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SENATE BILL 1055

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Mark Boitano

AN ACT

RELATING TO LICENSURE; CREATING LICENSING REQUIREMENTS FOR
MORTGAGE LOAN ORIGINATORS; AMENDING AND ENACTING SECTIONS OF
THE NMSA 1978.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 13 of this act may be cited as the "Mortgage Loan
Originator Licensing Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Mortgage Loan Originator Licensing Act:

A. "affiliate" means an entity that controls, is
controlled by or is under common control with another entity;

B. "applicant" means any person seeking to be
licensed as a mortgage loan originator;

C. "director" means the director of the division;

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1 D. "division" means the financial institutions
2 division of the regulation and licensing department;

3 E. "license" means a license issued by the director
4 pursuant to the Mortgage Loan Originator Licensing Act;

5 F. "licensee" means a person who obtains a license
6 issued by the director pursuant to the Mortgage Loan Originator
7 Licensing Act;

8 G. "mortgage loan" means a loan or agreement to
9 extend credit made to a natural person that is secured by a
10 first or second mortgage, deed of trust, contract for deed or
11 other similar instrument or document representing a security
12 interest or lien upon any lot intended for residential purposes
13 or a one-to-four family dwelling, located in this state,
14 including the renewal or refinancing of any such loan;

15 H. "mortgage loan origination" means engaging in,
16 or holding out to the public as willing to engage in, for
17 compensation or gain, or in the expectation of compensation or
18 gain, directly or indirectly, the business of making,
19 originating, soliciting, placing, negotiating, acquiring,
20 selling or arranging for others, or offering to solicit, place,
21 negotiate, acquire, sell or arrange for others, mortgage loans
22 in the primary market;

23 I. "mortgage loan originator" means a natural
24 person whose job responsibilities include direct contact with
25 borrowers during the mortgage loan origination process,

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1 including soliciting, negotiating, acquiring or making mortgage
2 loans for others, obtaining personal or financial information,
3 assisting with the preparation of loan applications or other
4 documents, quoting loan payments, rates or terms, or providing
5 required disclosures. "Mortgage loan originator" does not mean
6 a person whose job responsibilities on behalf of a licensee are
7 clerical in nature;

8 J. "primary market" means the market wherein
9 mortgage loans are originated between a lender and a borrower,
10 whether or not through a mortgage broker or other means; and

11 K. "registrant" means a person who is registered as
12 a mortgage loan company or loan broker pursuant to the Mortgage
13 Loan Company and Loan Broker Act.

14 Section 3. [NEW MATERIAL] LICENSE EXEMPTIONS.--The
15 following are exempt from the licensing requirements of the
16 Mortgage Loan Originator Licensing Act:

17 A. a person employed by a bank, savings bank,
18 savings and loan association or credit union that is authorized
19 to make loans and to receive deposits and is chartered under
20 the laws of the United States, the state of New Mexico or any
21 other state or, by an affiliate or subsidiary of any such bank,
22 savings bank, savings and loan association or credit union;

23 B. the United States, the state of New Mexico, any
24 other state of the United States and an agency or
25 instrumentality of any state government; and

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1 C. a person who, with the person's own funds for
2 the person's own investment, makes a purchase money mortgage or
3 finances the sale of the person's own property, except that a
4 person who enters into more than three such investments or
5 sales in any twelve-month period shall be subject to all
6 provisions of the Mortgage Loan Originator Licensing Act.

7 Section 4. [NEW MATERIAL] LICENSE REQUIRED TO ORIGINATE
8 MORTGAGE LOANS.--

9 A. Mortgage loan origination shall only be
10 conducted by a licensee.

11 B. A licensee shall only engage in mortgage loan
12 origination on behalf of one registrant.

13 C. A person found to be in violation of the
14 Mortgage Loan Originator Licensing Act shall be subject to a
15 fine not to exceed five thousand dollars (\$5,000) or revocation
16 of that person's license for a period of not less than three
17 years, or both.

18 Section 5. [NEW MATERIAL] APPLICATION FOR LICENSE.--

19 A. An applicant shall submit to the director an
20 application and required fees for licensing on forms prescribed
21 and provided by the director. The application shall contain
22 information the director deems necessary to adequately identify
23 the location where the person engages in mortgage loan
24 origination activities, the registrants for whom the licensee
25 will originate mortgage loans and other information the

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1 director requires to evaluate the condition, character,
2 qualifications and fitness of the applicant and the applicant's
3 compliance with the provisions of the Mortgage Loan Originator
4 Licensing Act. Each application shall be accompanied by a
5 nonrefundable fee pursuant to the Mortgage Loan Originator
6 Licensing Act.

7 B. An application shall be approved, and a license
8 shall be issued to the applicant if the director:

9 (1) has received the complete application and
10 fee required by this subsection; and

11 (2) determines that the character,
12 qualifications and fitness of the applicant warrant a belief
13 that the business of the applicant will be conducted
14 competently, honestly, fairly and in accordance with all
15 applicable state and federal laws.

16 C. An applicant shall complete satisfactorily a
17 course of mortgage lending study approved by the director and
18 shall pass a written examination approved by the director to
19 ensure the applicant has sufficient knowledge to conduct
20 mortgage business in compliance with state and federal law.

21 D. An applicant shall satisfy a background check
22 authorized and approved by the director.

23 Section 6. [NEW MATERIAL] ANNUAL RENEWAL OF LICENSE.--

24 A. A license shall become effective as of the date
25 specified on the face of the license.

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1 B. A license shall be renewed annually by filing
2 with the director, at least thirty days prior to the expiration
3 of the license, a renewal application containing information
4 the director requires to determine the existence of material
5 changes from the information contained in the applicant's
6 original license application or prior renewal applications,
7 including evidence of satisfactory completion of a minimum of
8 twelve hours of continuing professional education approved by
9 the director.

10 C. Each renewal application shall be accompanied by
11 a nonrefundable fee pursuant to Section 12 of the Mortgage Loan
12 Originator Licensing Act.

13 Section 7. [NEW MATERIAL] APPLICATION DENIAL--APPEAL.--If
14 the director denies an initial license application or a license
15 renewal application, the applicant may make a written request
16 for a hearing. The director shall conduct a hearing to
17 determine if the denial was warranted.

18 Section 8. [NEW MATERIAL] DENIAL, SUSPENSION, REVOCATION
19 AND NONRENEWAL OF LICENSE--NOTICE.--The director may deny,
20 suspend, revoke or refuse to renew a license issued pursuant to
21 the Mortgage Loan Originator Licensing Act if the director
22 finds, after notice and opportunity for a hearing, that:

23 A. the applicant or licensee has violated a section
24 of the Mortgage Loan Originator Licensing Act or a rule
25 promulgated pursuant to that act;

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1 B. facts or conditions exist that would have
2 justified the denial of the license or renewal application had
3 those facts or conditions existed or been known to exist at the
4 time the application for an initial license or license renewal
5 was made;

6 C. the applicant or licensee has filed with the
7 division a document or statement containing a false
8 representation of a material fact or fails to state a material
9 fact;

10 D. the applicant or licensee, or an employee of the
11 applicant or licensee, has been convicted of a crime involving
12 fraud, dishonesty or deceit;

13 E. the applicant or licensee, or an employee of the
14 applicant or licensee, has engaged in or is engaging in
15 deceptive business practices;

16 F. the applicant or licensee, or an employee of the
17 applicant or licensee, has been the subject of a disciplinary
18 action by the division or any other state or federal regulatory
19 agency;

20 G. a final judgment has been entered against the
21 applicant or licensee, or an employee of the applicant or
22 licensee, in a civil action and the director finds, based upon
23 the conduct on which the judgment is based, that the licensing
24 of that applicant or licensee would be contrary to the public
25 interest;

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1 H. the applicant or licensee, or an employee of the
2 applicant or licensee, has been convicted of engaging in
3 mortgage business activity without authorization pursuant to
4 the Mortgage Loan Originator Licensing Act or a substantially
5 similar offense in another state; or

6 I. the applicant or licensee has refused to furnish
7 information required by the director within a reasonable period
8 of time as established by the director.

9 Section 9. [NEW MATERIAL] LICENSE DISPLAY.--A licensee
10 shall prominently display the licensee's original license in a
11 way that reasonably ensures recognition by customers and
12 members of the general public who enter the licensee's place of
13 business.

14 Section 10. [NEW MATERIAL] DUTIES OF THE DIRECTOR.--The
15 director shall:

16 A. promulgate rules necessary to carry out the
17 intent and purpose of the Mortgage Loan Originator Licensing
18 Act;

19 B. order a licensee to cease any activity or
20 practice that the director deems to be deceptive, dishonest,
21 violative of state or federal law or unduly harmful to the
22 interests of the public;

23 C. exchange any information regarding the
24 administration of the Mortgage Loan Originator Licensing Act
25 with an agency of the United States or an agency of any state

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1 that regulates the licensee or administers statutes, rules or
2 programs related to mortgage loans;

3 D. disclose that an applicant's or licensee's
4 application or license has been denied, suspended, revoked or
5 refused renewal;

6 E. require or permit a person to file a written
7 statement, under oath or otherwise as the director may direct,
8 setting forth all the facts and circumstances concerning any
9 apparent violation of the Mortgage Loan Originator Licensing
10 Act or any rule promulgated pursuant to that act; and

11 F. follow the procedures set forth in the Uniform
12 Licensing Act in carrying out the director's duties pursuant to
13 the Mortgage Loan Originator Licensing Act.

14 Section 11. [NEW MATERIAL] CEASE AND DESIST ORDER--CIVIL
15 FINES.--

16 A. If the director determines after notice and
17 opportunity for a hearing that a person has engaged, is
18 engaging or is about to engage in any act or practice
19 constituting a violation of any provision of the Mortgage Loan
20 Originator Licensing Act or any rule pursuant to that act, the
21 director by order may require any or all of the following:

22 (1) that the person cease and desist from the
23 unlawful act or practice;

24 (2) that the person pay a fine not to exceed
25 five thousand dollars (\$5,000) per incident for the unlawful

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1 act or practice; and

2 (3) that the person take such affirmative
3 action as in the judgment of the director will carry out the
4 purposes of the Mortgage Loan Originator Licensing Act.

5 B. Whenever it appears to the director that a
6 person has engaged, is engaging or is about to engage in any
7 act or practice constituting a violation of a provision of the
8 Mortgage Loan Originator Licensing Act or any rule pursuant to
9 that act, the director may bring an action in any court of
10 competent jurisdiction to enjoin the acts or practices and to
11 require compliance with that act or any rule pursuant to that
12 act. Upon a proper showing, a permanent or temporary
13 injunction, restraining order, restitution, writ of mandamus or
14 other equitable relief shall be granted, and a receiver or
15 conservator may be appointed for the defendant or the
16 defendant's assets.

17 Section 12. [NEW MATERIAL] MORTGAGE LOAN ORIGINATOR
18 FEES.--At the time of filing any application, an applicant,
19 licensee or registrant shall pay to the division the following
20 nonrefundable fees as may be applicable:

21	Application for licensing as mortgage loan	
22	originator	\$200
23	Renewal application for licensing as mortgage loan	
24	originator	\$125
25	Amendment of any license	\$50.00.

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1 Section 13. [NEW MATERIAL] CONTINUING PROFESSIONAL
2 EDUCATION--REQUIREMENTS--WAIVER.--A licensee shall annually
3 complete at least twelve hours of approved continuing
4 professional education as a condition of licensing renewal as
5 follows:

6 A. each continuing professional education course
7 shall first be approved by the director;

8 B. continuing professional education courses shall
9 focus on issues of mortgage business or related industry
10 topics;

11 C. evidence of satisfactory completion of approved
12 continuing professional education courses shall be submitted on
13 forms provided by the director. The form may be submitted by
14 the licensee seeking continuing professional education credit
15 or the person sponsoring the continuing professional education
16 course. A licensee shall be ultimately responsible for
17 ensuring that continuing professional education credit has been
18 properly submitted to the director and shall maintain
19 verification records in the form of completion certificates or
20 other documents supporting evidence of attendance at approved
21 continuing professional education courses;

22 D. a continuing professional education year shall
23 be the calendar year;

24 E. continuing professional education hours shall
25 not be carried forward from one year to the next year;

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1 F. a licensee issued a license on or after the
2 first day of July of a year shall have until December 31 of the
3 following year to comply with annual continuing professional
4 education requirements;

5 G. a licensee who fails to renew a license pursuant
6 to the provisions of the Mortgage Loan Originator Licensing Act
7 shall obtain all delinquent continuing professional education
8 hours before receiving a new license, unless a period of twelve
9 months has elapsed from the initial expiration date of the
10 license. In that case, the licensee may renew with the
11 completion of only twelve hours of continuing professional
12 education; and

13 H. the requirement for completion of continuing
14 professional education may be waived or the deadline for
15 completion may be extended by the director if the licensee is
16 called to active duty in the armed forces of the United States
17 for a period exceeding one hundred twenty consecutive days in
18 any continuing professional education year.

19 Section 14. Section 58-21-5 NMSA 1978 (being Laws 1983,
20 Chapter 86, Section 5, as amended by Laws 2001, Chapter 251,
21 Section 4 and by Laws 2001, Chapter 264, Section 4) is amended
22 to read:

23 "58-21-5. REGISTRATION FEES--DURATION OF
24 REGISTRATION.--

25 A. Applicants shall, at the time of application,

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1 pay to the division [~~four hundred dollars (\$400)~~] five hundred
2 dollars (\$500) for initial registration and [~~three hundred~~
3 ~~dollars (\$300)~~] four hundred dollars (\$400) for each renewal
4 registration. Additionally, the director shall charge and
5 collect from an applicant a fee of ten dollars (\$10.00) per day
6 for late filings of a renewal registration or three hundred
7 dollars (\$300), whichever is less.

8 B. A registration shall continue for a period of
9 twelve months from the date of registration. Each registrant
10 shall submit a renewal application at least thirty days before
11 the expiration of [~~his~~] the registrant's existing registration.

12 C. A registrant shall pay a replacement license fee
13 of fifty dollars (\$50.00)."

14 Section 15. A new section of the Mortgage Loan Company
15 and Loan Broker Act is enacted to read:

16 "[NEW MATERIAL] PROHIBITED PRACTICES.--A person required
17 to be registered pursuant to Section 58-21-3 NMSA 1978 shall
18 not pay compensation to, contract with or employ a person in
19 the capacity of a mortgage loan originator as defined in
20 Subsection H of Section 2 of the Mortgage Loan Originator
21 Licensing Act who does not have a license in good standing
22 pursuant to that act."

23 Section 16. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2009.