

1 SENATE BILL 365

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Gay G. Kernan

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10 AN ACT

11 RELATING TO MORTGAGE LOAN ORIGINATION; CHANGING THE  
12 PROHIBITIONS AND REQUIREMENTS RELATING TO CERTAIN ADJUSTABLE  
13 RATE HOME LOANS.

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

16 SECTION 1. Section 58-21A-4 NMSA 1978 (being Laws 2003,  
17 Chapter 436, Section 4, as amended) is amended to read:

18 "58-21A-4. PROHIBITED PRACTICES AND PROVISIONS REGARDING  
19 HOME LOANS.--

20 A. No creditor shall finance, directly or  
21 indirectly, credit life, credit disability, credit unemployment  
22 or credit property insurance, or any other life or health  
23 insurance, or any payments directly or indirectly for any debt  
24 cancellation or suspension agreement or contract, provided that  
25 nothing in this subsection prohibits the payment or receipt of

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1 insurance premiums or debt cancellation or suspension fees  
2 calculated on the unpaid balance of a home loan and paid on a  
3 monthly basis.

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

13 C. No creditor shall make a home loan without  
14 documenting and considering the borrower's reasonable ability  
15 to repay that loan pursuant to its terms. The borrower's  
16 ability to repay shall be demonstrated through reasonably  
17 reliable documentation that may include payroll receipts, tax  
18 returns, bank records, asset and credit evaluations, mortgage  
19 payment history or other similar reliable documentation. The  
20 provisions of this subsection shall not apply to a home loan  
21 originated pursuant to a government streamline program or a  
22 streamline program administered by a government-sponsored  
23 enterprise, to a reverse mortgage insured as part of a  
24 government program or to loss mitigation activities of a home  
25 loan servicer or lender with which the borrower has a current

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1 relationship, so long as each of these exceptions, as  
2 applicable, provides the borrower with a reasonable, tangible  
3 net benefit.

4 D. No creditor shall make a home loan without  
5 determining the borrower's reasonable ability to pay the costs  
6 set forth in this subsection. In the case of an adjustable  
7 rate home loan, the reasonable ability to pay shall be  
8 determined based on a fully indexed rate and repayment schedule  
9 that achieves full amortization over the life of the home loan.  
10 The costs, as applicable, to be used in determining the  
11 borrower's reasonable ability to pay include principal,  
12 interest, real estate taxes, property insurance, property  
13 assessments, mortgage insurance premiums and other scheduled  
14 long-term monthly debt payments.

15 E. No creditor shall make or originate an  
16 adjustable rate home loan in which caps on payment increases  
17 may be less than that necessary to reduce principal and  
18 amortize the loan over the entire term of the loan regardless  
19 of interest rate adjustments resulting in negative  
20 amortization.

21 F. No creditor shall make or originate a home loan  
22 that includes terms under which more than two periodic payments  
23 required under the loan are consolidated and paid in advance  
24 from the loan proceeds provided to the borrower.

25 G. No creditor shall pay a contractor under a

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1 home-improvement contract from the proceeds of a home loan  
2 unless:

3 (1) the creditor is presented with a signed  
4 and dated completion certificate showing that the home  
5 improvements have been completed; or

6 (2) the instrument is payable jointly to the  
7 borrower and the contractor, or at the election of the  
8 borrower, through a third-party escrow agent in accordance with  
9 terms established in a written agreement signed by the  
10 borrower, the creditor and the contractor prior to the  
11 disbursement.

12 H. No creditor shall charge a borrower any fees or  
13 other charges, other than those that are bona fide, reasonable  
14 and actual, to modify, renew, extend or amend a home loan.

15 I. No creditor shall charge a borrower more than  
16 seventy-five dollars (\$75.00) to defer any payment due under  
17 the terms of a home loan.

18 J. No creditor shall recommend or encourage default  
19 on an existing loan or other debt prior to and in connection  
20 with the closing or planned closing of a home loan that  
21 refinances all or any portion of the existing loan or debt.

22 K. No creditor shall make a home loan that provides  
23 for a late payment fee except as follows:

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

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

3 (3) the late payment fee shall not be imposed  
4 more than once with respect to a single late payment, and no  
5 late payment fee shall be charged with respect to a subsequent  
6 payment that would have been a full payment but for the  
7 previous default or the imposition of the previous late payment  
8 fee;

9 (4) no late payment fee shall be charged  
10 unless the creditor notifies the borrower within forty-five  
11 days following the date the payment was due that a late payment  
12 fee has been imposed for a particular late payment. A late  
13 payment fee that the creditor has collected shall be reimbursed  
14 if the borrower presents proof of having made a timely payment;  
15 and

16 (5) a creditor shall treat each payment as  
17 posted on the same business day as it was received by the  
18 creditor, servicer, creditor's agent for making payments or at  
19 the address provided to the borrower by the creditor, servicer  
20 or creditor's agent for making payments.

21 L. No creditor shall make a home loan that contains  
22 a provision that permits the creditor, in its sole discretion,  
23 to accelerate the indebtedness, provided that this provision  
24 does not prohibit acceleration of a loan in good faith due to a  
25 borrower's failure to abide by the material terms of the loan.

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1 M. No creditor shall make or originate a home loan  
2 that contains a provision that requires a penalty or premium  
3 for prepayment of the balance or any portion of the principal  
4 of the indebtedness.

5 N. No creditor shall make or originate a home loan  
6 that includes or uses one or more of the following lending  
7 practices:

8 (1) making a home loan primarily based upon  
9 the foreclosure or liquidation value of the borrower's  
10 collateral rather than on the borrower's ability to repay the  
11 home loan according to its terms;

12 (2) making or originating an adjustable rate  
13 home loan, except a home equity line of credit, a home loan  
14 that is eligible for sale to the federal national mortgage  
15 association or the federal home loan mortgage corporation or a  
16 home loan that is eligible for insurance under Title II of the  
17 federal National Housing Act, where the interest rate and  
18 payment may change more frequently than [~~annually~~] once every  
19 six months during the term of the loan;

20 (3) making an adjustable rate home loan,  
21 except a home equity line of credit, where:

22 (a) the initial interest rate may be  
23 increased by more than two percent for loans with initial  
24 periods less than five years and six percent for loans with  
25 initial periods greater than or equal to five years;

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1 (b) a periodic interest rate may be  
2 increased by more than [~~two percent~~] one percent every six  
3 months; and

4 (c) a lifetime interest rate cap is more  
5 than six percent over the initial rate;

6 (4) advertising terms of home loans, including  
7 interest rates, margins, discount points, fees, commissions or  
8 other material facts, including limitations on the home loans,  
9 unless the creditor is able to make the advertised home loans  
10 available to a reasonable number of qualified applicants;

11 (5) misrepresenting a borrower's credit  
12 rating;

13 (6) misrepresenting, inflating or fabricating,  
14 or encouraging a borrower to misrepresent, inflate or  
15 fabricate, the source or amount of a borrower's actual income  
16 or assets, other than allowable grossed-up income not to exceed  
17 the twenty-five percent per agency guidelines established by  
18 rule by the director, in the application or underwriting  
19 process of a home loan; and

20 (7) making a home loan with an eighty percent  
21 or higher loan-to-value ratio for an owner-occupied residence  
22 if the creditor has failed to establish an escrow account for  
23 the payment of real estate taxes and property insurance."