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HOUSE BILL 316

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Patricia A. Lundstrom

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO REAL ESTATE; PROHIBITING CERTAIN HOME LOANS;
AMENDING THE HOME LOAN PROTECTION ACT.

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

Section 1. Section 58-21A-1 NMSA 1978 (being Laws 2003,
Chapter 436, Section 1) is amended to read:

"58-21A-1. SHORT TITLE.--~~[Sections 1 through 14 of this~~
~~act]~~ Chapter 58, Article 21A NMSA 1978 may be cited as the
"Home Loan Protection Act"."

Section 2. A new section of the Home Loan Protection Act
is enacted to read:

"[NEW MATERIAL] PURPOSE.--Some problematic forms of
mortgage lending have emerged in New Mexico, including some
interest-only home loans, adjustable rate home loans with an
initially low teaser rate that is reset after a short period to
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1 a higher rate resulting in borrower payment shock and
2 adjustable rate home loans with payment increase caps but
3 without interest rate caps that may result in negative
4 amortization, as well as mortgage lending underwriting
5 practices such as no verification of borrower income, approval
6 of borrowers with less than ideal credit histories and
7 prospective home loan payments that constitute an
8 unrealistically high proportion of the borrower's net income.
9 These mortgage lending practices may result in a higher rate of
10 home loan foreclosures and displacement of borrowers and their
11 families. The purpose of this 2009 act is to address mortgage
12 lending practices that adversely affect the welfare of New
13 Mexico homeowners."

14 Section 3. Section 58-21A-3 NMSA 1978 (being Laws 2003,
15 Chapter 436, Section 3) is amended to read:

16 "58-21A-3. DEFINITIONS.--As used in the Home Loan
17 Protection Act:

18 A. "adjustable rate home loan" means a home loan
19 that has an initial interest rate that adjusts to a variable
20 interest rate at the end of a specified initial period or
21 subsequent periods of time during the remaining term of the
22 home loan;

23 [~~A.~~] B. "affiliate" means a person that controls,
24 is controlled by or is under common control with another
25 person;

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1 ~~[B-]~~ C. "bona fide discount points" means loan
2 discount points that are knowingly paid by the borrower for the
3 express purpose of reducing, and which in fact do result in a
4 bona fide reduction of, the annual percentage rate otherwise
5 applicable to the home loan; provided, however, that discount
6 points are not "bona fide discount points" if the annual
7 percentage rate otherwise applicable to the home loan exceeds
8 the conventional mortgage rate by more than:

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

11 (2) three percentage points for a home loan
12 secured by a junior lien;

13 ~~[G-]~~ D. "borrower" means a natural person obligated
14 to repay a home loan, including a co-borrower, cosigner or
15 guarantor;

16 ~~[D-]~~ E. "bridge loan" means a loan for the initial
17 construction of a borrower's principal dwelling on land owned
18 by the borrower with a maturity of less than eighteen months
19 that only requires the payment of interest until the entire
20 unpaid balance is due and payable;

21 ~~[E-]~~ F. "conventional mortgage rate" means the most
22 recently published annual yield on conventional mortgages
23 published by the board of governors of the federal reserve
24 system as of the fifteenth day of the month immediately
25 preceding the month in which the application for the extension

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1 of credit is received by the creditor;

2 [~~F.~~] G. "conventional prepayment penalty" means a
3 prepayment penalty or fee that may be collected in a home loan
4 and that is authorized by federal law; provided that a
5 prepayment penalty is not a "conventional prepayment penalty"
6 if the home loan:

7 (1) has an annual percentage rate that exceeds
8 the conventional mortgage rate by more than two percent; or

9 (2) permits prepayment fees or penalties that
10 exceed two percent of the amount prepaid;

11 [~~G.~~] H. "creditor" means a person who regularly
12 makes a home loan and includes a loan broker;

13 [~~H.~~] I. "high-cost home loan" means a home loan in
14 which:

15 (1) the contract rate exceeds the [~~rates~~] rate
16 threshold; or

17 (2) the total points and fees exceed the total
18 points and fees threshold;

19 [~~I.~~] J. "home loan" means a loan, including an
20 open-end credit plan, other than a reverse mortgage transaction
21 or a bridge loan, where the principal amount does not exceed
22 the conforming loan size limit for a single-family dwelling as
23 established by the federal national mortgage association and
24 where the loan is secured by:

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

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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 [~~J-~~] K. "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

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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 ~~[K-]~~ L. "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; and

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

16 (d) does not include fees for the
17 following purposes, if the amounts are bona fide and reasonable
18 and paid to a person other than the creditor or an affiliate of
19 the creditor: 1) service or carrying charges; 2) credit
20 reports; 3) title exam, title insurance or similar purposes; 4)
21 escrow charges for future payments of taxes and insurance; 5)
22 fees for notarizing deeds and other documents; 6) appraisals,
23 including fees related to any pest infestation or flood hazard
24 inspections conducted prior to closing; 7) inspection performed
25 prior to closing; 8) attorney fees, if the borrower has the

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1 right to select the attorney from an approved list or
2 otherwise; 9) fire and hazard insurance and flood insurance
3 premiums if the conditions in 12 C.F.R. s.226.4(d)(2) are met;
4 10) tax payment services; 11) surveys; 12) flood certification;
5 and 13) pest infestation and flood determination;

6 (2) all compensation paid directly or
7 indirectly to a mortgage broker, including a broker that
8 originates a loan in its own name in a table-funded
9 transaction;

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

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

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

25 (6) for open-end loans, the points and fees

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1 included in Paragraphs (1) through (5) of this subsection that
2 are known at or before closing plus the minimum additional fees
3 the borrower would be required to pay to draw down an amount
4 equal to the total credit line;

5 ~~[L.]~~ M. "rate threshold" means:

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

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

16 ~~[M.]~~ N. "total points and fees" means the result
17 obtained by subtracting the sum of the conventional prepayment
18 penalties and the bona fide discount points paid from the sum
19 of the points and fees, except that if the sum of the
20 conventional prepayment penalties and the bona fide discount
21 points paid exceeds two points, then only the amount that
22 represents two points shall be subtracted; ~~[and~~

23 ~~N.]~~ O. "total points and fees threshold" means:

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

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

8 P. "variable interest rate" means an interest rate
9 that changes periodically based upon a specified index plus a
10 specified additional rate margin."

11 Section 4. Section 58-21A-4 NMSA 1978 (being Laws 2003,
12 Chapter 436, Section 4) is amended to read:

13 "58-21A-4. PROHIBITED PRACTICES AND PROVISIONS REGARDING
14 HOME LOANS.--

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

5 B. No creditor shall knowingly and intentionally
6 engage in the unfair act or practice of flipping a home loan.
7 As used in this subsection, "flipping a home loan" means the
8 making of a home loan to a borrower that refinances an existing
9 home loan when the new loan does not have reasonable, tangible
10 net benefit to the borrower considering all of the
11 circumstances, including the terms of both the new and
12 refinanced loans, the cost of the new loan and the borrower's
13 circumstances.

14 C. No creditor shall make a home loan that includes
15 or uses one or more of the following lending practices:

16 (1) making a home loan without documenting and
17 considering the borrower's reasonable ability to repay the home
18 loan pursuant to its terms. The borrower's ability to repay
19 shall be demonstrated through reasonably reliable
20 documentation, which may include payroll receipts, tax returns,
21 bank records, asset or credit evaluations or other similarly
22 reliable documentation. The provisions of this paragraph shall
23 not apply to the refinancing of a home loan facing imminent
24 foreclosure that provides the borrower with a reasonable,
25 tangible net benefit;

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1 (2) making a home loan primarily based upon
2 the foreclosure or liquidation value of the borrower's
3 collateral home;

4 (3) making a home loan without determining the
5 borrower's reasonable ability to pay the costs listed in
6 Subparagraphs (a) through (g) of this paragraph. In the case
7 of an adjustable rate home loan, the reasonable ability to pay
8 shall be determined based on a fully indexed rate and repayment
9 schedule that achieves full amortization over the life of the
10 mortgage loan. The costs, as applicable, to be used in
11 determining the borrower's reasonable ability to pay include:

- 12 (a) principal;
- 13 (b) interest;
- 14 (c) real estate taxes;
- 15 (d) property insurance;
- 16 (e) property assessments;
- 17 (f) mortgage insurance premiums; and
- 18 (g) other scheduled monthly debt
19 payments;

20 (4) making a home loan, except a home equity
21 line of credit, where the borrower's payments are limited to
22 only interest, and payment of outstanding principal of the home
23 loan is prohibited, and where the required payments over the
24 stated term of the loan are not sufficient to completely
25 amortize the loan within the term of the loan;

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1 (5) making an adjustable rate home loan,
2 except a home equity line of credit, where the interest rate
3 and resulting principal and interest payment may increase more
4 frequently than annually during the term of the loan;

5 (6) making an adjustable rate home loan,
6 except a home equity line of credit, where the interest rate
7 for the initial period or subsequent periods may be increased
8 for the next period by more than two percent, except where the
9 initial period is at least five years in length, in which case
10 an initial interest rate increase may be no more than five
11 percent;

12 (7) making an adjustable rate home loan where
13 caps on payment increases may be less than that necessary to
14 reduce principal and amortize the loan over the entire term of
15 the loan regardless of interest rate adjustments;

16 (8) making a home loan requiring a borrower to
17 pay a penalty or premium if the borrower at any time during the
18 term of the loan makes principal payments in addition to
19 scheduled principal payments or pays the balance of the home
20 loan prior to the stated end of the term of the loan;

21 (9) advertising terms of home loans, including
22 interest rates, margins, discount points, fees, commissions or
23 other material facts, including limitations on the home loans,
24 unless the creditor is able to make the advertised home loans
25 available to a reasonable number of qualified applicants;

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1 (10) misrepresenting a borrower's credit
2 rating;

3 (11) misrepresenting, inflating or
4 fabricating, or encouraging a borrower to misrepresent, inflate
5 or fabricate, the source or amount of a borrower's actual
6 income or assets in the application or underwriting process of
7 a home loan;

8 (12) making a home loan for an owner-occupied
9 residence in which the loan to value ratio is greater than
10 eighty percent, where the creditor has failed to establish an
11 escrow account for the payment of real estate taxes and
12 property insurance;

13 (13) directly or indirectly employing any
14 scheme, device or artifice to defraud or mislead borrowers;

15 (14) engaging in any unfair or deceptive
16 practice toward any person;

17 (15) obtaining property by fraud or
18 misrepresentation;

19 (16) making any payment, threat or promise,
20 directly or indirectly, to any person for the purpose of
21 influencing the independent judgment of the person in
22 connection with a home loan or making any payment, threat or
23 promise, directly or indirectly, to any appraiser of a property
24 for the purpose of influencing the independent judgment of the
25 appraiser with respect to the value of the property; and

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1 (17) causing or requiring a borrower to obtain
2 property insurance coverage in an amount that exceeds the
3 replacement cost of the improvements as established by the
4 property insurer."

5 Section 5. APPLICABILITY.--The provisions of this act
6 shall not apply to applications for home loans submitted before
7 October 1, 2009.

8 Section 6. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is October 1, 2009.

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