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HOUSE BILL 21

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Patricia A. Lundstrom

FOR THE ECONOMIC AND RURAL DEVELOPMENT COMMITTEE  
AND 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. Section 58-21A-2 NMSA 1978 (being Laws 2003,  
Chapter 436, Section 2) is amended to read:

"58-21A-2. 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

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1 increase in recent years;

2 B. one of the most common forms of abusive lending  
3 is the making of loans that are equity-based, rather than  
4 income-based;

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

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

13 E. other forms of abusive mortgage lending have  
14 emerged in New Mexico, including home loans to purchase a home  
15 that include no down payment; interest-only home loans;  
16 adjustable rate home loans with an initially low teaser rate  
17 that is reset after a short period to a higher rate resulting  
18 in borrower payment shock; and adjustable rate home loans with  
19 payment increase caps but without interest rate caps that may  
20 result in negative amortization and underwriting practices such  
21 as no verification of borrower income, approval of borrowers  
22 with poor or checkered credit histories and prospective home  
23 loan payments that are an unrealistically high proportion of  
24 the borrower's monthly income. These abusive mortgage lending  
25 practices may result in an unacceptably high rate of home loan

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1 foreclosures and displacement of borrowers and their families."

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

4 "58-21A-3. DEFINITIONS.--As used in the Home Loan  
5 Protection Act:

6 A. "adjustable rate home loan" means a home loan in  
7 any amount that has an initial interest rate that adjusts to a  
8 variable interest rate at the end of a specified initial period  
9 or subsequent periods of time during the remaining term of the  
10 home loan;

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

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

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

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

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

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

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

15           ~~[F-]~~ G. "conventional prepayment penalty" means a  
16 prepayment penalty or fee that may be collected in a home loan  
17 and that is authorized by federal law; provided that a  
18 prepayment penalty is not a "conventional prepayment penalty"  
19 if the home loan:

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

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

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

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

3                   (1) the contract rate exceeds the ~~[rates]~~ rate  
4 threshold; or

5                   (2) the total points and fees exceed the total  
6 points and fees threshold;

7           ~~[F.]~~ J. "home loan" means a loan, including an  
8 open-end credit plan, other than a reverse mortgage transaction  
9 or a bridge loan, where the principal amount does not exceed  
10 the conforming loan size limit for a single-family dwelling as  
11 established by the federal national mortgage association and  
12 where the loan is secured by:

13                   (1) a mortgage or deed of trust on real estate  
14 in this state upon which there is located or there is to be  
15 located a structure:

16                           (a) designed principally for occupancy  
17 by one to four families; and

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

20                   (2) a security interest on a manufactured home  
21 that is or will be occupied by a borrower as the borrower's  
22 principal residence;

23           ~~[J.]~~ K. "manufactured home" means a structure,  
24 transportable in one or more sections, which in the traveling  
25 mode is eight body feet or more in width or forty body feet or

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1 more in length or, when erected on site is three hundred twenty  
2 or more square feet and which is built on a permanent chassis  
3 and designed to be used as a dwelling with a permanent  
4 foundation when erected on land secured in conjunction with the  
5 real property on which the manufactured home is located and  
6 connected to the required utilities and includes the plumbing,  
7 heating, air conditioning and electrical systems contained  
8 therein. "Manufactured home" includes any structure that meets  
9 all the requirements of this subsection except the size  
10 requirements and with respect to which the manufacturer  
11 voluntarily files a certification required by the secretary of  
12 the United States department of housing and urban development  
13 and complies with the standards established under the federal  
14 National Manufactured Housing Construction and Safety Standards  
15 Act of 1974. "Manufactured home" does not include rental  
16 property or second homes or manufactured homes when not secured  
17 in conjunction with the real property on which the manufactured  
18 home is located;

19 [K-] L. "points and fees" means:

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

23 (a) loan discount points or other  
24 discounts;

25 (b) loan fees, finder's fees or similar

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1 charges; and

2 (c) fees for preparation of loan-related  
3 documents; but

4 (d) does not include fees for the  
5 following purposes, if the amounts are bona fide and reasonable  
6 and paid to a person other than the creditor or an affiliate of  
7 the creditor: 1) service or carrying charges; 2) credit  
8 reports; 3) title exam, title insurance or similar purposes; 4)  
9 escrow charges for future payments of taxes and insurance; 5)  
10 fees for notarizing deeds and other documents; 6) appraisals,  
11 including fees related to any pest infestation or flood hazard  
12 inspections conducted prior to closing; 7) inspection performed  
13 prior to closing; 8) attorney fees, if the borrower has the  
14 right to select the attorney from an approved list or  
15 otherwise; 9) fire and hazard insurance and flood insurance  
16 premiums if the conditions in 12 C.F.R. s.226.4(d)(2) are met;  
17 10) tax payment services; 11) surveys; 12) flood certification;  
18 and 13) pest infestation and flood determination;

19 (2) all compensation paid directly or  
20 indirectly to a mortgage broker, including a broker that  
21 originates a loan in its own name in a table-funded  
22 transaction;

23 (3) the maximum prepayment fees and penalties  
24 that may be charged or collected under the terms of the loan  
25 documents;

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

5 (5) the cost of all premiums financed by the  
6 creditor, directly or indirectly, for any credit life, credit  
7 disability, credit unemployment or credit property insurance,  
8 or any other life or health insurance, or any payments financed  
9 by the creditor, directly or indirectly, for any debt  
10 cancellation or suspension agreement or contract, except that  
11 insurance premiums calculated and paid on a monthly basis shall  
12 not be considered financed by the creditor; and

13 (6) for open-end loans, the points and fees  
14 included in Paragraphs (1) through (5) of this subsection that  
15 are known at or before closing plus the minimum additional fees  
16 the borrower would be required to pay to draw down an amount  
17 equal to the total credit line;

18 [~~E.~~] M. "rate threshold" means:

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

24 (2) for a subordinate mortgage lien, an  
25 interest rate equal to nine percentage points over the weekly

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1 average yield on comparable United States treasury securities  
2 on the fifteenth day of the month immediately preceding the  
3 month in which the loan is made;

4 ~~[M.]~~ N. "total points and fees" means the result  
5 obtained by subtracting the sum of the conventional prepayment  
6 penalties and the bona fide discount points paid from the sum  
7 of the points and fees, except that if the sum of the  
8 conventional prepayment penalties and the bona fide discount  
9 points paid exceeds two points, then only the amount that  
10 represents two points shall be subtracted; ~~[and~~

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

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

16 (2) for a home loan in which the total  
17 principal loan amount is less than twenty thousand dollars  
18 (\$20,000), an amount equal to the lesser of one thousand  
19 dollars (\$1,000) or eight percent of the total principal loan  
20 amount; and

21 P. "variable interest rate" means an interest rate  
22 that changes periodically based upon a specified index plus a  
23 specified additional rate margin."

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

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1 "58-21A-4. PROHIBITED PRACTICES AND PROVISIONS REGARDING  
2 HOME LOANS.--

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

18 B. No creditor shall knowingly and intentionally  
19 engage in the unfair act or practice of flipping a home loan.  
20 As used in this subsection, "flipping a home loan" means the  
21 making of a home loan to a borrower that refinances an existing  
22 home loan when the new loan does not have reasonable, tangible  
23 net benefit to the borrower considering all of the  
24 circumstances, including the terms of both the new and  
25 refinanced loans, the cost of the new loan and the borrower's

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1 circumstances.

2 C. No creditor shall make a home loan in any amount  
3 that includes or uses one or more of the following lending  
4 practices:

5 (1) making a home loan without documenting and  
6 considering the borrower's income, credit history and assessed  
7 ability to repay the home loan according to its terms over the  
8 entire term of the loan;

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

12 (3) making a home loan where the monthly loan  
13 payment amount, including principal, interest, taxes and  
14 insurance, along with the borrower's other scheduled monthly  
15 debt payments at the time the home loan is executed exceeds  
16 fifty percent of the borrower's gross monthly income;

17 (4) making a home loan where the borrower is  
18 required to pay only the interest on the outstanding principal  
19 of the home loan or where the required payments over the stated  
20 term of the loan are not sufficient to completely amortize the  
21 loan within the term of the loan;

22 (5) making an adjustable rate home loan where  
23 the interest rate and payment may change more frequently than  
24 annually during the term of the loan;

25 (6) making an adjustable rate home loan where

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1 the interest rate for the initial period or subsequent periods  
2 may be increased for the next period so that the payments of  
3 interest and principal will increase by more than one and one-  
4 half percent;

5 (7) making an adjustable rate home loan where  
6 caps on payment increases are different from caps on interest  
7 rates so that the required payments may be less than that  
8 necessary to reduce principal and amortize the loan within the  
9 term of the loan regardless of interest rate adjustments; and

10 (8) making a home loan requiring a borrower to  
11 pay a penalty or premium if the borrower at any time during the  
12 term of the loan makes principal payments in addition to  
13 scheduled principal payments or pays the balance of the home  
14 loan prior to the stated end of the term of the loan."