the imposition of the previous late payment
17 fee;

18 (4) no late payment fee shall be charged
19 unless the creditor notifies the borrower within forty-five
20 days following the date the payment was due that a late payment
21 fee has been imposed for a particular late payment. A late
22 payment fee that the creditor has collected shall be reimbursed
23 if the borrower presents proof of having made a timely payment;
24 and

25 (5) a creditor shall treat each payment as

1 posted on the same business day as it was received by the
 2 creditor, service, creditor's agent or at the address provided
 3 to the borrower by the creditor, service or the creditor's
 4 agent for making payments.

5 N. No creditor shall make a high-cost home loan
 6 that contains a provision that permits the creditor, in its
 7 sole discretion, to accelerate the indebtedness, provided that
 8 this provision does not prohibit acceleration of a loan in good
 9 faith due to a borrower's failure to abide by the material
 10 terms of the loan.

11 O. No creditor shall make a high-cost home loan
 12 that contains a provision that requires a penalty or premium
 13 for prepayment of the balance of the indebtedness.

14 P. A creditor shall not make a high-cost home loan
 15 unless the creditor has given the following notice, or a
 16 substantially similar notice, in writing, to the borrower,
 17 acknowledged in writing and signed by the borrower not later
 18 than the time the notice is required under the notice provision
 19 contained in 12 C. F. R. s. 226. 31(c):

20 **NOTICE TO BORROWER**

21 **YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A**
 22 **LOAN AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN**
 23 **RATES AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES**
 24 **VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT**
 25 **AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-**

. 146834. 2

underscored material = new
 [bracketed material] = delete

1 TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE
2 YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON
3 WHICH CREDITOR OR BROKER YOU SELECT.

4 IF YOU ACCEPT THE TERMS OF THIS LOAN, THE CREDITOR WILL
5 HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME
6 AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT
7 OBLIGATIONS UNDER THE LOAN.

8 YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND A QUALIFIED
9 INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL
10 ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS
11 MORTGAGE LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED
12 COUNSELORS IS AVAILABLE BY CONTACTING THE NEW MEXICO REGULATION
13 AND LICENSING DEPARTMENT.

14 YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT
15 MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED
16 A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S
17 INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE
18 ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR
19 CREDITOR ABOUT THESE SERVICES.

20 ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR
21 CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE
22 YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.

23 Section 6. [NEW MATERIAL] DEFAULT--NOTICE--RIGHT TO
24 CURE. --

25 A. Before an action is filed to foreclose or

1 collect money due pursuant to a home loan or before other
 2 action is taken to seize or transfer ownership of property
 3 subject to a home loan, the creditor or creditor's assignee of
 4 the loan shall deliver to the borrower a notice of the right to
 5 cure the default informing the borrower of:

6 (1) the nature of the default;

7 (2) the borrower's right to cure the default
 8 by paying the sum of money required, provided that a creditor
 9 or assignee shall accept any partial payment made or tendered
 10 in response to the notice. If the amount necessary to cure the
 11 default will change within thirty days of the notice, due to
 12 the application of a daily interest rate or the addition of
 13 late fees, as allowed by the Home Loan Protection Act, the
 14 notice shall give sufficient information to enable the borrower
 15 to calculate the amount at any point within the thirty-day
 16 period;

17 (3) the date by which the borrower may cure
 18 the default to avoid a court action, acceleration and
 19 initiation of foreclosure or other action to seize the
 20 property, which date shall not be less than thirty days after
 21 the date the notice is delivered, and the name and address and
 22 telephone number of a person to whom the payment or tender
 23 shall be made;

24 (4) that if the borrower does not cure the
 25 default by the date specified, the creditor or assignee may

. 146834. 2

underscored material = new
 [bracketed material] = delete

1 file an action for money due or take steps to terminate the
2 borrower's ownership in the property by requiring payment in
3 full of the home loan and commencing a foreclosure proceeding
4 or other action to seize the property; and

5 (5) the name and address and the telephone
6 number of a person whom the borrower may contact if the
7 borrower disagrees with the assertion that a default has
8 occurred or the correctness of the calculation of the amount
9 required to cure the default.

10 B. If a creditor or assignee asserts that grounds
11 for acceleration exist and requires the payment in full of all
12 sums secured by the home loan, the borrower, or anyone
13 authorized to act on the borrower's behalf, may, at any time
14 prior to the time title is transferred by means of foreclosure,
15 by judicial proceeding and sale or otherwise, cure the default,
16 and reinstate the home loan. Cure of the default shall
17 reinstate the borrower to the same position as if the default
18 had not occurred and shall nullify, as of the date of the cure,
19 an acceleration of any obligation under the home loan arising
20 from the default.

21 C. To cure a default under this section, a borrower
22 shall not be required to pay any charge, fee or penalty
23 attributable to the exercise of the right to cure a default,
24 other than the fees specifically allowed by this subsection.
25 The borrower shall not be liable for any attorney fees relating

1 to the default that are incurred by the creditor or assignee
 2 prior to or during the thirty-day period set forth in
 3 Subsection A of this section, nor for any such fees in excess
 4 of one hundred dollars (\$100) that are incurred by the creditor
 5 or assignee after the expiration of the thirty-day period but
 6 prior to the time the creditor or assignee files a foreclosure
 7 or other judicial action or takes other action to seize or
 8 transfer ownership of the real estate. After the creditor or
 9 assignee files a foreclosure or other judicial action or takes
 10 other action to seize or transfer ownership of the real estate,
 11 the borrower shall only be liable for attorney fees that are
 12 reasonable and actually incurred by the creditor or assignee,
 13 based on a reasonable hourly rate and a reasonable number of
 14 hours.

15 D. If a default is cured prior to the initiation of
 16 any action to foreclose or to seize the residence, the creditor
 17 or assignee shall not institute a proceeding or other action
 18 for that default. If a default is cured after the initiation
 19 of any action, the creditor or assignee shall take such steps
 20 as are necessary to terminate the action.

21 E. A creditor or a creditor's assignee of a home
 22 loan that has the legal right to foreclose shall, in a
 23 foreclosure, use the judicial foreclosure procedures provided
 24 by law. In such a proceeding, the borrower may assert the
 25 nonexistence of a default and any other claim or defense to

. 146834. 2

1 acceleration and foreclosure, including any based on a
2 violation of the Home Loan Protection Act, though no such claim
3 or defense shall be deemed a compulsory counterclaim.

4 F. The provisions of this section apply only to
5 home loans that were high-cost home loans at the time of
6 origination.

7 Section 7. [NEW MATERIAL] CLAIMS AGAINST CERTAIN
8 SELLERS. --Notwithstanding any other provision of law, if a home
9 loan is made, arranged or assigned by a person selling a
10 manufactured home to a borrower or selling home improvements on
11 the residence of a borrower, the borrower may assert all
12 affirmative claims and defenses that the borrower may have
13 against the seller or home improvement contractor against a
14 creditor or a holder or service of the home loan, in any
15 capacity.

16 Section 8. [NEW MATERIAL] SUBTERFUGE PROHIBITED. --No
17 person shall, with the intent to avoid the application or
18 provisions of the Home Loan Protection Act:

- 19 A. divide a loan transaction into separate parts;
20 B. structure a home loan transaction as an open-end
21 loan when the loan would have been a high-cost home loan if the
22 loan had been structured as a closed-end loan; or
23 C. perform any other subterfuge.

24 Section 9. [NEW MATERIAL] CIVIL ACTION. --

- 25 A. A borrower harmed by a violation of the Home

1 Loan Protection Act may bring a civil action to recover:

2 (1) actual damages, including consequential
3 and incidental damages;

4 (2) statutory damages equal to the finance
5 charges agreed to in the home loan agreement, plus ten percent
6 of the amount financed;

7 (3) punitive damages, when the violation was
8 malicious or reckless;

9 (4) costs and reasonable attorney fees;

10 (5) injunctive, declaratory and such other
11 equitable relief as the court deems appropriate in an action to
12 enforce compliance with the Home Loan Protection Act; and

13 (6) rescission of the home loan. If
14 rescinded, the home loan agreement shall be void, and the
15 creditor or the creditor's assignee shall have no right to
16 collect, receive or retain any principal, interest or other
17 charges whatsoever with respect to the loan, and the borrower
18 may recover any payments made under the agreement.

19 B. The civil action and remedies provided in this
20 section are not exclusive and are in addition to any other
21 action or remedies available to a borrower under applicable
22 law.

23 C. A creditor is not liable in an action brought
24 pursuant to this section if:

25 (1) within thirty days of the home loan

1 closing and prior to receiving any notice from the borrower of
2 the violation, the creditor has made appropriate restitution to
3 the borrower, and appropriate adjustments are made to the loan;
4 or

5 (2) the violation was not intentional and
6 resulted from a bona fide error in fact notwithstanding the
7 maintenance of procedures reasonably adopted to avoid such
8 errors and within sixty days of the loan closing and prior to
9 receiving any notice from the borrower of the violation, the
10 borrower is notified of the violation, appropriate restitution
11 is made to the borrower and appropriate adjustments are made to
12 the loan.

13 Section 10. [NEW MATERIAL] PREEMPTION. -- Counties and
14 municipalities, including home rule counties and
15 municipalities, are prohibited from enacting and enforcing
16 ordinances, resolutions or rules regulating financial or
17 lending activities or imposing reporting requirements or any
18 other obligations upon creditors regarding home loans that are
19 subject to the Home Loan Protection Act.

20 Section 11. [NEW MATERIAL] ACTIONS BASED ON HOME LOANS. --

21 A. Notwithstanding any other provision of law, any
22 person who purchases or is otherwise assigned a high-cost home
23 loan shall be subject to all affirmative claims and any
24 defenses with respect to the loan that the borrower could
25 assert against the original creditor of the loan; provided that

underscored material = new
[bracketed material] = delete

1 this section shall not apply if the purchaser or assignee
2 demonstrates by a preponderance of the evidence that a
3 reasonable person exercising reasonable due diligence could not
4 determine that the mortgage was a high-cost home loan. It
5 shall be presumed that a purchaser or assignee has exercised
6 such due diligence if the purchaser or assignee:

7 (1) has in place at the time of the
8 acquisition of the subject loan, policies that expressly
9 prohibit its purchase or acceptance of an assignment of any
10 high-cost home loan;

11 (2) requires by contract that a seller or
12 assignor of the home loan to the purchaser or assignee
13 represents and warrants to the purchaser or assignee that
14 either:

15 (a) the seller or assignor will not sell
16 or assign any high-cost home loan to the purchaser or assignee;
17 or

18 (b) that such seller or assignor is the
19 beneficiary of such a representation and warranty from a
20 previous seller or assignor; and

21 (3) exercises reasonable due diligence at the
22 time of the acquisition of the home loan, or within a
23 reasonable period of time thereafter, intended to determine
24 that the home loan is not a high-cost home loan; or

25 (4) satisfies the requirements in Paragraphs

. 146834. 2

1 (1) and (2) of this subsection and establishes that a
2 reasonable person exercising ordinary due diligence could not
3 determine, based on the documentation received in the normal
4 course of business and the itemization of the amount financed
5 and other disclosure disbursements, that the loan was a high-
6 cost home loan.

7 B. Notwithstanding any other law to the contrary, a
8 borrower acting only in an individual capacity may assert
9 against the creditor or any subsequent holder or assignee of
10 the home loan:

11 (1) within six years of the closing of a home
12 loan, a violation of the Home Loan Protection Act in connection
13 with the loan as an original action or as a defense, claim or
14 counterclaim after an action to collect on the home loan or
15 foreclose on the collateral securing the home loan has been
16 initiated or the debt arising from the home loan has been
17 accelerated or the home loan has become sixty days in default;
18 or

19 (2) at any time during the term of a high-cost
20 home loan, a violation of the Home Loan Protection Act in
21 connection with the loan as a defense, claim or counterclaim
22 after an action to collect on the home loan or foreclose on the
23 collateral securing the home loan has been initiated or the
24 debt arising from the home loan has been accelerated or the
25 home loan has become sixty days in default.

1 C. In an action, claim or counterclaim brought
 2 pursuant to Subsection B of this section, the borrower may
 3 recover only amounts required to reduce or extinguish the
 4 borrower's liability under the home loan plus amounts required
 5 to recover costs and reasonable attorney fees.

6 D. Nothing in this section shall limit the
 7 substantive rights, remedies or procedural rights available to
 8 a borrower against a creditor, assignee or holder that are
 9 otherwise provided by law.

10 Section 12. [NEW MATERIAL] APPLICATION OF UNFAIR
 11 PRACTICES ACT.--A violation of the Home Loan Protection Act
 12 constitutes an unfair or deceptive trade practice pursuant to
 13 the Unfair Practices Act.

14 Section 13. [NEW MATERIAL] ATTORNEY GENERAL-- ENFORCEMENT
 15 OF RULES.--The financial institution division of the regulation
 16 and licensing department shall enforce the provisions of the
 17 Home Loan Protection Act and, after consulting with the
 18 attorney general and considering similar rules of the federal
 19 housing administration and the federal department of veterans
 20 affairs, shall adopt rules required pursuant to Subsection H of
 21 Section 5 of the Home Loan Protection Act and such other rules
 22 as are necessary to implement that act.

23 Section 14. [NEW MATERIAL] LIBERAL INTERPRETATION.--The
 24 Home Loan Protection Act shall be liberally construed to carry
 25 out its purpose.

underscored material = new
 [bracketed material] = delete

1 Section 15. Section 58-7-9 NMSA 1978 (being Laws 1959,
2 Chapter 327, Section 10, as amended) is amended to read:

3 "58-7-9. CONSTRUCTION. --

4 A. None of the provisions of the New Mexico Small
5 Loan Act of 1955 are amended or repealed by the New Mexico Bank
6 Installment Loan Act of 1959.

7 B. With the exception of precomputed loan
8 transactions, a lender is not bound by the provisions of the
9 New Mexico Bank Installment Loan Act of 1959 in making loans
10 where the loan is made in accordance with the provisions of
11 Sections 56-8-9 through 56-8-14 NMSA 1978.

12 C. None of the provisions of the New Mexico Bank
13 Installment Loan Act of 1959 apply to the assignment or
14 purchase of retail installment contracts originated under the
15 provisions of Sections 58-19-1 through 58-19-14 NMSA 1978 or
16 originated under the provisions of Sections 56-1-1 through
17 56-1-15 NMSA 1978.

18 D. In the event of a conflict between a requirement
19 of the New Mexico Bank Installment Loan Act of 1959 and a
20 requirement of the Home Loan Protection Act, the requirement of
21 the Home Loan Protection Act shall control.

22 [~~D.~~] E. As used in the New Mexico Bank Installment
23 Loan Act of 1959:

24 (1) "year" means three hundred sixty-five
25 days; and

1 (2) "month" means one-twelfth of a year. [~~and~~
 2 (~~3~~) "~~day~~" means ~~one three hundred sixty fifth~~
 3 ~~of a year.~~

4 ~~E.]~~ F. The director of the financial institutions
 5 division of the regulation and licensing department [~~is~~
 6 ~~empowered and directed to~~] shall issue and file as required by
 7 law interpretive regulations to effectuate the purposes of the
 8 New Mexico Bank Installment Loan Act of 1959. In issuing,
 9 amending or repealing interpretive regulations, the director
 10 shall issue the regulation amendment or repeal of the
 11 regulation as a proposed regulation amendment or repeal of a
 12 regulation and file it for public inspection in the office of
 13 the director of the financial institutions division.
 14 Distribution thereof shall be made to interested persons, and
 15 their comments shall be invited. After the proposed regulation
 16 has been on file for not less than two months, the director may
 17 issue it as a final regulation by filing as required by law.
 18 Any person who is or may be adversely affected by the adoption,
 19 amendment or repeal of a regulation under this section may file
 20 an appeal of that action in the district court in Santa Fe
 21 county within thirty days after the filing of the adopted
 22 regulation, amendment or repeal as required by law.

23 [~~F.]~~ G. Any person, corporation or association
 24 complying with the regulations adopted by the director of the
 25 financial institutions division of the regulation and licensing

underscored material = new
 [bracketed material] = delete

1 department is deemed to have complied with the provisions of
2 the New Mexico Bank Installment Loan Act of 1959.

3 ~~[G-]~~ H. All loans other than precomputed loan
4 transactions made under the New Mexico Bank Installment Loan
5 Act of 1959 shall be clearly identified on the loan documents
6 as being made under that act. "

7 Section 16. Section 58-21-6 NMSA 1978 (being Laws 1983,
8 Chapter 86, Section 6, as amended by Laws 2001, Chapter 251,
9 Section 5 and by Laws 2001, Chapter 264, Section 5) is amended
10 to read:

11 "58-21-6. PERSONS EXEMPT FROM REGISTRATION. -- The
12 following persons shall be exempt from all provisions of the
13 Mortgage Loan Company and Loan Broker Act:

14 A. banks, trust companies, savings and loan
15 associations, credit unions, ~~[consumer finance companies]~~
16 insurance companies or real estate investment trusts as defined
17 in 26 USCA 856;

18 B. an attorney licensed to practice law in New
19 Mexico who is not principally engaged in the business of
20 negotiating loans secured by real or personal property, when
21 the person renders services in the course of his practice as an
22 attorney;

23 C. a New Mexico-licensed real estate broker
24 rendering service in the performance of his duties as a real
25 estate broker who obtains financing for a real estate

1 transaction involving an actual bona fide sale of real estate
2 or real estate contract handled by the broker and who receives
3 only the customary real estate broker's commission in
4 connection with the transaction;

5 D. a person doing an act under order of a court;

6 E. a person making or acquiring a mortgage loan
7 with his own funds for his own investment without the intent to
8 resell the mortgage loan;

9 F. the United States of America, state of New
10 Mexico or any of their branches, agencies, departments, boards,
11 instrumentalities or institutions and all political
12 subdivisions of the state and their agencies, instrumentalities
13 and institutions; and

14 G. a company licensed as a small business
15 investment company under the federal Small Business Investment
16 Act of 1958. "

17 Section 17. Section 58-21-19 NMSA 1978 (being Laws 1983,
18 Chapter 86, Section 19, as amended by Laws 2001, Chapter 251,
19 Section 12 and by Laws 2001, Chapter 264, Section 12) is
20 amended to read:

21 "58-21-19. COMPLIANCE WITH FEDERAL LAW.--In connection
22 with any loan originated, brokered, negotiated or made by a
23 registrant pursuant to the Mortgage Loan Company and Loan
24 Broker Act, registrants shall comply with:

25 A. applicable federal consumer lending laws; and

. 146834. 2

underscoring material = new
[bracketed material] = delete

B. the provisions of the Home Loan Protection Act. "

Section 18. SEVERABILITY. --The provisions of the Home Loan Protection Act are severable, and if any part or application of that act is held invalid, the remainder or its application to other situations or persons shall not be affected. If any provision of the Home Loan Protection Act is declared to be inapplicable to any specific category, type or kind of loan or points and fees, the provisions of that act shall continue to apply with respect to all other loans and points and fees.

Section 19. APPLICABILITY. --The Home Loan Protection Act shall apply to all home loans made or entered into after the effective date of that act.

underscoring material = new
[bracketed material] = delete