

1 AN ACT
2 RELATING TO REAL PROPERTY; ENACTING THE NEW MEXICO MORTGAGE
3 LOAN ORIGINATOR LICENSING ACT; CREATING LICENSING
4 REQUIREMENTS FOR MORTGAGE LOAN ORIGINATORS; PROVIDING
5 PENALTIES; AMENDING THE MORTGAGE LOAN COMPANY AND LOAN BROKER
6 ACT; AMENDING THE HOME LOAN PROTECTION ACT; PROSCRIBING
7 CERTAIN PRACTICES; CREATING A FUND; MAKING AN APPROPRIATION.

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

10 Section 1. SHORT TITLE.--Sections 1 through 24 of this
11 act may be cited as the "New Mexico Mortgage Loan Originator
12 Licensing Act".

13 Section 2. FINDINGS--PURPOSE.--

14 A. The activities of mortgage loan originators and
15 the origination or offering of financing for residential real
16 property have a direct, valuable and immediate impact upon
17 New Mexico's consumers, New Mexico's economy, the
18 neighborhoods and communities of New Mexico and the housing
19 and real estate industry. The legislature finds that
20 accessibility to mortgage credit is vital to New Mexico's
21 residents. The legislature also finds that it is essential
22 for the protection of the residents of New Mexico and the
23 stability of New Mexico's economy that reasonable standards
24 for licensing and regulation of the business practices of
25 mortgage loan originators be imposed. The legislature

1 further finds that the obligations of mortgage loan
2 originators to consumers in connection with originating or
3 making residential mortgage loans are such as to warrant the
4 regulation of the mortgage lending process.

5 B. The purpose of the New Mexico Mortgage Loan
6 Originator Licensing Act is to protect consumers seeking
7 mortgage loans.

8 Section 3. DEFINITIONS.--As used in the New Mexico
9 Mortgage Loan Originator Licensing Act:

10 A. "clerical or support duties" may include,
11 subsequent to the receipt of an application:

12 (1) the receipt, collection, distribution
13 and analysis of information common for the processing or
14 underwriting of a residential mortgage loan; and

15 (2) communicating with a consumer to obtain
16 the information necessary for the processing or underwriting
17 of a loan, to the extent that such communication does not
18 include offering or negotiating loan rates or terms or
19 counseling consumers about residential mortgage loan rates or
20 terms;

21 B. "depository institution" has the same meaning
22 as the definition of depository institution in Section 3 of
23 the Federal Deposit Insurance Act and includes any credit
24 union;

25 C. "director" means the director of the financial

1 institutions division of the regulation and licensing
2 department;

3 D. "dwelling" means a residential structure that
4 contains one to four units whether or not that structure is
5 attached to real property. "Dwelling" includes an individual
6 condominium unit, an individual cooperative unit, a mobile
7 home and a trailer if used as a residence;

8 E. "federal banking agencies" means the board of
9 governors of the federal reserve system, the comptroller of
10 the currency, the director of the office of thrift
11 supervision, the national credit union administration and the
12 federal deposit insurance corporation;

13 F. "immediate family member" means a spouse,
14 child, sibling, parent, grandparent or grandchild, and
15 "immediate family member" includes a stepparent, a stepchild,
16 a stepsibling and an adoptive relationship;

17 G. "individual" means a natural person;

18 H. "license" means a license issued pursuant to
19 Section 6 of the New Mexico Mortgage Loan Originator
20 Licensing Act;

21 I. "loan processor or underwriter" means an
22 individual who performs clerical or support duties as an
23 employee at the direction of and subject to the supervision
24 and instruction of a person licensed, or exempt from
25 licensing, pursuant to the Mortgage Loan Company Act;

1 J. "mortgage loan company" means any person
2 defined as such in the Mortgage Loan Company Act;

3 K. "mortgage loan originator" means an individual
4 who for compensation or gain or in the expectation of
5 compensation or gain takes a residential mortgage loan
6 application or offers or negotiates terms of a residential
7 mortgage loan. "Mortgage loan originator" does not include:

8 (1) an individual engaged solely as a loan
9 processor or underwriter except as otherwise provided in
10 Subsection I of this section;

11 (2) a person that only performs real estate
12 brokerage activities and is licensed or registered in
13 accordance with New Mexico law, unless the person is
14 compensated by a lender, a mortgage loan company or other
15 mortgage loan originator or by any agent of such lender,
16 mortgage loan company or other mortgage loan originator; and

17 (3) a person solely involved in extensions
18 of credit relating to timeshare plans, as that term is
19 defined in Section 101(53D) of Title 11 of the United States
20 Code;

21 L. "nationwide mortgage licensing system and
22 registry" means a mortgage licensing system developed and
23 maintained by the conference of state bank supervisors and
24 the American association of residential mortgage regulators
25 for the licensing and registration of licensed mortgage loan

1 originators;

2 M. "nontraditional mortgage product" means any
3 mortgage product other than a thirty-year fixed rate
4 mortgage;

5 N. "person" means a natural person, corporation,
6 company, limited liability company, partnership or
7 association;

8 O. "real estate brokerage activity" means any
9 activity that involves offering or providing real estate
10 brokerage services to the public, including:

11 (1) acting as a real estate agent or real
12 estate broker for a buyer, seller, lessor or lessee of real
13 property;

14 (2) bringing together parties interested in
15 the sale, purchase, lease, rental or exchange of real
16 property;

17 (3) negotiating, on behalf of any party, any
18 portion of a contract relating to the sale, purchase, lease,
19 rental or exchange of real property, other than in connection
20 with providing financing with respect to any such
21 transaction;

22 (4) engaging in any activity for which a
23 person engaged in the activity is required to be registered
24 or licensed as a real estate agent or real estate broker
25 pursuant to any applicable law; and

1 (5) offering to engage in any activity or to
2 act in any capacity described in Paragraphs (1) through (4)
3 of this subsection;

4 P. "registered mortgage loan originator" means any
5 individual who:

6 (1) meets the definition of mortgage loan
7 originator and is an employee of:

8 (a) a depository institution;

9 (b) a subsidiary that is: 1) owned and
10 controlled by a depository institution; and 2) regulated by a
11 federal banking agency; or

12 (c) an institution regulated by the
13 farm credit administration; and

14 (2) is registered with, and maintains a
15 unique identifier through, the nationwide mortgage licensing
16 system and registry;

17 Q. "residential mortgage loan" means any loan
18 primarily for personal, family or household use that is
19 secured by a mortgage, deed of trust or other equivalent
20 consensual security interest on a dwelling or on residential
21 real estate upon which is constructed or is intended to be
22 constructed a dwelling as so defined;

23 R. "residential real estate" means any real
24 property located in New Mexico upon which is constructed or
25 intended to be constructed a dwelling;

1 S. "servicer" means a person that collects or
2 receives payments, including principal, interest and trust
3 items such as hazard insurance, property taxes and other
4 amounts due, on behalf of a note holder or investor in
5 accordance with the terms of a residential mortgage loan, and
6 includes working with a borrower on behalf of a note holder
7 or investor, when the borrower is in financial hardship or
8 default, to modify either temporarily or permanently the
9 terms of an existing residential mortgage loan; and

10 T. "unique identifier" means a number or other
11 identifier assigned by protocols established by the
12 nationwide mortgage licensing system and registry.

13 Section 4. LICENSE AND REGISTRATION REQUIRED TO
14 ORIGINATE MORTGAGE LOANS.--

15 A. Unless specifically exempted from the New
16 Mexico Mortgage Loan Originator Licensing Act pursuant to
17 Subsection B of this section, an individual shall not engage
18 in the business of a mortgage loan originator with respect to
19 any dwelling located in New Mexico without first obtaining
20 and maintaining annually a license pursuant to that act.

21 Each licensed mortgage loan originator must register with and
22 maintain a valid unique identifier issued by the nationwide
23 mortgage licensing system and registry. All new licenses and
24 license renewals shall expire on December 31 of each year.

25 All license renewal applications shall be submitted on or

1 before November 1 of each year.

2 B. The following are exempt from the provisions of
3 the New Mexico Mortgage Loan Originator Licensing Act:

4 (1) registered mortgage loan originators
5 when acting for an entity defined in Subparagraphs (a)
6 through (c) of Paragraph (1) of Subsection P of Section 3 of
7 the New Mexico Mortgage Loan Originator Licensing Act;

8 (2) an individual who offers or negotiates
9 terms of a residential mortgage loan with or on behalf of an
10 immediate family member of the individual;

11 (3) an individual who offers or negotiates
12 terms of a real property sale financed in whole or in part by
13 the seller and secured by the seller's real property; or

14 (4) a licensed attorney who negotiates the
15 terms of a residential mortgage loan on behalf of a client as
16 an ancillary matter to the attorney's representation of the
17 client, unless the attorney is compensated by a lender, a
18 mortgage loan company or other mortgage loan originator or by
19 any agent of such lender, mortgage loan company or other
20 mortgage loan originator.

21 C. A loan processor or underwriter who is an
22 independent contractor shall not engage in the activities of
23 a loan processor or underwriter unless the independent
24 contractor loan processor or underwriter obtains and
25 maintains a license pursuant to Subsection A of this section.

1 Each contractor loan processor or underwriter licensed as a
2 mortgage loan originator shall have and maintain a valid
3 unique identifier issued by the nationwide mortgage licensing
4 system and registry.

5 D. A mortgage loan originator who is currently
6 licensed in another state through the nationwide mortgage
7 licensing system and registry may be granted a temporary
8 mortgage loan originator license valid for ninety days while
9 the mortgage loan originator completes the education and
10 testing requirements of the New Mexico Mortgage Loan
11 Originator Licensing Act. The mortgage loan originator's
12 current license in another state must be valid for more than
13 ninety days beyond the date of application for a temporary
14 license in order to receive a temporary license in New
15 Mexico.

16 Section 5. STATE LICENSE AND REGISTRATION APPLICATION
17 AND ISSUANCE.--

18 A. Applicants for a license shall apply in a form
19 as prescribed by the director. Each form shall contain
20 content as set forth by rule, instruction or procedure of the
21 director and may be changed or updated as necessary by the
22 director in order to carry out the purposes of the New Mexico
23 Mortgage Loan Originator Licensing Act.

24 B. In order to fulfill the purposes of the New
25 Mexico Mortgage Loan Originator Licensing Act, the director

1 may establish relationships or contracts with the nationwide
2 mortgage licensing system and registry or other entities
3 designated by the nationwide mortgage licensing system and
4 registry to collect and maintain records and process
5 transaction fees or other fees related to licensed mortgage
6 loan originators or other individuals subject to that act.

7 C. In connection with an application for licensing
8 as a mortgage loan originator, the applicant shall, at a
9 minimum, furnish to the nationwide mortgage licensing system
10 and registry information concerning the applicant's identity,
11 including:

12 (1) fingerprints for submission to the
13 federal bureau of investigation and any governmental agency
14 or entity authorized to receive such information for a state,
15 national and international criminal history background check;
16 and

17 (2) personal history and experience in a
18 form prescribed by the nationwide mortgage licensing system
19 and registry, including the submission of authorization for
20 the nationwide mortgage licensing system and registry and the
21 director to obtain:

22 (a) an independent credit report
23 obtained from a consumer reporting agency described in
24 Section 603(p) of the federal Fair Credit Reporting Act; and

25 (b) information related to any

1 administrative, civil or criminal findings by any
2 governmental jurisdiction.

3 D. For the purposes of this section and in order
4 to reduce the points of contact that the federal bureau of
5 investigation may have to maintain for purposes of Paragraph
6 (1) of Subsection C of this section and Subparagraph (b) of
7 Paragraph (2) of Subsection C of this section, the director
8 may use the nationwide mortgage licensing system and registry
9 as a channeling agent for requesting information from and
10 distributing information to the federal department of justice
11 or any governmental agency with mortgage industry oversight
12 authority.

13 E. For the purposes of this section and in order
14 to reduce the points of contact that the director may have to
15 maintain for purposes of Subparagraphs (a) and (b) of
16 Paragraph (2) of Subsection C of this section, the director
17 may use the nationwide mortgage licensing system and registry
18 as a channeling agent for requesting and distributing
19 information to and from any source as directed by the
20 director.

21 Section 6. ISSUANCE OF LICENSE.--The director shall not
22 issue a mortgage loan originator license unless the director
23 makes at a minimum the following findings:

24 A. the applicant has never had a mortgage loan
25 originator license revoked in any governmental jurisdiction,

1 except that a formal vacation of such revocation shall not be
2 deemed a revocation;

3 B. the applicant has not been convicted of, or
4 pled guilty or nolo contendere to, a felony in a domestic,
5 foreign or military court, not including a juvenile court:

6 (1) during the seven-year period preceding
7 the date of the application for licensing and registration;
8 or

9 (2) at any time preceding the date of
10 application, if the felony involved an act of fraud or
11 dishonesty, a breach of trust or money laundering; and

12 (3) provided that any pardon of a conviction
13 shall not be a conviction for the purposes of this
14 subsection;

15 C. the applicant has demonstrated financial
16 responsibility, good character and general fitness so as to
17 command the confidence of the community and to warrant a
18 determination that the mortgage loan originator will operate
19 honestly, fairly and efficiently within the purposes of the
20 New Mexico Mortgage Loan Originator Licensing Act. For the
21 purposes of this subsection, an individual has shown that the
22 individual is not financially responsible when the individual
23 has shown a disregard in the management of the individual's
24 own financial condition. A determination that an individual
25 has not shown financial responsibility may include but is not

1 limited to:

2 (1) current outstanding judgments, except
3 judgments solely as a result of medical expenses;

4 (2) current outstanding tax liens or other
5 government liens and filings;

6 (3) foreclosures within the past three
7 years; or

8 (4) a pattern of seriously delinquent
9 accounts within the past three years;

10 D. the applicant has completed the pre-licensing
11 education requirement set forth in Section 7 of the New
12 Mexico Mortgage Loan Originator Licensing Act;

13 E. the applicant has passed a written test that
14 meets the test requirement set forth in Section 8 of the New
15 Mexico Mortgage Loan Originator Licensing Act; and

16 F. the applicant has met the surety bond
17 requirements set forth in Section 17 of the New Mexico
18 Mortgage Loan Originator Licensing Act.

19 Section 7. PRE-LICENSING EDUCATION OF MORTGAGE LOAN
20 ORIGINATORS.--

21 A. In order to meet the pre-licensing education
22 requirement referred to in Subsection D of Section 6 of the
23 New Mexico Mortgage Loan Originator Licensing Act, an
24 individual shall complete at least twenty hours of education
25 approved in accordance with Subsection B of this section,

1 which shall include at least:

2 (1) three hours of federal law and
3 regulations;

4 (2) three hours of ethics, including
5 instruction on fraud, consumer protection and fair lending
6 issues;

7 (3) two hours of training related to lending
8 standards for the nontraditional mortgage product
9 marketplace; and

10 (4) three hours of New Mexico law and
11 administrative rules.

12 B. For the purposes of Subsection A of this
13 section, pre-licensing education courses shall be reviewed
14 and approved by the nationwide mortgage licensing system and
15 registry based upon reasonable standards. Review and
16 approval of a pre-licensing education course shall include
17 review and approval of the course provider.

18 C. Nothing in this section shall preclude any
19 pre-licensing education course, as approved by the nationwide
20 mortgage licensing system and registry, that is provided by
21 the employer of the applicant or by an entity that is
22 affiliated with the applicant by an agency contract, or by
23 any subsidiary or affiliate of the employer or entity.

24 D. Pre-licensing education may be offered in a
25 classroom, online or by any other means approved by the

1 nationwide mortgage licensing system and registry.

2 E. The pre-licensing education requirements
3 approved by the nationwide mortgage licensing system and
4 registry in Paragraphs (1) through (4) of Subsection A of
5 this section for any state shall be accepted as credit toward
6 completion of pre-licensing education requirements in New
7 Mexico.

8 F. An individual previously licensed pursuant to
9 the New Mexico Mortgage Loan Originator Licensing Act
10 subsequent to the effective date of that act applying to be
11 licensed again shall prove that the individual has completed
12 all of the continuing education requirements for the year in
13 which the license was last held.

14 Section 8. TESTING OF MORTGAGE LOAN ORIGINATORS.--

15 A. In order to meet the written test requirement
16 referred to in Subsection E of Section 6 of the New Mexico
17 Mortgage Loan Originator Licensing Act, an individual shall
18 pass, in accordance with the standards established pursuant
19 to this section, a qualified written test developed by the
20 nationwide mortgage licensing system and registry and
21 administered by a test provider approved by the nationwide
22 mortgage licensing system and registry based upon reasonable
23 standards.

24 B. A written test shall not be treated as a
25 qualified written test for purposes of Subsection A of this

1 section unless the test adequately measures the applicant's
2 knowledge and comprehension in appropriate subject areas,
3 including:

- 4 (1) ethics;
- 5 (2) federal law and regulations pertaining
6 to mortgage origination;
- 7 (3) New Mexico law and rules pertaining to
8 mortgage origination; and
- 9 (4) federal and New Mexico law and
10 regulations and rules, including those concerning fraud,
11 consumer protection, the nontraditional mortgage product
12 marketplace and fair lending issues.

13 C. Nothing in this section shall prohibit a test
14 provider approved by the nationwide mortgage licensing system
15 and registry from providing a test at the location of the
16 employer of the applicant or the location of any subsidiary
17 or affiliate of the employer of the applicant, or at the
18 location of any entity with which the applicant holds an
19 exclusive arrangement to conduct the business of a mortgage
20 loan originator.

21 D. An individual shall not be considered to have
22 passed a qualified written test unless the individual
23 achieves a test score of not less than seventy-five percent
24 correct answers to questions.

25 E. An individual may retake a test two consecutive

1 times, provided that each retake occurs at least thirty days
2 after the preceding test. After failing three consecutive
3 tests, an individual shall wait at least six months before
4 taking the test again.

5 F. A licensed mortgage loan originator who fails
6 to maintain a valid license for a period of five years or
7 longer shall retake the test, not taking into account any
8 time during which the individual is a registered mortgage
9 loan originator.

10 Section 9. STANDARDS FOR LICENSE RENEWAL.--

11 A. The minimum standards for license renewal for
12 mortgage loan originators shall include the following:

13 (1) the mortgage loan originator continues
14 to meet the minimum standards for license issuance pursuant
15 to Section 6 of the New Mexico Mortgage Loan Originator
16 Licensing Act;

17 (2) the mortgage loan originator has
18 satisfied the annual continuing education requirements set
19 forth in Section 10 of the New Mexico Mortgage Loan
20 Originator Licensing Act; and

21 (3) the mortgage loan originator has paid
22 all required fees for renewal of the license.

23 B. The license of a mortgage loan originator who
24 fails to satisfy the minimum standards for license renewal
25 shall expire. The director may adopt rules for the

1 reinstatement of expired licenses consistent with the
2 standards established by the nationwide mortgage licensing
3 system and registry.

4 Section 10. CONTINUING EDUCATION FOR MORTGAGE LOAN
5 ORIGINATORS.--

6 A. In order to meet the annual continuing
7 education requirements set forth in Paragraph (2) of
8 Subsection A of Section 9 of the New Mexico Mortgage Loan
9 Originator Licensing Act, a licensed mortgage loan originator
10 shall complete at least eight hours of education approved in
11 accordance with Subsection B of this section, which shall
12 include at least:

13 (1) three hours of federal law and
14 regulations;

15 (2) two hours of ethics, including
16 instruction on fraud, consumer protection and fair lending
17 issues;

18 (3) two hours of training related to lending
19 standards for the nontraditional mortgage product
20 marketplace; and

21 (4) one hour of New Mexico law and
22 administrative rules.

23 B. For the purposes of Subsection A of this
24 section, continuing education courses shall be reviewed and
25 approved by the nationwide mortgage licensing system and

1 registry based upon reasonable standards. Review and
2 approval of a continuing education course shall include
3 review and approval of the course provider.

4 C. Nothing in this section shall preclude any
5 education course, as approved by the nationwide mortgage
6 licensing system and registry, that is provided by the
7 employer of the mortgage loan originator or by an entity that
8 is affiliated with the mortgage loan originator by an agency
9 contract, or any subsidiary or affiliate of such employer or
10 entity.

11 D. Continuing education may be offered in a
12 classroom, online or by any other means approved by the
13 nationwide mortgage licensing system and registry.

14 E. A licensed mortgage loan originator:

15 (1) except for the provisions of Subsection
16 B of Section 9 of the New Mexico Mortgage Loan Originator
17 Licensing Act and Subsection I of this section, may only
18 receive credit for a continuing education course in the year
19 in which the course is taken; and

20 (2) may not take the same approved course in
21 the same or successive years to meet the annual requirements
22 for continuing education.

23 F. A licensed mortgage loan originator who is an
24 approved instructor of an approved continuing education
25 course may receive credit for the licensed mortgage loan

1 originator's own annual continuing education requirement at
2 the rate of two hours' credit for every one hour taught.

3 G. An individual who has successfully completed
4 the education requirements approved by the nationwide
5 mortgage licensing system and registry and as set forth in
6 Subsection A of this section for any state shall be accepted
7 as credit toward completion of continuing education
8 requirements in New Mexico.

9 H. A licensed mortgage loan originator who
10 subsequently becomes unlicensed shall complete the continuing
11 education requirements for the last year in which the license
12 was held prior to issuance of a new or renewed license.

13 I. An individual who meets the requirements set
14 forth in Paragraphs (1) and (3) of Subsection A of Section 9
15 of the New Mexico Mortgage Loan Originator Licensing Act may
16 make up any deficiency in continuing education as established
17 by rule promulgated by the director.

18 Section 11. AUTHORITY TO REQUIRE LICENSE AND TO SET
19 FEES.--

20 A. In addition to any other duties imposed upon
21 the director by law, the director shall require mortgage loan
22 originators to be licensed and registered through the
23 nationwide mortgage licensing system and registry. In order
24 to carry out this requirement, the director may participate
25 in the nationwide mortgage licensing system and registry.

1 For this purpose, the director may establish requirements as
2 necessary, including but not limited to:

3 (1) background checks for:

4 (a) criminal history through
5 fingerprint or other databases;

6 (b) civil or administrative records;

7 (c) credit history; or

8 (d) any other information deemed
9 necessary by the nationwide mortgage licensing system and
10 registry;

11 (2) payment of fees to apply for or renew
12 licenses through the nationwide mortgage licensing system and
13 registry;

14 (3) setting or resetting as necessary
15 renewal or reporting dates; and

16 (4) requirements for amending or
17 surrendering a license or any other activities the director
18 deems necessary for participation in the nationwide mortgage
19 licensing system and registry.

20 B. The director shall establish by rule fees
21 sufficient to cover the costs of administering the New Mexico
22 Mortgage Loan Originator Licensing Act. These fees may
23 include:

24 (1) an original and renewal license fee paid
25 by each licensed mortgage loan originator;

1 (2) an application fee to cover the costs of
2 processing applications;

3 (3) an examination or investigation fee to
4 cover the costs of any examination or investigation of the
5 books and records of a licensed mortgage loan originator or
6 other person subject to the New Mexico Mortgage Loan
7 Originator Licensing Act; and

8 (4) late fees, license amendment fees and
9 any other fees associated with the costs of administering the
10 New Mexico Mortgage Loan Originator Licensing Act.

11 C. Mortgage loan originators shall not be charged
12 investigation fees for the processing of complaints when the
13 investigation determines that no violation of the New Mexico
14 Mortgage Loan Originator Licensing Act occurred or when the
15 mortgage loan originator provides a remedy satisfactory to
16 the complainant and the director and no order of the director
17 is issued. All money, fees and penalties collected pursuant
18 to the New Mexico Mortgage Loan Originator Licensing Act
19 shall be deposited into the mortgage regulatory fund.

20 D. For the purposes of implementing an orderly and
21 efficient licensing process, the director may establish
22 licensing rules and interim procedures for licensing and
23 acceptance of applications. For individuals previously
24 registered or licensed pursuant to the Mortgage Loan Company
25 and Loan Broker Act, the director may establish expedited

1 review and licensing procedures.

2 Section 12. NATIONWIDE MORTGAGE LICENSING SYSTEM AND
3 REGISTRY INFORMATION CHALLENGE PROCESS.--The director shall
4 establish rules whereby mortgage loan originators may
5 challenge information entered into the nationwide mortgage
6 licensing system and registry by the director.

7 Section 13. ENFORCEMENT--VIOLATIONS--PENALTIES.--

8 A. In order to ensure the effective supervision
9 and enforcement of the New Mexico Mortgage Loan Originator
10 Licensing Act, the director may:

11 (1) deny, suspend, revoke or decline to
12 renew a license for a violation of the New Mexico Mortgage
13 Loan Originator Licensing Act or rules issued pursuant to
14 that act or an order or a directive entered pursuant to that
15 act;

16 (2) deny, suspend, revoke or decline to
17 renew a license if an applicant or licensed mortgage loan
18 originator:

19 (a) fails at any time to meet the
20 requirements of Section 6 or 9 of the New Mexico Mortgage
21 Loan Originator Licensing Act; or

22 (b) withholds information or makes a
23 material misstatement in an application for a license or
24 renewal of a license;

25 (3) order restitution against mortgage loan

1 originators for violations of that act;

2 (4) impose fines on mortgage loan
3 originators pursuant to Subsections C through E of this
4 section;

5 (5) order or direct such other affirmative
6 action as the director deems necessary;

7 (6) bar or suspend a mortgage loan
8 originator from licensure in New Mexico as a mortgage loan
9 originator; and

10 (7) issue orders or directives pursuant to
11 the New Mexico Mortgage Loan Originator Licensing Act as
12 follows:

13 (a) order or direct mortgage loan
14 originators to cease and desist from conducting business,
15 including issuing an immediate temporary order to cease and
16 desist;

17 (b) order or direct mortgage loan
18 originators to cease any harmful activities or violations of
19 that act, including issuing an immediate temporary order to
20 cease and desist; and

21 (c) enter immediate temporary orders to
22 cease business pursuant to a license issued pursuant to the
23 authority granted pursuant to Section 4 of the New Mexico
24 Mortgage Loan Originator Licensing Act if the director
25 determines that the license was erroneously granted or the

1 licensed mortgage loan originator is currently in violation
2 of that act.

3 B. The director may initiate one or more of the
4 actions set forth in Section 15 of the New Mexico Mortgage
5 Loan Originator Licensing Act.

6 C. It is a violation of the New Mexico Mortgage
7 Loan Originator Licensing Act for a mortgage loan originator
8 to:

9 (1) directly or indirectly employ any
10 scheme, device or artifice to defraud or mislead borrowers or
11 lenders or to defraud any person;

12 (2) engage in any unfair or deceptive
13 practice toward any person;

14 (3) obtain property by fraud or
15 misrepresentation;

16 (4) solicit or enter into a contract with a
17 borrower that provides in substance that the mortgage loan
18 originator may earn a fee or commission through "best
19 efforts" to obtain a loan even though no loan is actually
20 obtained for the borrower;

21 (5) solicit, advertise or enter into a
22 contract for specific interest rates, points or other
23 financing terms unless the terms are actually available at
24 the time of soliciting, advertising or contracting;

25 (6) conduct any business covered by the New

1 Mexico Mortgage Loan Originator Licensing Act without holding
2 a valid license as required pursuant to that act, or assist
3 or aid and abet any person in the conduct of business
4 pursuant to that act without a valid license as required
5 pursuant to that act;

6 (7) fail to make disclosures as required by
7 the New Mexico Mortgage Loan Originator Licensing Act and any
8 other applicable state or federal law, including rules and
9 regulations thereunder;

10 (8) fail to comply with the provisions of
11 the New Mexico Mortgage Loan Originator Licensing Act or
12 rules or regulations promulgated pursuant to that act, or
13 fail to comply with any other state or federal law, including
14 rules and regulations thereunder, applicable to any business
15 authorized or conducted pursuant to the New Mexico Mortgage
16 Loan Originator Licensing Act;

17 (9) make, in any manner, a false or
18 deceptive statement or representation, including, with regard
19 to the rates, points or other financing terms or conditions
20 for a residential mortgage loan, engaging in bait-and-switch
21 advertising;

22 (10) negligently make any false statement or
23 knowingly and willfully make any omission of material fact in
24 connection with any information or reports filed with a
25 governmental agency or the nationwide mortgage licensing

1 system and registry or in connection with any investigation
2 conducted by the director or another governmental agency;

3 (11) make any payment, threat or promise,
4 directly or indirectly, to any person for the purposes of
5 influencing the independent judgment of the person in
6 connection with a residential mortgage loan or make any
7 payment, threat or promise, directly or indirectly, to any
8 appraiser of a property for the purposes of influencing the
9 independent judgment of the appraiser with respect to the
10 value of the property. Nothing in this paragraph shall be
11 construed to prohibit a mortgage loan originator from asking
12 the appraiser to consider additional appropriate property
13 information or provide further detail, substantiation or
14 explanation for the appraiser's value conclusion;

15 (12) collect, charge, attempt to collect or
16 charge, or to use or propose any agreement purporting to
17 collect or charge, any fee prohibited by the New Mexico
18 Mortgage Loan Originator Licensing Act;

19 (13) cause or require a borrower to obtain
20 property insurance coverage in an amount that exceeds the
21 replacement cost of the improvements as established by the
22 director and the property insurer;

23 (14) fail to account truthfully for money
24 belonging to a party to a residential mortgage loan
25 transaction;

1 (15) engage in mortgage loan origination on
2 behalf of more than one mortgage loan company;

3 (16) pay, receive or collect in whole or in
4 part any commission, fee or other compensation for
5 originating a mortgage loan in violation of the New Mexico
6 Mortgage Loan Originator Licensing Act, including a mortgage
7 loan originated by any unlicensed person other than an exempt
8 person;

9 (17) charge or collect any fee, commission
10 or rate of interest or make or originate any mortgage loan
11 with terms or conditions or in a manner contrary to other
12 applicable federal and state laws;

13 (18) advertise mortgage loans, including
14 rates, margins, discounts, points, fees, commission or other
15 material information, including material limitations on the
16 loans, unless the person is able to make the mortgage loans
17 available to a reasonable number of qualified applicants;

18 (19) coerce, extort, induce, bribe or
19 intimidate or attempt to coerce, extort, induce, bribe or
20 intimidate an appraiser to value property in excess of its
21 fair market value;

22 (20) originate a mortgage loan that contains
23 a pre-payment penalty;

24 (21) misrepresent a borrower's credit
25 rating;

1 (22) misrepresent, inflate or fabricate, or
2 encourage a borrower to misrepresent, inflate or fabricate,
3 the source or amount of a borrower's actual income or assets,
4 other than allowable grossed-up income not to exceed twenty-
5 five percent per current agency guidelines as set by the
6 director, in the application or underwriting process for a
7 residential mortgage loan;

8 (23) originate a residential mortgage loan
9 when the terms of that loan are in violation of the Home Loan
10 Protection Act;

11 (24) originate a residential mortgage loan
12 that does not require documentation and consideration of the
13 borrower's reasonable ability to repay that loan pursuant to
14 its terms. The borrower's ability to repay shall be
15 demonstrated through reasonably reliable documentation that
16 may include payroll receipts, tax returns, bank records,
17 asset and credit evaluations, mortgage payment history or
18 other similar reliable documentation. The provisions of this
19 paragraph shall not apply to a residential mortgage loan
20 originated pursuant to a government streamline program or a
21 streamline program administered by a government-sponsored
22 enterprise, to a reverse mortgage insured as part of a
23 government program or to loss mitigation activities of a
24 mortgage loan servicer or lender with which the borrower has
25 a current relationship, so long as each of these exceptions,

1 as applicable, provides the borrower with a reasonable,
2 tangible net benefit; or

3 (25) originate a residential mortgage loan
4 that does not require a determination of the borrower's
5 reasonable ability to pay the costs set forth in this
6 paragraph. In the case of an adjustable rate residential
7 mortgage loan, the reasonable ability to pay shall be
8 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 principal, interest, real estate taxes, property insurance,
13 property assessments, mortgage insurance premiums and other
14 scheduled long-term monthly debt payments.

15 D. The director may impose a civil penalty on a
16 mortgage loan originator if the director finds, on the record
17 after notice and opportunity for hearing, that the mortgage
18 loan originator has violated or failed to comply with any
19 requirement of the Mortgage Loan Originator Licensing Act or
20 any rule promulgated by the director pursuant to that act or
21 any order issued pursuant to authority of that act.

22 E. The maximum amount of penalty for each act or
23 omission described in Subsection C of this section shall be
24 twenty-five thousand dollars (\$25,000).

25 F. Each violation or failure to comply with any

1 directive or order of the director is a separate and distinct
2 violation or failure.

3 Section 14. NOTICE OF CONTEMPLATED ACTION--HEARINGS.--

4 A. When the director contemplates taking any
5 action specified in Paragraphs (1) through (6) of Subsection
6 A or in Subsection D of Section 13 of the New Mexico Mortgage
7 Loan Originator Licensing Act, the director shall serve upon
8 the licensed mortgage loan originator a written notice
9 containing a statement:

10 (1) that the director has sufficient
11 evidence that, if not rebutted or explained, will justify the
12 director in taking the contemplated action;

13 (2) indicating the general nature of the
14 evidence; and

15 (3) that unless the licensed mortgage loan
16 originator within twenty days after service of the notice
17 deposits in the mail a certified return receipt requested
18 letter addressed to the director containing a request for a
19 hearing, the director will take the contemplated action.

20 B. If the licensed mortgage loan originator does
21 not mail a request for a hearing within the time and in the
22 manner required by this section, the director may take the
23 action contemplated in the notice, and such action shall be
24 final and not subject to judicial review.

25 C. If the licensed mortgage loan originator mails

1 a request for a hearing as required by this section, the
2 director shall, within thirty days of receipt of the request,
3 notify the licensed mortgage loan originator of the time and
4 place of the hearing, the name of the person who shall
5 conduct the hearing for the director and the statutes and
6 regulations authorizing the director to take the contemplated
7 action.

8 Section 15. POWER OF THE COURT TO GRANT RELIEF.--

9 A. Upon a showing by the director that a person
10 has or is about to violate the New Mexico Mortgage Loan
11 Originator Licensing Act or any rule or order of the director
12 pursuant to that act, the district court of the first
13 judicial district or other appropriate district court in the
14 state may grant or impose one or more of the following
15 appropriate legal or equitable remedies:

16 (1) a temporary restraining order, permanent
17 or temporary prohibitory or mandatory injunction or a writ of
18 prohibition or mandamus;

19 (2) a civil penalty up to a maximum of
20 twenty-five thousand dollars (\$25,000) for each violation;

21 (3) disgorgement;

22 (4) declaratory judgment;

23 (5) restitution to consumers;

24 (6) the appointment of a receiver or
25 conservator for the defendant or the defendant's assets;

1 (7) recovery by the director of all costs
2 and expenses for conducting an investigation or the bringing
3 of any enforcement action under that act; or

4 (8) other relief as the court deems just.

5 B. In determining the appropriate relief to grant,
6 the court shall consider enforcement actions taken and
7 sanctions imposed by the director pursuant to Section 13 of
8 the New Mexico Mortgage Loan Originator Licensing Act in
9 connection with the transactions constituting violations of
10 that act.

11 C. The court shall not require the director to
12 post bond in an action pursuant to this section.

13 Section 16. UNLICENSED ACTIVITY.--

14 A. An individual who acts as a mortgage loan
15 originator without being properly licensed pursuant to the
16 New Mexico Mortgage Loan Originator Licensing Act is, for a
17 first offense, guilty of a misdemeanor and upon conviction
18 shall be sentenced in accordance with the provisions of
19 Subsection A of Section 31-19-1 NMSA 1978.

20 B. In the case of a conviction pursuant to
21 Subsection A of this section, the court may impose a deferred
22 sentence in accordance with Section 31-20-6 NMSA 1978.

23 C. An individual who violates Subsection A of this
24 section is, for a second or subsequent offense, guilty of a
25 fourth degree felony and upon conviction shall be sentenced

1 in accordance with the provisions of Section 31-18-15 NMSA
2 1978.

3 Section 17. SURETY BOND REQUIRED.--

4 A. Each mortgage loan originator shall be covered
5 by a surety bond in accordance with this section. In the
6 event the mortgage loan originator is an employee or
7 exclusive agent of a mortgage loan company subject to the
8 Mortgage Loan Company Act, the surety bond of the mortgage
9 loan company subject to that act may be used in lieu of the
10 mortgage loan originator's surety bond requirement.

11 B. The surety bond shall provide coverage for each
12 mortgage loan originator in an amount as prescribed in
13 Subsection E of this section.

14 C. The surety bond shall be in a form as
15 prescribed by the director.

16 D. The director may promulgate rules with respect
17 to the requirements for such surety bonds as are necessary to
18 accomplish the purposes of the New Mexico Mortgage Loan
19 Originator Licensing Act.

20 E. The penal sum of the surety bond shall be in an
21 initial amount of fifty thousand dollars (\$50,000). Upon
22 renewal of the license, the penal sum of the surety bond
23 shall be in an amount that reflects the total dollar amount
24 of mortgage loans originated annually in New Mexico by the
25 licensed mortgage loan originator, as follows:

1 (1) zero dollars (\$0.00) to three million
2 dollars (\$3,000,000), a surety bond of fifty thousand dollars
3 (\$50,000);

4 (2) more than three million dollars
5 (\$3,000,000) and less than ten million dollars (\$10,000,000),
6 a surety bond of one hundred thousand dollars (\$100,000); and

7 (3) ten million dollars (\$10,000,000) or
8 more, a surety bond of one hundred fifty thousand dollars
9 (\$150,000).

10 F. Every bond shall provide for suit thereon by
11 any person who has a cause of action pursuant to the New
12 Mexico Mortgage Loan Originator Licensing Act.

13 G. When an action is commenced on a licensed
14 mortgage loan originator's bond, the director may require the
15 filing of a new bond.

16 H. Immediately upon recovery on any action on a
17 bond, the licensed mortgage loan originator shall file a new
18 bond.

19 Section 18. CONFIDENTIALITY.--In order to promote more
20 effective regulation and reduce regulatory burden through
21 supervisory information-sharing, except as otherwise provided
22 in Public Law 110-289, Section 1512, the requirements
23 pursuant to any federal law or pursuant to the Inspection of
24 Public Records Act regarding the privacy or confidentiality
25 of any information or material provided to the nationwide

1 mortgage licensing system and registry, and any privilege
2 arising pursuant to federal or state law, including the rules
3 of any federal or state court, with respect to such
4 information or material, shall continue to apply to such
5 information or material after the information or material has
6 been disclosed to the nationwide mortgage licensing system
7 and registry. Such information and material may be shared
8 with all state and federal regulatory officials with mortgage
9 industry oversight authority without the loss of privilege or
10 the loss of confidentiality protections provided by federal
11 law or the Inspection of Public Records Act, and the director
12 may enter into agreements or sharing arrangements with other
13 governmental agencies, the conference of state bank
14 supervisors, the American association of residential mortgage
15 regulators or other associations representing governmental
16 agencies as established by rule or order of the director.

17 Section 19. POWERS AND DUTIES OF DIRECTOR.--

18 A. The director shall exercise general supervision
19 and control over mortgage loan originators doing business in
20 New Mexico.

21 B. In addition to the other duties imposed on the
22 director by law, the director shall make reasonable rules
23 necessary for the implementation of the New Mexico Mortgage
24 Loan Originator Licensing Act; provided that promulgated
25 rules shall be subject to judicial review in the manner set

1 forth in Section 12-8-8 NMSA 1978. In addition to any
2 authority allowed pursuant to the New Mexico Mortgage Loan
3 Originator Licensing Act, the director may conduct
4 investigations and examinations as follows:

5 (1) for the purposes of initial licensing,
6 license renewal, license suspension, license revocation or
7 termination or general or specific inquiry or investigation
8 to determine compliance with the New Mexico Mortgage Loan
9 Originator Licensing Act, the director shall have access to
10 and may receive and use any books, accounts, records, files,
11 documents, information or evidence, including:

12 (a) criminal, civil and administrative
13 history information, including nonconviction data as
14 specified in the Arrest Record Information Act;

15 (b) personal history and experience
16 information, including independent credit reports obtained
17 from a consumer reporting agency described in Section 603(p)
18 of the federal Fair Credit Reporting Act; and

19 (c) any other documents, information or
20 evidence the director deems relevant to the inquiry or
21 investigation regardless of the location, possession, control
22 or custody of such documents, information or evidence;

23 (2) for the purposes of investigating
24 violations or complaints arising pursuant to the New Mexico
25 Mortgage Loan Originator Licensing Act, or for the purposes

1 of examination, the director may review, investigate or
2 examine any individual subject to that act as often as
3 necessary in order to carry out the purposes of that act.
4 The director may direct, subpoena or order the attendance of
5 and examine under oath all persons whose testimony may be
6 required about the loans or the business or subject matter of
7 any such examination or investigation and may direct,
8 subpoena or order such persons to produce books, accounts,
9 records, files and any other documents the director deems
10 relevant to the inquiry;

11 (3) each mortgage loan originator shall make
12 available to the director upon request the books and records
13 relating to the operations of the mortgage loan originator.
14 The director shall have access to the books and records and
15 interview the officers, principals, mortgage loan
16 originators, employees, independent contractors and agents of
17 the mortgage loan originator concerning their business;

18 (4) each mortgage loan originator shall make
19 or compile reports or prepare other information as directed
20 by the director in order to carry out the purposes of this
21 section, including:

22 (a) accounting compilations;
23 (b) information lists and data
24 concerning loan transactions in a format prescribed by the
25 director; and

1 (c) such other information deemed by
2 the director to be necessary to carry out the purposes of
3 this section;

4 (5) in making any examination or
5 investigation authorized by the New Mexico Mortgage Loan
6 Originator Licensing Act, the director may control access to
7 any documents and records of the individual under examination
8 or investigation. The director may take possession of the
9 documents and records or place a person in exclusive charge
10 of the documents and records in the place where they are
11 usually kept. During the period of control, no individual or
12 person shall remove or attempt to remove any of the documents
13 and records except pursuant to a court order or with the
14 consent of the director. Unless the director has reasonable
15 grounds to believe the documents or records of the licensed
16 mortgage loan originator have been, or are at risk of being,
17 altered or destroyed for purposes of concealing a violation
18 of the New Mexico Mortgage Loan Originator Licensing Act, the
19 licensed mortgage loan originator or owner of the documents
20 and records shall have access to the documents or records as
21 necessary to conduct its ordinary business affairs;

22 (6) in order to carry out the purposes of
23 this section, the director may:

24 (a) retain attorneys, accountants or
25 other professionals and specialists as examiners, auditors or

1 investigators to conduct or assist in the conduct of
2 examinations or investigations;

3 (b) enter into agreements or
4 relationships with other government officials or regulatory
5 associations in order to improve efficiencies and reduce
6 regulatory burden by sharing resources, standardized or
7 uniform methods or procedures and documents, records,
8 information or evidence obtained pursuant to this section;

9 (c) use, hire, contract or employ
10 public or privately available analytical systems, methods or
11 software to examine or investigate the mortgage loan
12 originator;

13 (d) accept and rely on examination or
14 investigation reports made by other government officials,
15 within or without this state; and

16 (e) accept audit reports made by an
17 independent certified public accountant for the mortgage loan
18 originator in the course of that part of the examination
19 covering the same general subject matter as the audit and may
20 incorporate the audit report in the report of the
21 examination, report of investigation or other writing of the
22 director;

23 (7) the authority of this section shall
24 remain in effect whether such a licensed mortgage loan
25 originator or individual subject to the New Mexico Mortgage

1 Loan Originator Licensing Act acts or claims to act pursuant
2 to any licensing or registration law of New Mexico or claims
3 to act without such authority;

4 (8) no licensed mortgage loan originator or
5 individual who is the subject an of investigation or
6 examination pursuant to this section shall knowingly
7 withhold, abstract, remove, mutilate, destroy or secrete any
8 books, records, computer records or other information; and

9 (9) applications for a license or a license
10 renewal, and all papers, documents, reports and other written
11 instruments filed with the director pursuant to the New
12 Mexico Mortgage Loan Originator Licensing Act, are public
13 documents and open to public inspection, except for files of
14 ongoing examinations and investigations relating to
15 violations of that act, which investigations do not
16 culminate, or have not yet culminated, in administrative,
17 civil or criminal action.

18 Section 20. MORTGAGE LOAN ORIGINATOR DUTIES.--

19 A. A mortgage loan originator shall, enter into a
20 fiduciary relationship with the borrower. For the purposes
21 of this subsection, "fiduciary relationship" is a
22 relationship in which a mortgage loan originator shall:

23 (1) safeguard and account for any money
24 handled for the borrower;

25 (2) follow reasonable and lawful

1 instructions from the borrower;

2 (3) act with reasonable skill, care and
3 diligence;

4 (4) act in good faith and engage in fair
5 dealing in any transaction, practice or course of business
6 regarding mortgage loans;

7 (5) direct, recommend and make reasonable
8 efforts to secure a residential mortgage loan that is
9 reasonably advantageous to the borrower, considering all of
10 the circumstances, and has a net tangible benefit to the
11 borrower;

12 (6) make a full and fair disclosure of all
13 facts within the knowledge of the mortgage loan originator
14 that are or may be material to the borrower's decision,
15 rights or interests;

16 (7) disclose to the borrower the existence
17 of all loans available to the mortgage loan originator, for
18 which the borrower qualifies, that have terms that are as
19 favorable or more favorable than those loans offered to the
20 borrower by the mortgage loan originator;

21 (8) not steer the borrower to a loan or
22 loans with terms that are clearly less favorable than those
23 loans offered to the borrower by the mortgage loan
24 originator; and

25 (9) maintain all information provided by the

1 borrower or obtained regarding the borrower in strict
2 confidence. However, the mortgage loan originator may
3 disclose confidential information if required by law or rule
4 or if the borrower authorizes the disclosure in writing in
5 advance of the disclosure. Any such authorization shall
6 specifically identify the nature of the information to be
7 disclosed.

8 B. If not provided by the mortgage loan company, a
9 mortgage loan originator shall, in addition to all other
10 disclosures required by statute or common law:

11 (1) disclose at least two days prior to
12 closing of the loan the total amount of any compensation the
13 mortgage loan company expects to receive specific to the loan
14 being offered, including origination fees, broker fees, yield
15 spread premiums and other fees payable to the mortgage loan
16 company by the lender or other third party at the time the
17 loan is funded to the borrower; and

18 (2) clearly and conspicuously disclose in
19 writing a mortgage loan summary, as specified by the director
20 by rule.

21 Section 21. PRIVATE RIGHT OF ACTION--DAMAGES--
22 ENFORCEMENT BY ATTORNEY GENERAL.--

23 A. Any person who has suffered injury by reason of
24 any method, act or practice in violation of the New Mexico
25 Mortgage Loan Originator Licensing Act may sue in district

1 court. Upon a showing that that act is being or has been
2 violated and a showing that the plaintiff has suffered
3 injury, the court may award damages, punitive damages and
4 injunctive relief and shall award the cost of the suit,
5 including reasonable attorney fees.

6 B. Whenever the attorney general has reasonable
7 belief that a person is using, has used or is about to use
8 any method, act or practice in violation of the New Mexico
9 Mortgage Loan Originator Licensing Act and enforcement
10 proceedings would be in the public interest, the attorney
11 general may bring an action in the name of the state alleging
12 violations of that act. An enforcement action by the
13 attorney general may be brought in the district court of the
14 county in which the person that allegedly is using, has used
15 or is about to use a method, act or practice in violation of
16 the New Mexico Mortgage Loan Originator Licensing Act resides
17 or has its principal place of business, or in the district
18 court in any county in which the person allegedly is using,
19 has used or is about to use a method, act or practice in
20 violation of the New Mexico Mortgage Loan Originator
21 Licensing Act. In any action filed by the attorney general
22 pursuant to the New Mexico Mortgage Loan Originator Licensing
23 Act, the attorney general may petition the district court for
24 temporary or permanent injunctive relief and restitution.
25 The attorney general acting on behalf of the state shall not

1 be required to post bond when seeking a temporary or
2 permanent injunction in an action brought pursuant to this
3 section.

4 C. The relief provided in this section is in
5 addition to remedies otherwise available pursuant to common
6 law or other New Mexico statutes.

7 Section 22. MORTGAGE CALL REPORTS.--A mortgage loan
8 originator shall submit to the nationwide mortgage licensing
9 system and registry reports of condition, which shall be in
10 such form and shall contain such information as the
11 nationwide mortgage licensing system and registry may
12 require.

13 Section 23. REPORT TO NATIONWIDE MORTGAGE LICENSING
14 SYSTEM AND REGISTRY.--Subject to state privacy laws, the
15 director shall report regularly violations of the New Mexico
16 Mortgage Loan Originator Licensing Act, as well as
17 enforcement actions and other relevant information, to the
18 nationwide mortgage licensing system and registry subject to
19 the provisions set forth in Section 18 of the New Mexico
20 Mortgage Loan Originator Licensing Act.

21 Section 24. UNIQUE IDENTIFIER SHOWN.--The unique
22 identifier of any person originating a residential mortgage
23 loan shall be clearly shown on all residential mortgage loan
24 application forms, solicitations or advertisements, including
25 business cards or web sites, and on any other documents as

1 established by rule or order of the director.

2 Section 25. Section 58-21-1 NMSA 1978 (being Laws 1983,
3 Chapter 86, Section 1, as amended) is amended to read:

4 "58-21-1. SHORT TITLE.--Chapter 58, Article 21 NMSA
5 1978 may be cited as the "Mortgage Loan Company Act"."

6 Section 26. Section 58-21-2 NMSA 1978 (being Laws 1983,
7 Chapter 86, Section 2, as amended) is amended to read:

8 "58-21-2. DEFINITIONS.--As used in the Mortgage Loan
9 Company Act:

10 A. "affiliate" means a person who, directly or
11 indirectly, through one or more intermediaries, controls or
12 is controlled by or is under common control with another
13 person;

14 B. "branch office" means any location, including a
15 divisional office, separate from the principal place of
16 business of the mortgage loan company that is identified by
17 any means to the public or customers as a location at which
18 the licensee holds itself out as a mortgage loan company;

19 C. "closing agent" means a person, including a
20 title insurance agent or title insurance company, that acts
21 in the normal course of business in a fiduciary capacity as a
22 disinterested third party for the seller and buyer of real
23 property for the purpose of consummating a sale of real
24 property, including the performance of the following
25 functions:

1 (1) preparation of deeds, mortgages,
2 promissory notes, deeds of trust, real estate contracts,
3 assignments or other documents incidental to the sale as
4 permitted by law;

5 (2) calculations and disbursements of
6 prorated taxes, insurance premiums, utility bills and other
7 charges incidental to the sale;

8 (3) preparation of sellers' and buyers'
9 closing statements;

10 (4) supervision of signing of documents;

11 (5) collection and disbursement of down
12 payments, commissions of real estate licensees, fees and
13 other charges pursuant to a sales agreement; and

14 (6) recordation of documents;

15 D. "division" means the financial institutions
16 division of the regulation and licensing department;

17 E. "director" means the director of the financial
18 institutions division of the regulation and licensing
19 department;

20 F. "dwelling" means a residential structure that
21 contains one to four units whether or not that structure is
22 attached to real property. "Dwelling" includes an individual
23 condominium unit, an individual cooperative unit, a mobile
24 home and a trailer if used as a residence;

25 G. "individual" means a natural person;

1 H. "lender" means a person or government agency
2 making a mortgage loan;

3 I. "mortgage loan company" means any person who,
4 for compensation or gain, or in the expectation of
5 compensation or gain, either directly or indirectly:

6 (1) accepts an application for a mortgage
7 loan; negotiates terms for a mortgage loan; or solicits,
8 processes, originates, brokers or makes mortgage loans for
9 others;

10 (2) offers to:

11 (a) accept an application for a
12 mortgage loan;

13 (b) negotiate terms for a mortgage
14 loan; or

15 (c) solicit, process, originate, broker
16 or make mortgage loans for others; or

17 (3) closes mortgage loans that may be in the
18 mortgage loan company's own name with funds provided by
19 others and that are assigned to the mortgage lenders
20 providing the funding of such loans;

21 J. "mortgage loan" means any loan primarily for
22 personal, family or household use that is secured by a
23 mortgage, deed of trust or other equivalent consensual
24 security interest on a dwelling or residential real estate
25 upon which is constructed or intended to be constructed a

1 dwelling as so defined;

2 K. "net loan funds" means the mortgage loan
3 amounts specified in the note and mortgage less
4 lender-retained fees, as specified in the lender's
5 instruction to the closing agent;

6 L. "person" means a natural person, corporation,
7 company, limited liability company, partnership or
8 association;

9 M. "qualified manager" means an individual,
10 designated by a mortgage loan company, responsible for the
11 activities of the licensed mortgage loan company's office,
12 divisional office or branch office in conducting the business
13 of that mortgage loan company's office, divisional office or
14 branch office and who meets requirements as specified by the
15 director; and

16 N. "servicer" means a person who collects or
17 receives payments, including principal, interest and trust
18 items such as hazard insurance, property taxes and other
19 amounts due, on behalf of a note holder or investor in
20 accordance with the terms of a residential mortgage loan, and
21 includes working with a borrower on behalf of a note holder
22 or investor, when the borrower is in financial hardship or
23 default, to modify either temporarily or permanently the
24 terms of an existing mortgage loan."

25 Section 27. Section 58-21-3 NMSA 1978 (being Laws 1983,

1 Chapter 86, Section 3, as amended by Laws 2001, Chapter 251,
2 Section 2 and by Laws 2001, Chapter 264, Section 2) is
3 amended to read:

4 "58-21-3. LICENSE REQUIRED--QUALIFIED MANAGER.--

5 A. It is unlawful for any person to transact
6 business in the state of New Mexico, either directly or
7 indirectly, as a mortgage loan company without first filing
8 an application with the director, meeting requirements
9 established by the director and obtaining a license under the
10 Mortgage Loan Company Act.

11 B. A mortgage loan company shall designate at
12 least one qualified manager who shall:

13 (1) obtain and maintain a mortgage loan
14 originator license and unique identifier number pursuant to
15 the New Mexico Mortgage Loan Originator Licensing Act; and

16 (2) have not less than two years verifiable
17 experience as a principal, partner, officer, director,
18 manager, processor or underwriter of a mortgage loan company
19 or a mortgage loan originator or have equivalent lending
20 experience in a related business during the four years
21 immediately preceding the time of application.

22 C. A qualified manager shall serve as a qualified
23 manager for only one mortgage loan company."

24 Section 28. Section 58-21-4 NMSA 1978 (being Laws 1983,
25 Chapter 86, Section 4, as amended by Laws 2001, Chapter 251,

1 Section 3 and by Laws 2001, Chapter 264, Section 3) is
2 amended to read:

3 "58-21-4. APPLICATION FOR LICENSE OR RENEWAL.--Each
4 application for a license or license renewal as a mortgage
5 loan company shall be filed in writing with the director,
6 shall meet requirements established by the director and shall
7 contain the following:

8 A. the applicant's name, the name of designated
9 qualified managers, the New Mexico mortgage loan originator
10 license number and national mortgage licensing system unique
11 identifier number of each designated qualified manager and
12 the name and location of every mortgage loan company office,
13 divisional office or branch office that will be supervised by
14 that qualified manager;

15 B. the name of the applicant and of each of the
16 applicant's affiliates, engaged in the business of a mortgage
17 loan company, and the name under which the applicant will
18 conduct business in New Mexico, together with the articles of
19 incorporation or articles of partnership;

20 C. the location of the applicant's principal
21 office and of each branch office doing business in New
22 Mexico;

23 D. the name, residence and business address of
24 each person having an interest in the business as principal,
25 partner, officer, trustee, director, manager or affiliate,

1 specifying the capacity and title of each;

2 E. a financial statement of the applicant verified
3 by a principal of the applicant;

4 F. the length of time the applicant has been
5 engaged in the mortgage business in New Mexico and other
6 jurisdictions;

7 G. disclosure of any action or proceeding, civil
8 or criminal, judicial or administrative, completed or in
9 progress, against the applicant or a principal, partner,
10 director, officer, trustee, manager, employee or affiliate of
11 the applicant;

12 H. the license fee; and

13 I. such other information and documentation as the
14 director may require."

15 Section 29. Section 58-21-5 NMSA 1978 (being Laws 1983,
16 Chapter 86, Section 5, as amended by Laws 2001, Chapter 251,
17 Section 4 and by Laws 2001, Chapter 264, Section 4) is
18 amended to read:

19 "58-21-5. LICENSE FEES--DURATION OF LICENSE.--

20 A. A license shall expire on December 31 each
21 year. Each licensee shall submit a renewal application on or
22 before November 1 each year.

23 B. The director shall establish by rule fees that
24 shall be sufficient to cover the costs of administering the
25 Mortgage Loan Company Act. These fees may include:

1 (1) an original and renewal license fee paid
2 by each licensee;

3 (2) an application fee to cover the costs of
4 processing applications;

5 (3) an examination and investigation fee for
6 all licensees; and

7 (4) late fees, license amendment fees,
8 supervisory fees, divisional office fees, branch office fees
9 and any other fees associated with the costs of administering
10 the Mortgage Loan Company Act.

11 C. A mortgage loan company shall not be charged
12 investigation fees for the processing of complaints when the
13 investigation determines that no violation of the Mortgage
14 Loan Company Act occurred or when the mortgage loan company
15 provides a remedy satisfactory to the complainant and the
16 director and no order of the director is issued.

17 D. The following fees shall be deposited into the
18 general fund:

19 (1) original license fees;

20 (2) license renewal fees;

21 (3) examination fees;

22 (4) investigation fees;

23 (5) late fees; and

24 (6) license amendment fees.

25 E. The following fees shall be deposited into the

1 mortgage regulatory fund:

- 2 (1) application fees;
- 3 (2) divisional office fees;
- 4 (3) branch office fees; and
- 5 (4) supervisory fees."

6 Section 30. Section 58-21-6 NMSA 1978 (being Laws 1983,
7 Chapter 86, Section 6, as amended) is amended to read:

8 "58-21-6. PERSONS EXEMPT FROM LICENSING.--The following
9 persons shall be exempt from all provisions of the Mortgage
10 Loan Company Act:

11 A. banks, trust companies, savings and loan
12 associations, credit unions, insurance companies or real
13 estate investment trusts as defined in 26 U.S.C.A. 856;

14 B. an attorney licensed to practice law in New
15 Mexico who is not principally engaged in the business of
16 negotiating loans secured by real or personal property, when
17 that person renders services in the course of the person's
18 practice as an attorney;

19 C. a New Mexico-licensed real estate broker
20 rendering service in the performance of that person's duties
21 as a real estate broker who obtains financing for a real
22 estate transaction involving an actual bona fide sale of real
23 estate or real estate contract handled by the broker and who
24 receives only the customary real estate broker's commission
25 in connection with the transaction;

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

2 E. an individual making a single mortgage loan in
3 a calendar year with the individual's own funds for the
4 individual's own investment without the intent to resell the
5 mortgage loan;

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

11 G. a company licensed as a small business
12 investment company under the federal Small Business
13 Investment Act of 1958."

14 Section 31. Section 58-21-7 NMSA 1978 (being Laws 1983,
15 Chapter 86, Section 7) is amended to read:

16 "58-21-7. SURETY BOND.--

17 A. Each mortgage loan company shall post and
18 maintain with the director a corporate surety bond.

19 B. The penal sum of the surety bond shall be in an
20 initial amount of fifty thousand dollars (\$50,000). Upon
21 renewal of the license, the penal sum of the surety bond
22 shall be in an amount that reflects the total dollar amount
23 of mortgage loans originated annually in New Mexico by the
24 licensee, as follows:

25 (1) zero dollars (\$0.00) to three million

1 dollars (\$3,000,000), a surety bond of fifty thousand dollars
2 (\$50,000);

3 (2) more than three million dollars
4 (\$3,000,000) and less than ten million dollars (\$10,000,000),
5 a surety bond of one hundred thousand dollars (\$100,000); and

6 (3) ten million dollars (\$10,000,000) or
7 more, a surety bond of one hundred fifty thousand dollars
8 (\$150,000).

9 C. Every bond shall provide for suit thereon by
10 any person who has a cause of action under the Mortgage Loan
11 Company Act.

12 D. The bond shall be in substantially the form as
13 the director prescribes.

14 E. When an action is commenced on a licensee's
15 bond, the director may require the filing of a new bond.

16 F. Immediately upon recovery upon any action on a
17 bond, the licensee shall file a new bond."

18 Section 32. Section 58-21-8 NMSA 1978 (being Laws 1983,
19 Chapter 86, Section 8, as amended by Laws 2001, Chapter 251,
20 Section 6 and by Laws 2001, Chapter 264, Section 6) is
21 amended to read:

22 "58-21-8. VIOLATIONS.--The director may deny, suspend
23 or revoke any license or impose other penalties when the
24 applicant or licensee, or a principal, partner, director,
25 officer, trustee, manager, employee or affiliate of the

1 applicant or licensee:

2 A. lacks a good business reputation;

3 B. has violated a provision of the Mortgage Loan
4 Company Act;

5 C. charges, collects or receives fees for
6 procuring, negotiating or securing a loan in excess of the
7 amounts allowed by the Mortgage Loan Company Act or by rules
8 promulgated pursuant to that act;

9 D. has committed fraud in connection with a
10 transaction subject to the Mortgage Loan Company Act;

11 E. has made a misrepresentation or false statement
12 to or concealed an essential or material fact from a person
13 in the course of the mortgage loan company business;

14 F. has knowingly made or caused to be made a false
15 representation of material fact or has suppressed or withheld
16 from the director information that the applicant or licensee
17 possesses and that, if submitted by that person, would have
18 rendered the applicant or licensee ineligible to be licensed
19 pursuant to the Mortgage Loan Company Act;

20 G. has violated any provisions of any New Mexico
21 statute relating to escrow agents or escrow companies;

22 H. has refused to permit an examination or
23 investigation by the director of that person's books and
24 records or has refused or failed, within a reasonable time,
25 to furnish information or make a report that may be required

1 by the director under the provisions of the Mortgage Loan
2 Company Act;

3 I. has been convicted of a felony or any
4 misdemeanor involving moral turpitude; subject, however, to
5 the provisions of the Criminal Offender Employment Act;

6 J. appears to be conducting business in a manner
7 that is injurious to persons;

8 K. conducts any business covered by the Mortgage
9 Loan Company Act without holding a valid license as required
10 by that act;

11 L. knowingly assists or aids and abets any person
12 in the conduct of business covered by the Mortgage Loan
13 Company Act without a valid license as required pursuant to
14 that act;

15 M. hires or engages the services of a mortgage
16 loan originator who is not licensed pursuant to the New
17 Mexico Mortgage Loan Originator Licensing Act;

18 N. makes a mortgage loan without documenting and
19 considering the borrower's reasonable ability to repay that
20 loan pursuant to its terms. The borrower's ability to repay
21 shall be demonstrated through reasonably reliable
22 documentation that may include payroll receipts, tax returns,
23 bank records, asset and credit evaluations, mortgage payment
24 history or other similar reliable documentation. The
25 provisions of this subsection shall not apply to a mortgage

1 loan originated pursuant to a government streamline program
2 or a streamline program administered by a
3 government-sponsored enterprise, to a reverse mortgage
4 insured as part of a government program or to loss mitigation
5 activities of a mortgage loan servicer or lender with which
6 the borrower has a current relationship, so long as each of
7 these exceptions, as applicable, provides the borrower with a
8 reasonable, tangible net benefit; or

9 O. makes a mortgage loan without determining the
10 borrower's reasonable ability to pay the costs set forth in
11 this subsection. In the case of an adjustable rate mortgage
12 loan, the reasonable ability to pay shall be determined based
13 on a fully indexed rate and repayment schedule that achieves
14 full amortization over the life of the mortgage loan. The
15 costs, as applicable, to be used in determining the
16 borrower's reasonable ability to pay include principal,
17 interest, real estate taxes, property insurance, property
18 assessments, mortgage insurance premiums and other scheduled
19 long-term monthly debt payments."

20 Section 33. Section 58-21-9 NMSA 1978 (being Laws 1983,
21 Chapter 86, Section 9, as amended by Laws 2001, Chapter 251,
22 Section 7 and by Laws 2001, Chapter 264, Section 7) is
23 amended to read:

24 "58-21-9. POWERS AND DUTIES OF DIRECTOR.--

25 A. The director shall exercise general supervision

1 and control over mortgage loan companies doing business in
2 New Mexico. In addition to the other duties imposed on the
3 director by law, the director shall:

4 (1) make reasonable rules necessary for the
5 implementation of the Mortgage Loan Company Act; provided
6 that promulgated rules shall be subject to judicial review in
7 the manner set forth in Section 12-8-8 NMSA 1978;

8 (2) conduct investigations necessary to
9 determine whether a person has engaged in or is about to
10 engage in an act or practice constituting a violation of a
11 provision of the Mortgage Loan Company Act; and

12 (3) conduct examinations, investigations and
13 hearings in addition to those specifically provided for by
14 law necessary and proper to the efficient administration of
15 the Mortgage Loan Company Act.

16 B. The director may conduct an investigation upon
17 complaint when it appears that a mortgage loan company is
18 conducting business in a manner injurious to persons or when
19 it appears that a person has improperly claimed an exemption
20 pursuant to Section 58-21-6 NMSA 1978."

21 Section 34. Section 58-21-10 NMSA 1978 (being Laws
22 1983, Chapter 86, Section 10) is amended to read:

23 "58-21-10. SUBPOENAS, OATHS AND EXAMINATION OF
24 WITNESSES--PENALTIES.--

25 A. In the conduct of any examination,

1 investigation or hearing, the director may:

2 (1) compel the attendance of any person or
3 obtain any documents by subpoena;

4 (2) administer oaths; and

5 (3) examine any person under oath concerning
6 the business of any person subject to the provisions of the
7 Mortgage Loan Company Act and in connection therewith require
8 the production of any books, records or papers relevant to
9 the inquiry.

10 B. In case of refusal to obey a subpoena issued to
11 any person, the district court of the first judicial district
12 of Santa Fe county, upon application by the director, may
13 issue to the person an order requiring the person to appear
14 before the director or the staff member designated by the
15 director, there to produce documentary evidence if so ordered
16 or to give evidence relating to the matter under
17 investigation or in question. Failure to obey the order of
18 the court may be punished by the court as a contempt of
19 court."

20 Section 35. Section 58-21-12 NMSA 1978 (being Laws
21 1983, Chapter 86, Section 12, as amended by Laws 2001,
22 Chapter 251, Section 9 and by Laws 2001, Chapter 264, Section
23 9) is amended to read:

24 "58-21-12. EXAMINATION OF RECORDS.--All the records
25 required to be maintained by the Mortgage Loan Company Act

1 are subject to examinations or investigations by
2 representatives of the director within or without New Mexico
3 as the director deems necessary or appropriate in the public
4 interest or for the protection of investors. If the
5 examination or investigation is conducted outside the state,
6 the actual cost of travel for the examiners shall be
7 reimbursed to the state by the mortgage loan company so
8 examined or investigated."

9 Section 36. Section 58-21-13 NMSA 1978 (being Laws
10 1983, Chapter 86, Section 13) is amended to read:

11 "58-21-13. PUBLIC INSPECTION OF APPLICATIONS.--
12 Applications for licensing or a license renewal and all
13 papers, documents, reports and other written instruments
14 filed with the director under the Mortgage Loan Company Act
15 are public documents and open to public inspection except for
16 files of ongoing examinations and investigations relating to
17 violations of that act, which investigations do not
18 culminate, or have not yet culminated, in administrative,
19 civil or criminal action."

20 Section 37. Section 58-21-14 NMSA 1978 (being Laws
21 1983, Chapter 86, Section 14) is amended to read:

22 "58-21-14. NOTICE OF CONTEMPLATED ACTION--HEARINGS.--

23 A. When the director contemplates taking any
24 action specified in Section 58-21-8 NMSA 1978 and Paragraphs
25 (1) through (7) of Subsection A of Section 58-21-28 NMSA

1 1978, the director shall serve upon the licensee a written
2 notice containing a statement:

3 (1) that the director has sufficient
4 evidence that, if not rebutted or explained, will justify the
5 director in taking the contemplated action;

6 (2) indicating the general nature of
7 the evidence; and

8 (3) that unless the licensee within
9 twenty days after service of the notice deposits in the mail
10 a certified return receipt requested letter addressed to the
11 director and containing a request for a hearing, the director
12 will take the contemplated action.

13 B. If the licensee does not mail a request for a
14 hearing within the time and in the manner required by this
15 section, the director may take the action contemplated in the
16 notice, and such action shall be final and not subject to
17 judicial review.

18 C. If the licensee mails a request for a hearing
19 as required by this section, the director shall, within
20 thirty days of receipt of the request, notify the licensee of
21 the time and place of the hearing, the name of the person who
22 shall conduct the hearing for the director and the statutes
23 and regulations authorizing the director to take the
24 contemplated action."

25 Section 38. Section 58-21-15 NMSA 1978 (being Laws

1 1983, Chapter 86, Section 15, as amended by Laws 2001,
2 Chapter 251, Section 10 and by Laws 2001, Chapter 264,
3 Section 10) is amended to read:

4 "58-21-15. INVESTIGATIONS BY DIRECTOR.--

5 A. The director may make any public or private
6 investigation, within or outside of this state, as the
7 director finds necessary to determine whether a person has
8 violated or is about to violate the Mortgage Loan Company Act
9 or any rule or order of the director under that act or to aid
10 in enforcement of that act or in the rules under that act.

11 B. The director may publish information concerning
12 a violation of the Mortgage Loan Company Act or a rule or
13 order of the director under that act or concerning mortgage
14 loan activities of persons that may operate as a fraud or
15 deceit."

16 Section 39. Section 58-21-17 NMSA 1978 (being Laws
17 1983, Chapter 86, Section 17) is amended to read:

18 "58-21-17. ESCROW SERVICES.--Any licensee under the
19 Mortgage Loan Company Act who also performs any acts that are
20 within the scope of activities regulated by any statutes of
21 the state relating to escrow agents shall also comply with
22 all provisions of those statutes, and the issuance of a
23 license under the Mortgage Loan Company Act shall not serve
24 to relieve the licensee from compliance with the provisions
25 of such other statutes."

1 Section 40. Section 58-21-18 NMSA 1978 (being Laws
2 1983, Chapter 86, Section 18, as amended by Laws 2001,
3 Chapter 251, Section 11 and by Laws 2001, Chapter 264,
4 Section 11) is amended to read:

5 "58-21-18. PERMISSIBLE CHARGES.--In connection with any
6 loan originated, brokered, negotiated or made by a licensee
7 pursuant to the Mortgage Loan Company Act, a mortgage loan
8 company shall not collect, charge or receive broker fees in
9 excess of six percent of the principal amount of the loan. A
10 licensee may charge reasonable settlement, origination,
11 transaction and other fees or charges not otherwise
12 prohibited or limited by applicable state or federal laws."

13 Section 41. Section 58-21-19 NMSA 1978 (being Laws
14 1983, Chapter 86, Section 19, as amended) is amended to read:

15 "58-21-19. COMPLIANCE WITH FEDERAL AND STATE LAW.--In
16 connection with any loan originated, brokered, negotiated or
17 made by a licensee pursuant to the Mortgage Loan Company Act,
18 a licensee shall comply with:

19 A. applicable federal or state laws;

20 B. the provisions of the Home Loan Protection Act;

21 and

22 C. the provisions of the New Mexico Mortgage Loan
23 Originator Licensing Act."

24 Section 42. Section 58-21-20 NMSA 1978 (being Laws
25 1983, Chapter 86, Section 20) is amended to read:

1 "58-21-20. FALSE STATEMENT UNLAWFUL.--It is unlawful
2 for any person to make or cause to be made in any document
3 filed with the director in any proceedings under the Mortgage
4 Loan Company Act any statement that is at the time and in the
5 light of the circumstances under which it is made false or
6 misleading in any respect."

7 Section 43. Section 58-21-21 NMSA 1978 (being Laws
8 1983, Chapter 86, Section 21) is amended to read:

9 "58-21-21. FRAUD UNLAWFUL.--It is unlawful for any
10 mortgage loan company in connection with the origination,
11 brokering, negotiating or making of any mortgage loan,
12 directly or indirectly, to:

13 A. employ any device, scheme or artifice to
14 defraud; or

15 B. engage in any act, practice or course of
16 business that operates or would operate as a fraud or deceit
17 upon any person."

18 Section 44. Section 58-21-22 NMSA 1978 (being Laws
19 1983, Chapter 86, Section 22, as amended by Laws 2001,
20 Chapter 251, Section 13 and Laws 2001, Chapter 264, Section
21 13) is amended to read:

22 "58-21-22. PENALTIES.--A person who violates Section
23 58-21-18, 58-21-19, 58-21-20 or 58-21-21 NMSA 1978, knowing
24 the statement to be false or misleading in any respect, is
25 guilty of a fourth degree felony and upon conviction shall be

1 sentenced as provided for in Section 31-18-15 NMSA 1978.
2 Civil and criminal penalties are in addition to any remedies
3 available at common law."

4 Section 45. Section 58-21-23 NMSA 1978 (being Laws
5 1983, Chapter 86, Section 23, as amended by Laws 2001,
6 Chapter 251, Section 14 and by Laws 2001, Chapter 264,
7 Section 14) is amended to read:

8 "58-21-23. FILING AND DESTRUCTION OF DOCUMENTS.--A
9 document is filed when it is received by the director. The
10 director may permit the destruction of any document filed
11 under the Mortgage Loan Company Act with the division or the
12 director after six years from the date of filing documents."

13 Section 46. Section 58-21-23.2 NMSA 1978 (being Laws
14 2005, Chapter 191, Section 3, as amended) is amended to read:

15 "58-21-23.2. FUNDING OF REAL ESTATE TRANSACTIONS--
16 ENFORCEMENT.--

17 A. Unless the net loan funds necessary to complete
18 a purchase of real property have been previously delivered to
19 the seller or to the closing agent, a lender shall deliver
20 the required net loan funds within two business days of the
21 time that the lender deems the closing agent has fulfilled
22 the requirements of the closing agent's duties, except for
23 the recordation of documents, and shall:

24 (1) authorize the closing agent to record
25 with the county clerk all documents necessary to complete the

1 real estate transaction and release the proceeds of the real
2 estate transaction in accordance with agreed upon escrow
3 instructions;

4 (2) advise the closing agent of any funding
5 conditions, as set forth in the lender's escrow instructions,
6 that have not been satisfied and instruct the closing agent
7 in writing what is to be done with any of the lender's funds
8 held in escrow; or

9 (3) advise the closing agent that the
10 documentation for the real estate transaction does not
11 satisfy the lender's escrow instructions, specify the manner
12 in which that documentation does not satisfy those
13 instructions and instruct the closing agent in writing what
14 is to be done with any of the lender's funds held in escrow.

15 B. In the event a lender does not comply with the
16 requirements of Subsection A of this section, unreasonably
17 refuses to approve the documentation necessary to complete a
18 real estate action or unreasonably delays authorization of
19 the recordation of closing documents and release of proceeds
20 of a real estate transaction, the director of the division
21 may, upon receipt of a complaint and in accordance with the
22 procedures set forth in the Mortgage Loan Company Act,
23 suspend or revoke any state registration or license issued to
24 the lender for a period not to exceed one year."

25 Section 47. Section 58-21-25 NMSA 1978 (being Laws

1 1983, Chapter 86, Section 25) is amended to read:

2 "58-21-25. NO IMPAIRMENT OF OTHER REMEDIES.--The
3 Mortgage Loan Company Act is not intended to impair any
4 remedies available to injured parties under other statutes or
5 under common law."

6 Section 48. Section 58-21-26 NMSA 1978 (being Laws
7 1983, Chapter 86, Section 26) is amended to read:

8 "58-21-26. EXEMPTION FROM AUTHORITY OF SUPERINTENDENT
9 OF REGULATION AND LICENSING.--The responsibilities and
10 authority of the director under the Mortgage Loan Company Act
11 are explicitly exempted from the authority of the
12 superintendent of regulation and licensing as set forth in
13 Subsection B of Section 9-16-6 NMSA 1978."

14 Section 49. Section 58-21-28 NMSA 1978 (being Laws
15 2001, Chapter 251, Section 15 and Laws 2001, Chapter 264,
16 Section 15) is amended to read:

17 "58-21-28. ENFORCEMENT.--

18 A. In order to ensure the effective
19 supervision and enforcement of the Mortgage Loan Company Act,
20 the director may:

21 (1) deny, suspend, revoke or decline to
22 renew a license for a violation of that act, rules issued
23 pursuant to that act or order or directive entered pursuant
24 to that act;

25 (2) deny, suspend, revoke or decline to

1 renew a license if an applicant or licensee fails at any time
2 to meet the requirements of licensing pursuant to that act or
3 rules issued pursuant to that act;

4 (3) order restitution against persons
5 subject to that act for violations of that act;

6 (4) impose fines on persons subject to
7 that act pursuant to Subsections B through D of this section;

8 (5) order or direct such other
9 affirmative action as the director deems necessary;

10 (6) deny the person's license
11 application or suspend or revoke the person's license in New
12 Mexico as a mortgage loan company;

13 (7) award damages to the injured party
14 in double the amount of fees charged by the mortgage loan
15 company for originating, brokering, negotiating or making a
16 loan within the jurisdiction of that act;

17 (8) issue orders or directives pursuant
18 to that act as follows:

19 (a) order or direct persons
20 subject to that act to cease and desist from conducting
21 business, including immediate temporary orders to cease and
22 desist;

23 (b) order or direct persons
24 subject to that act to cease and desist any harmful
25 activities or violations of that act, including immediate

1 temporary orders to cease and desist; and

2 (c) enter immediate temporary
3 orders to cease business under a license issued pursuant to
4 the authority granted pursuant to that act if the director
5 determines that such license was erroneously granted or the
6 licensee is currently in violation of that act; and

7 (9) initiate one or more of the actions
8 specified in Section 58-21-29 NMSA 1978, as applicable.

9 B. The director may impose a civil penalty on a
10 mortgage loan company or person subject to the Mortgage Loan
11 Company Act if the director finds, on the record after notice
12 and opportunity for hearing, that the mortgage loan company
13 or person subject to that act has violated or failed to
14 comply with any requirement of that act or any rule adopted
15 by the director pursuant to that act or order issued pursuant
16 to that act.

17 C. The maximum amount of penalty for each act or
18 omission described in Section 58-21-8 NMSA 1978 shall be
19 twenty-five thousand dollars (\$25,000).

20 D. Each violation or failure to comply with any
21 directive or order of the director is a separate and distinct
22 violation or failure."

23 Section 50. Section 58-21-29 NMSA 1978 (being Laws
24 2001, Chapter 251, Section 16 and Laws 2001, Chapter 264,
25 Section 16) is amended to read:

1 "58-21-29. POWER OF COURT TO GRANT RELIEF.--

2 A. Upon a showing by the director that a person
3 has or is about to violate the Mortgage Loan Company Act or
4 any rule or order of the director under that act, the
5 district court of the first judicial district for Santa Fe
6 county or other appropriate district court in the state may
7 grant or impose one or more of the following appropriate
8 legal or equitable remedies:

9 (1) a temporary restraining order, permanent
10 or temporary prohibitory or mandatory injunction or a writ of
11 prohibition or mandamus;

12 (2) a civil penalty up to a maximum of
13 twenty-five thousand dollars (\$25,000) for each violation;

14 (3) disgorgement;

15 (4) declaratory judgment;

16 (5) restitution to consumers;

17 (6) the appointment of a receiver or
18 conservator for the defendant or the defendant's assets;

19 (7) recovery by the director of all costs
20 and expenses for conducting an investigation or the bringing
21 of any enforcement action under that act; or

22 (8) other relief as the court deems just.

23 B. In determining the appropriate relief to grant,
24 the court shall consider enforcement actions taken and
25 sanctions imposed by the director under Section 58-21-28 NMSA

1 1978 in connection with the transactions constituting
2 violations of the Mortgage Loan Company Act.

3 C. The court shall not require the director to
4 post bond in an action under this section."

5 Section 51. A new section of the Mortgage Loan Company
6 Act is enacted to read:

7 "UNLICENSED ACTIVITY.--

8 A. A person that violates Subsection A of Section
9 58-21-3 NMSA 1978 for the first offense is guilty of a
10 misdemeanor and upon conviction shall be sentenced pursuant
11 to the provisions of Section 31-19-1 NMSA 1978.

12 B. In the case of a first conviction pursuant to
13 Subsection A of this section, the court may impose a deferred
14 sentence pursuant to the provisions of Section 31-20-6 NMSA
15 1978.

16 C. A person that violates Subsection A of Section
17 58-21-3 NMSA 1978 for a second or subsequent offense is
18 guilty of a fourth degree felony and upon conviction shall be
19 sentenced pursuant to the provisions of Section 31-18-15 NMSA
20 1978."

21 Section 52. A new section of the Mortgage Loan Company
22 Act is enacted to read:

23 "LICENSEE REQUIRED DISCLOSURES.--A mortgage loan company
24 shall, in addition to other disclosures required pursuant to
25 other statutes or common law:

1 A. make all disclosures required by applicable
2 federal and state laws;

3 B. provide a revised "good faith estimate" and a
4 copy of the borrower's lock-in agreement to the borrower
5 within three days of locking in the loan rate, pricing and
6 terms;

7 C. make a full and fair disclosure of all facts
8 within the knowledge of the mortgage loan company that are or
9 may be material to the borrower's decision, rights or
10 interests;

11 D. disclose at least two days prior to closing of
12 the loan, in a manner that can be understood by a reasonable
13 borrower, the total amount of any compensation the mortgage
14 loan company expects to receive specific to the loan being
15 offered, including origination fees, broker fees, yield
16 spread premiums and other fees payable to the mortgage loan
17 company by the lender or other third party at the time the
18 loan is funded to the borrower;

19 E. clearly and conspicuously disclose in writing a
20 mortgage loan summary, as specified by the director by rule;
21 and

22 F. enter into a signed contract with the borrower,
23 as specified by the director by rule, that provides for
24 mortgage loan rate float or rate lock-in. The borrower may
25 choose to:

1 (1) rate float, which means that a loan rate
2 has not been locked in and the borrower is responsible for
3 instructing the mortgage loan company when to lock in the
4 loan rate; or

5 (2) lock in a rate, which means the mortgage
6 loan originator shall lock in a loan rate. The rate lock-in
7 shall include the loan interest rate, pricing, terms, lock-in
8 period and any fees required for an extension of the lock-in
9 period."

10 Section 53. A new section of the Mortgage Loan Company
11 Act is enacted to read:

12 "MORTGAGE CALL REPORTS.--Each licensee shall submit to
13 the nationwide mortgage licensing system and registry reports
14 of condition, which shall be in such form and shall contain
15 such information as the nationwide mortgage licensing system
16 and registry may require."

17 Section 54. Section 58-21A-1 NMSA 1978 (being Laws
18 2003, Chapter 436, Section 1) is amended to read:

19 "58-21A-1. SHORT TITLE.-- Chapter 58, Article 21A NMSA
20 1978 may be cited as the "Home Loan Protection Act"."

21 Section 55. Section 58-21A-3 NMSA 1978 (being Laws
22 2003, Chapter 436, Section 3) is amended to read:

23 "58-21A-3. DEFINITIONS.--As used in the Home Loan
24 Protection Act:

25 A. "adjustable rate home loan" means a home loan

1 that has an initial interest rate that adjusts to a variable
2 interest rate at the end of a specified initial period or
3 subsequent periods of time during the remaining term of the
4 home loan;

5 B. "affiliate" means a person that controls, is
6 controlled by or is under common control with another person;

7 C. "bona fide discount points" means loan discount
8 points that are knowingly paid by the borrower for the
9 express purpose of reducing, and which in fact do result in a
10 bona fide reduction of, the annual percentage rate otherwise
11 applicable to the home loan; provided, however, that discount
12 points are not "bona fide discount points" if the annual
13 percentage rate otherwise applicable to the home loan exceeds
14 the conventional mortgage rate by more than:

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

17 (2) three percentage points for a home loan
18 secured by a junior lien;

19 D. "borrower" means a natural person obligated to
20 repay a home loan, including a co-borrower, cosigner or
21 guarantor;

22 E. "bridge loan" means a loan for the initial
23 construction of a borrower's principal dwelling on land owned
24 by the borrower with a maturity of less than eighteen months
25 that only requires the payment of interest until the entire

1 unpaid balance is due and payable;

2 F. "conventional mortgage rate" means the most
3 recently published annual yield on conventional mortgages
4 published by the board of governors of the federal reserve
5 system as of the fifteenth day of the month immediately
6 preceding the month in which the application for the
7 extension of credit is received by the creditor;

8 G. "conventional prepayment penalty" means a
9 prepayment penalty or fee that may be collected in a home
10 loan and that is authorized by federal law; provided that a
11 prepayment penalty is not a "conventional prepayment penalty"
12 if the home loan:

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

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

18 H. "creditor" means a person who regularly offers
19 or makes a home loan;

20 I. "high-cost home loan" means a home loan in
21 which:

22 (1) the contract rate exceeds the rates
23 threshold; or

24 (2) the total points and fees exceed the
25 total points and fees threshold;

1 J. "home loan" means a loan, including an open-end
2 credit plan, other than a reverse mortgage transaction or a
3 bridge loan, where the principal amount does not exceed the
4 conforming loan size limit for a single-family dwelling as
5 established by the federal national mortgage association and
6 where the loan is secured by:

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

10 (a) designed principally for occupancy
11 by one to four families; and

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

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

17 K. "manufactured home" means a structure,
18 transportable in one or more sections, which in the traveling
19 mode is eight body feet or more in width or forty body feet
20 or more in length or, when erected on site is three hundred
21 twenty or more square feet and which is built on a permanent
22 chassis and designed to be used as a dwelling with a
23 permanent foundation when erected on land secured in
24 conjunction with the real property on which the manufactured
25 home is located and connected to the required utilities and

1 includes the plumbing, heating, air conditioning and
2 electrical systems contained therein. "Manufactured home"
3 includes any structure that meets all the requirements of
4 this subsection except the size requirements and with respect
5 to which the manufacturer voluntarily files a certification
6 required by the secretary of the United States department of
7 housing and urban development and complies with the standards
8 established under the federal National Manufactured Housing
9 Construction and Safety Standards Act of 1974. "Manufactured
10 home" does not include rental property or second homes or
11 manufactured homes when not secured in conjunction with the
12 real property on which the manufactured home is located;

13 L. "open-end loan" means a revolving debt that is
14 secured by the equity in the borrower's home, including a
15 home equity line of credit;

16 M. "points and fees" means:

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

21 (a) loan discount points or other
22 discounts;

23 (b) loan fees, broker fees or similar
24 charges; and

25 (c) fees for preparation of

1 loan-related documents; but

2 (d) does not include fees for the
3 following purposes, if the amounts are bona fide and
4 reasonable and paid to a person other than the creditor or an
5 affiliate of the creditor: 1) service or carrying charges;
6 2) credit reports; 3) title exam, title insurance, title
7 closing or similar purposes; 4) escrow charges for future
8 payments of taxes and insurance; 5) fees for notarizing deeds
9 and other documents; 6) appraisals, including fees related to
10 any pest infestation or flood hazard inspections conducted
11 prior to closing; 7) inspection performed prior to closing;
12 8) attorney fees, if the borrower has the right to select the
13 attorney from an approved list or otherwise; 9) fire and
14 hazard insurance and flood insurance premiums if the
15 conditions in 12 C.F.R. s.226.4(d)(2) are met; 10) tax
16 payment services; 11) surveys; 12) flood certification; 13)
17 pest infestation and flood determination; and 14) federal
18 housing administration upfront mortgage insurance, veterans
19 administration funding fee, guaranteed rural housing loan
20 guarantee fee or upfront premium private mortgage insurance
21 at a percentage rate, as set by the director biannually,
22 equal to the highest up-front government mortgage insurance
23 percentage rate or United States department of veterans
24 affairs funding fee percentage rate;

25 (2) all compensation, including yield spread

1 premiums, paid directly or indirectly to a mortgage broker,
2 including a broker that originates a loan in its own name in
3 a table-funded transaction;

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

12 (4) for open-end loans, the points and fees
13 included in Paragraphs (1) through (3) of this subsection
14 that are known at or before closing plus the minimum
15 additional fees the borrower would be required to pay to draw
16 down an amount equal to the total credit line;

17 N. "rate threshold" means:

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

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

1 on treasury securities having comparable periods of maturity
2 to the loan maturity as of the fifteenth day of the month
3 immediately preceding the month in which the loan is made;

4 O. "servicer" means a person who collects or
5 receives payments, including principal, interest and trust
6 items such as hazard insurance, property taxes and other
7 amounts due, on behalf of a note holder or investor in
8 accordance with the terms of a home loan, and includes
9 working with a borrower on behalf of a note holder or
10 investor, when the borrower is in financial hardship or
11 default, to modify either temporarily or permanently the
12 terms of an existing home loan;

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

20 Q. "total points and fees threshold" means:

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

25 (2) for a home loan in which the total

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

5 Section 56. Section 58-21A-4 NMSA 1978 (being Laws
6 2003, Chapter 436, Section 4) is amended to read:

7 "58-21A-4. PROHIBITED PRACTICES AND PROVISIONS
8 REGARDING HOME LOANS.--

9 A. No creditor shall finance, directly or
10 indirectly, credit life, credit disability, credit
11 unemployment or credit property insurance, or any other life
12 or health insurance, or any payments directly or indirectly
13 for any debt cancellation or suspension agreement or
14 contract, provided that nothing in this subsection prohibits
15 the payment or receipt of insurance premiums or debt
16 cancellation or suspension fees calculated on the unpaid
17 balance of a home loan and paid on a monthly basis.

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
22 existing home loan when the new loan does not have
23 reasonable, tangible net benefit to the borrower considering
24 all of the circumstances, including the terms of both the new
25 and refinanced loans, the cost of the new loan and the

1 borrower's circumstances.

2 C. No creditor shall make a home loan without
3 documenting and considering the borrower's reasonable ability
4 to repay that loan pursuant to its terms. The borrower's
5 ability to repay shall be demonstrated through reasonably
6 reliable documentation that may include payroll receipts, tax
7 returns, bank records, asset and credit evaluations, mortgage
8 payment history or other similar reliable documentation. The
9 provisions of this subsection shall not apply to a home loan
10 originated pursuant to a government streamline program or a
11 streamline program administered by a government-sponsored
12 enterprise, to a reverse mortgage insured as part of a
13 government program or to loss mitigation activities of a home
14 loan servicer or lender with which the borrower has a current
15 relationship, so long as each of these exceptions, as
16 applicable, provides the borrower with a reasonable, tangible
17 net benefit.

18 D. No creditor shall make a home loan without
19 determining the borrower's reasonable ability to pay the
20 costs set forth in this subsection. In the case of an
21 adjustable rate home loan, the reasonable ability to pay
22 shall be determined based on a fully indexed rate and
23 repayment schedule that achieves full amortization over the
24 life of the home loan. The costs, as applicable, to be used
25 in determining the borrower's reasonable ability to pay

1 include principal, interest, real estate taxes, property
2 insurance, property assessments, mortgage insurance premiums
3 and other scheduled long-term monthly debt payments.

4 E. No creditor shall make or originate an
5 adjustable rate home loan in which caps on payment increases
6 may be less than that necessary to reduce principal and
7 amortize the loan over the entire term of the loan regardless
8 of interest rate adjustments resulting in negative
9 amortization.

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

14 G. No creditor shall pay a contractor under a
15 home-improvement contract from the proceeds of a home loan
16 unless:

17 (1) the creditor is presented with a signed
18 and dated completion certificate showing that the home
19 improvements have been completed; or

20 (2) the instrument is payable jointly to the
21 borrower and the contractor, or at the election of the
22 borrower, through a third-party escrow agent in accordance
23 with terms established in a written agreement signed by the
24 borrower, the creditor and the contractor prior to the
25 disbursement.

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

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

8 J. No creditor shall recommend or encourage
9 default on an existing loan or other debt prior to and in
10 connection with the closing or planned closing of a home loan
11 that refinances all or any portion of the existing loan or
12 debt.

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

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

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

19 (3) the late payment fee shall not be
20 imposed more than once with respect to a single late payment,
21 and no late payment fee shall be charged with respect to a
22 subsequent payment that would have been a full payment but
23 for the previous default or the imposition of the previous
24 late payment fee;

25 (4) no late payment fee shall be charged

1 unless the creditor notifies the borrower within forty-five
2 days following the date the payment was due that a late
3 payment fee has been imposed for a particular late payment.
4 A late payment fee that the creditor has collected shall be
5 reimbursed if the borrower presents proof of having made a
6 timely payment; and

7 (5) a creditor shall treat each payment as
8 posted on the same business day as it was received by the
9 creditor, servicer, creditor's agent for making payments or
10 at the address provided to the borrower by the creditor,
11 servicer or creditor's agent for making payments.

12 L. No creditor shall make a home loan that
13 contains a provision that permits the creditor, in its sole
14 discretion, to accelerate the indebtedness, provided that
15 this provision does not prohibit acceleration of a loan in
16 good faith due to a borrower's failure to abide by the
17 material terms of the loan.

18 M. No creditor shall make or originate a home loan
19 that contains a provision that requires a penalty or premium
20 for prepayment of the balance or any portion of the principal
21 of the indebtedness.

22 N. No creditor shall make or originate a home loan
23 that includes or uses one or more of the following lending
24 practices:

25 (1) making a home loan primarily based upon

1 the foreclosure or liquidation value of the borrower's
2 collateral rather than on the borrower's ability to repay the
3 home loan according to its terms;

4 (2) making or originating an adjustable rate
5 home loan, except a home equity line of credit, where the
6 interest rate and payment may change more frequently than
7 annually during the term of the loan;

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

10 (a) the initial interest rate may be
11 increased by more than two percent for loans with initial
12 periods less than five years and six percent for loans with
13 initial periods greater than or equal to five years;

14 (b) a periodic interest rate may be
15 increased by more than two percent; and

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

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

24 (5) misrepresenting a borrower's credit
25 rating;

1 (6) misrepresenting, inflating or
2 fabricating, or encouraging a borrower to misrepresent,
3 inflate or fabricate, the source or amount of a borrower's
4 actual income or assets, other than allowable grossed-up
5 income not to exceed the twenty-five percent per agency
6 guidelines established by rule by the director, in the
7 application or underwriting process of a home loan; and

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

13 Section 57. Section 58-21A-5 NMSA 1978 (being Laws
14 2003, Chapter 436, Section 5) is amended to read:

15 "58-21A-5. LIMITATIONS AND PROHIBITED PRACTICES FOR
16 HIGH-COST HOME LOANS.--

17 A. No creditor or mortgage loan originator making
18 a high-cost home loan shall directly or indirectly finance
19 any points or fees in excess of two percent of the principal
20 loan amount.

21 B. No creditor shall make a high-cost home loan
22 that contains a provision that increases the interest rate
23 after default, provided that this provision does not apply to
24 interest rate changes in a variable rate loan otherwise
25 consistent with the provisions of the loan documents if the

1 change in the interest rate is not triggered by the event of
2 default or the acceleration of the indebtedness.

3 C. Without regard to whether a borrower is acting
4 individually or on behalf of others similarly situated, a
5 provision of a high-cost home loan agreement that allows a
6 party to require a borrower to assert any claim or defense in
7 a forum that is less convenient, more costly or more dilatory
8 for the resolution of a dispute than a judicial forum where
9 the borrower may otherwise properly bring a claim or defense
10 or limits in any way any claim or defense the borrower may
11 have is unconscionable and void.

12 D. No creditor or mortgage loan originator shall
13 make a high-cost home loan without first receiving
14 certification from a third-party, nonprofit counselor
15 approved by the United States department of housing and urban
16 development, the New Mexico mortgage finance authority or the
17 director of the financial institutions division of the
18 regulation and licensing department that the borrower has
19 received counseling on the advisability of the loan
20 transaction.

21 E. A creditor or mortgage loan originator shall
22 not make a high-cost home loan unless the creditor has given
23 the following notice, or a substantially similar notice, in
24 writing, to the borrower, acknowledged in writing and signed
25 by the borrower not later than the time the notice is

1 required under the notice provision contained in 12 C.F.R.
2 s.226.31(c):

3 NOTICE TO BORROWER

4 YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO
5 OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP
6 AROUND AND COMPARE LOAN RATES AND FEES. MORTGAGE
7 LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON
8 MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND
9 FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY,
10 THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF
11 PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE
12 AND FEES COULD ALSO VARY BASED ON WHICH CREDITOR OR
13 BROKER YOU SELECT.

14 IF YOU ACCEPT THE TERMS OF THIS LOAN, THE
15 CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR HOME.
16 YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO
17 IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS
18 UNDER THE LOAN.

19 YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND A
20 QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER
21 EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE,
22 FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE
23 YOU PROCEED. A LIST OF QUALIFIED COUNSELORS IS
24 AVAILABLE BY CONTACTING THE NEW MEXICO REGULATION
25 AND LICENSING DEPARTMENT.

1 YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN
2 AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS
3 DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION.
4 REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE
5 ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE
6 ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK
7 YOUR CREDITOR ABOUT THESE SERVICES.

8 ALSO, YOUR PAYMENTS ON EXISTING DEBTS
9 CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT
10 ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS
11 TO YOUR EXISTING CREDITORS."

12 Section 58. Section 58-21A-6 NMSA 1978 (being Laws
13 2003, Chapter 436, Section 6) is amended to read:

14 "58-21A-6. DEFAULT--NOTICE--RIGHT TO CURE.--

15 A. Before an action is filed to foreclose or
16 collect money due pursuant to a home loan or before other
17 action is taken to seize or transfer ownership of property
18 subject to a home loan, the creditor or creditor's assignee
19 of the loan shall deliver to the borrower a notice of the
20 right to cure the default informing the borrower of:

21 (1) the nature of the default;

22 (2) the borrower's right to cure the default
23 by paying the sum of money required, provided that a creditor
24 or assignee shall accept any partial payment made or tendered
25 in response to the notice. If the amount necessary to cure

1 the default will change within thirty days of the notice, due
2 to the application of a daily interest rate or the addition
3 of late fees, as allowed by the Home Loan Protection Act, the
4 notice shall give sufficient information to enable the
5 borrower to calculate the amount at any point within the
6 thirty-day period;

7 (3) the date by which the borrower may cure
8 the default to avoid a court action, acceleration and
9 initiation of foreclosure or other action to seize the
10 property, which date shall not be less than thirty days after
11 the date the notice is delivered, and the name and address
12 and telephone number of a person to whom the payment or
13 tender shall be made;

14 (4) that if the borrower does not cure the
15 default by the date specified, the creditor or assignee may
16 file an action for money due or take steps to terminate the
17 borrower's ownership in the property by requiring payment in
18 full of the home loan and commencing a foreclosure proceeding
19 or other action to seize the property; and

20 (5) the name and address and the telephone
21 number of a person whom the borrower may contact if the
22 borrower disagrees with the assertion that a default has
23 occurred or the correctness of the calculation of the amount
24 required to cure the default.

25 B. If a creditor or assignee asserts that grounds

1 for acceleration exist and requires the payment in full of
2 all sums secured by the home loan, the borrower, or anyone
3 authorized to act on the borrower's behalf, may, at any time
4 prior to the time title is transferred by means of
5 foreclosure, by judicial proceeding and sale or otherwise,
6 cure the default, and reinstate the home loan. Cure of the
7 default shall reinstate the borrower to the same position as
8 if the default had not occurred and shall nullify, as of the
9 date of the cure, an acceleration of any obligation under the
10 home loan arising from the default.

11 C. To cure a default under this section, a
12 borrower shall not be required to pay any charge, fee or
13 penalty attributable to the exercise of the right to cure a
14 default, other than the fees specifically allowed by this
15 subsection. The borrower shall not be liable for any
16 attorney fees relating to the default that are incurred by
17 the creditor or assignee prior to or during the thirty-day
18 period set forth in Subsection A of this section, nor for any
19 such fees in excess of one hundred dollars (\$100) that are
20 incurred by the creditor or assignee after the expiration of
21 the thirty-day period but prior to the time the creditor or
22 assignee files a foreclosure or other judicial action or
23 takes other action to seize or transfer ownership of the real
24 estate. After the creditor or assignee files a foreclosure
25 or other judicial action or takes other action to seize or

1 transfer ownership of the real estate, the borrower shall
2 only be liable for attorney fees that are reasonable and
3 actually incurred by the creditor or assignee, based on a
4 reasonable hourly rate and a reasonable number of hours.

5 D. If a default is cured prior to the initiation
6 of any action to foreclose or to seize the residence, the
7 creditor or assignee shall not institute a proceeding or
8 other action for that default. If a default is cured after
9 the initiation of any action, the creditor or assignee shall
10 take such steps as are necessary to terminate the action.

11 E. A creditor or a creditor's assignee of a home
12 loan that has the legal right to foreclose shall, in a
13 foreclosure, use the judicial foreclosure procedures provided
14 by law. In such a proceeding, the borrower may assert the
15 nonexistence of a default and any other claim or defense to
16 acceleration and foreclosure, including any based on a
17 violation of the Home Loan Protection Act, though no such
18 claim or defense shall be deemed a compulsory counterclaim."

19 Section 59. MORTGAGE REGULATORY FUND--CREATED--
20 PURPOSE--APPROPRIATION.--

21 A. The "mortgage regulatory fund" is created as a
22 nonreverting fund in the state treasury and shall be
23 administered by the financial institutions division of the
24 regulation and licensing department. The fund shall consist
25 of application, licensing, renewal, examination,

1 investigation and any other fees received that are associated
2 with the costs of administering the New Mexico Mortgage Loan
3 Originator Licensing Act, fees specified in Subsection E of
4 Section 58-21-5 NMSA 1978 and any money that is appropriated
5 or donated or that otherwise accrues to the fund. Money in
6 the fund shall be invested by the state investment officer in
7 the manner that land grant permanent funds are invested
8 pursuant to Chapter 6, Article 8 NMSA 1978. Income from
9 investment of the fund shall be credited to the fund.

10 B. Money in the mortgage regulatory fund is
11 appropriated to the financial institutions division of the
12 regulation and licensing department to carry out the
13 provisions of the New Mexico Mortgage Loan Originator
14 Licensing Act and the Mortgage Loan Company Act.

15 C. Money shall be disbursed from the mortgage
16 regulatory fund only on warrant of the secretary of finance
17 and administration upon vouchers signed by the director of
18 the financial institutions division or the director's
19 authorized representative. Any unexpended or unencumbered
20 balance remaining at the end of a fiscal year shall not
21 revert to the general fund.

22 Section 60. SEVERABILITY.--If any part or application
23 of this act is held invalid, the remainder or its application
24 to other situations or persons shall not be affected.

25 Section 61. EFFECTIVE DATE.--

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A. The effective date of the provisions of Sections 4 and 16 of this act is July 31, 2010.

B. The effective date of the provisions of Sections 1 through 3, 5 through 15 and 17 through 60 of this act is July 31, 2009.