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SENATE BILL 675

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO LICENSING; CREATING LICENSING REQUIREMENTS FOR
MORTGAGE LENDERS AND MORTGAGE BROKERS; PROVIDING POWERS TO THE
DIRECTOR OF THE FINANCIAL INSTITUTIONS DIVISION OF THE
REGULATION AND LICENSING DEPARTMENT; IMPOSING FEES; ENACTING
THE MORTGAGE LENDERS AND BROKERS LICENSURE ACT; REPEALING THE
MORTGAGE LOAN COMPANY AND LOAN BROKER ACT; PROVIDING PENALTIES;
DECLARING AN EMERGENCY.

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

Section 1. SHORT TITLE. -- This act may be cited as the
"Mortgage Lenders and Brokers Licensure Act".

Section 2. LEGISLATIVE FINDINGS. -- The legislature finds
that:

A. the activities of mortgage lenders and mortgage
brokers and the offering of financing for residential real

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1 property have a direct and immediate impact upon the housing
2 industry, neighborhoods and communities and homeowners and
3 potential homeowners in this state; and

4 B. it is essential for the protection of the
5 residents of this state and the stability of the state's
6 economy to establish reasonable standards governing the
7 business practices of mortgage lenders and mortgage brokers and
8 to provide for adequate supervision and regulation of mortgage
9 lenders and mortgage brokers.

10 Section 3. DEFINITIONS.--As used in the Mortgage Lenders
11 and Brokers Licensure Act:

12 A. "affiliate" means a person who, directly or
13 indirectly, through one or more intermediaries, controls or is
14 controlled by another person;

15 B. "audit" means a certified audit of a licensee's
16 books or records and systems of internal control performed by
17 an independent certified public accountant that is in
18 accordance with generally accepted accounting principles and
19 generally accepted auditing standards and that includes a
20 statement of the licensee's financial condition;

21 C. "borrower" means a person who seeks to obtain a
22 mortgage loan, including an applicant for a mortgage loan;

23 D. "branch office" means a location, other than a
24 licensee's principal place of business, from which a licensee
25 conducts business:

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1 (1) at which the licensee makes or brokers
2 mortgage loans;

3 (2) at which the licensee's advertising,
4 promotional material or signage suggests that the licensee
5 makes or brokers mortgage loans; or

6 (3) that, due to the actions of the licensee
7 or an employee or independent contractor hired by the licensee,
8 may be reasonably construed by the public as a place of
9 business from which the licensee makes or brokers mortgage
10 loans;

11 E. "company" means a corporation, limited liability
12 company, partnership, business trust, association or other
13 similar organization;

14 F. "control" means the possession, directly or
15 indirectly, of the power to direct or cause the direction of
16 the management and policies of a company, whether through the
17 ownership of voting stock of the company, the ownership of
18 voting stock of an entity that possesses that power or
19 otherwise, and is presumed to exist if a person, directly or
20 indirectly owns, controls or holds twenty-five percent or more
21 of the voting stock of a company or of an entity that owns,
22 controls or holds with power to vote twenty-five percent or
23 more of the voting stock of the company;

24 G. "conviction" means conviction of a crime if a
25 person has pleaded guilty, no contest or nolo contendere before

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1 a court or federal magistrate or if that person has been found
2 guilty by the decision or judgment of a court or federal
3 magistrate or by the verdict of a jury, irrespective of the
4 pronouncement of the sentence or the suspension of that
5 sentence; but does not include a conviction that has been set
6 aside, reversed or otherwise abrogated by lawful judicial
7 process or a conviction for which a person has received a
8 pardon from the president of the United States, or any other
9 pardoning authority in the jurisdiction where the person was
10 convicted;

11 H. "depository institution" means:

12 (1) a bank defined in the federal Bank Holding
13 Company Act of 1956;

14 (2) a savings association or savings bank
15 defined in the Federal Deposit Insurance Act; or

16 (3) an insured credit union defined in the
17 Federal Credit Union Act;

18 I. "director" means the director of the division;

19 J. "division" means the financial institutions
20 division of the regulation and licensing department;

21 K. "employee" means a person who is employed in the
22 service of a mortgage lender or a mortgage broker for wages,
23 salary, commissions or other direct compensation and is subject
24 to income tax withholding or other lawful deductions by the
25 mortgage lender or mortgage broker as a condition of

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1 employment;

2 L. "holding company" means a bank holding company
3 or financial holding company pursuant to Section 12 USCA 1841,
4 as may be amended or renumbered;

5 M. "independent contractor" means a person who
6 contracts with a mortgage lender, mortgage broker or an exempt
7 person to perform a service and is not directed or controlled
8 by the other person and is not required to maintain separate
9 records regarding the contract for services with respect to
10 accounting, taxes and other matters;

11 N. "license" means a license issued by the director
12 pursuant to the Mortgage Lenders and Brokers Licensure Act that
13 authorizes a person to act as a mortgage lender, a mortgage
14 broker or both a mortgage lender and a mortgage broker;

15 O. "licensee" means a person who obtains a license
16 pursuant to the Mortgage Lenders and Brokers Licensure Act;

17 P. "managing broker" means a person in charge of or
18 responsible for the operation of a principal place of business
19 or a branch office of a licensed mortgage broker, including
20 supervision of all employees of the licensed mortgage broker at
21 that location;

22 Q. "managing loan officer" means a person in charge
23 of and responsible for the operation of the principal place of
24 business or a branch office of a licensed mortgage lender,
25 including supervision of all employees of the licensed mortgage

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1 lender at that location;

2 R. "misrepresent" means to make a false statement
3 of a substantive fact with reckless disregard for the truth of
4 the statement or with knowledge that the statement is false, or
5 to engage, with the intent to deceive or mislead, in any
6 conduct that leads to a false belief that is material to the
7 transaction;

8 S. "mortgage broker" means a person who performs
9 mortgage brokering services and includes a person who closes a
10 mortgage loan in that person's own name with funds provided by
11 another person in a table funded mortgage loan transaction;

12 T. "mortgage brokering" means negotiating or
13 attempting to negotiate the placement, location or obtainment
14 of a mortgage loan for a borrower from a third-party mortgage
15 lender in return for compensation or in anticipation of
16 compensation to be paid, either directly or indirectly, by the
17 borrower or the mortgage lender or both the borrower and the
18 mortgage lender;

19 U. "mortgage lender" means a person who holds
20 himself out to the borrower or to the general public as a
21 mortgage lender or who makes a mortgage loan; and in a table
22 funded mortgage loan transaction originated by a mortgage
23 broker who closes the mortgage loan in the mortgage broker's
24 own name, the mortgage lender is the person who advances the
25 loan funds, and to whom the obligation is initially assigned at

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1 or after settlement;

2 V. "mortgage loan" means a loan made to a borrower
3 that is sought by the borrower primarily for personal, family
4 or household purposes and that is primarily secured by a
5 mortgage or deed of trust upon an interest in real property
6 located in this state upon which there is located or there is
7 to be located a one-to-four family dwelling occupied or to be
8 occupied by the borrower as the borrower's principal dwelling,
9 regardless of where the loan is made; but does not include a
10 loan that is made primarily for a business, commercial or
11 agricultural purpose;

12 W. "net worth" means the assets of a person that
13 are computed in accordance with generally accepted accounting
14 principles and that are reported annually on a certified
15 statement of financial condition;

16 X. "person" means an individual, sole
17 proprietorship, estate, trust, firm, corporation, limited
18 liability company, partnership, association, legal or
19 commercial entity or organized group of individuals;

20 Y. "principal" means a director, manager, general
21 partner, principal officer of a company, principal broker,
22 managing broker, principal loan officer or managing loan
23 officer or an individual who owns a controlling interest in a
24 company;

25 Z. "principal broker" means the person in charge of

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1 and responsible for the mortgage brokering activities of a
2 licensed mortgage broker, including supervision of all managing
3 brokers and other employees of the licensed mortgage broker;

4 AA. "principal loan officer" means a person in
5 charge of and responsible for the mortgage lending activities
6 of a licensed mortgage lender, including supervision of all
7 managing loan officers and other employees of the licensed
8 mortgage lender;

9 BB. "principal place of business" means a
10 licensee's primary business office as designated on an original
11 application or amended application for a license;

12 CC. "subsidiary" means a company in which another
13 company owns a majority or controlling interest directly,
14 indirectly or through one or more intermediaries; and

15 DD. "table funded mortgage loan transaction" means
16 a settlement at which a mortgage loan is funded by an advance
17 of loan funds and a subsequent assignment of the loan from the
18 person identified as the lender in the loan documents to the
19 person advancing the funds.

20 Section 4. PERSONS EXEMPT FROM ACT. --

21 A. The following are not subject to any of the
22 provisions of the Mortgage Lenders and Brokers Licensure Act:

23 (1) a depository institution or subsidiary of
24 a depository institution;

25 (2) the United States or the state of New

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1 Mexico or any of their branches, agencies, departments, boards,
2 instrumentalities or political subdivisions, including quasi-
3 governmental agencies and government-sponsored enterprises;

4 (3) a person acting pursuant to a court order;
5 and

6 (4) a company licensed as a small business
7 investment company under the federal Small Business Investment
8 Act of 1958.

9 B. The following are not subject to the provisions
10 of the Mortgage Lenders and Brokers Licensure Act, except for
11 Sections 6, 22 and 28 of that act:

12 (1) an insurance company licensed in New
13 Mexico or an employee of the insurance company;

14 (2) a pension plan that provides mortgage
15 loans exclusively to plan participants or plan assets;

16 (3) a corporation or employee of the
17 corporation that provides mortgage loans to promote home
18 ownership or improvements for the disadvantaged and that has
19 been granted exemption from the federal income tax as an
20 organization described in Section 501(c)(3) of the Internal
21 Revenue Code of 1986, as amended or renumbered;

22 (4) a person who provides three or fewer
23 mortgage loans in a calendar year with that person's own funds
24 for the person's own investment and who does not hold himself
25 out to the general public as a mortgage lender or mortgage

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1 broker;

2 (5) a person or employee of the person who
3 makes a mortgage loan while acting in a fiduciary capacity
4 conferred by authority of a court;

5 (6) a person or employee of the person who
6 sells purchase money obligations and receives as security for
7 those obligations not more than ten deeds of trust;

8 (7) a person or employee of the person who
9 makes a mortgage loan to that person's employee as a benefit of
10 employment; and

11 (8) a person or employee of the person who
12 makes a mortgage loan to a borrower related to the lender by
13 blood or marriage.

14 C. The following are not subject to the provisions
15 of the Mortgage Lenders and Brokers Licensure Act except for
16 Sections 6, 22 and 27 of that act:

17 (1) an attorney licensed to practice law in
18 New Mexico, or an employee of the attorney; provided that the
19 attorney does not hold himself out to the general public as a
20 mortgage broker;

21 (2) a licensed real estate salesperson or
22 broker when rendering services as a real estate salesperson or
23 broker subject to regulation and supervision by the New Mexico
24 real estate commission, or an employee of the commission;
25 provided that the real estate salesperson or broker does not

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1 receive any fee, commission or other payment for mortgage
2 brokering services or hold himself out to the general public as
3 a mortgage broker; and

4 (3) a person who brokers three or fewer
5 mortgage loans in New Mexico in a calendar year, or an employee
6 thereof, provided that the person is licensed as a mortgage
7 broker under the laws of another state.

8 D. An employee of a holding company, a subsidiary
9 of a holding company or an affiliate of a depository
10 institution that provides mortgage brokering services to a
11 borrower in the course and scope of employment is exempt from
12 the provisions of the Mortgage Lenders and Brokers Licensure
13 Act except for Sections 8, 22 and 27 of that act; provided that
14 the lender involved in the loan for which the mortgage
15 brokering services are provided is an affiliate of the
16 employee's employer and that affiliate is:

- 17 (1) a licensed mortgage lender;
18 (2) a depository institution; or
19 (3) a subsidiary of a depository institution.

20 E. Notwithstanding the provisions of this section,
21 a person who is not exempt from the provisions of the Mortgage
22 Lenders and Brokers Licensure Act pursuant to Subsection A of
23 this section who holds himself out to a borrower or to the
24 general public as a mortgage broker shall be licensed pursuant
25 to the Mortgage Lenders and Brokers Licensure Act.

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1 F. An employee of a licensed mortgage broker is
2 exempt from the provisions of the Mortgage Lenders and Brokers
3 Licensure Act except for Sections 21, 22 and 25 through 27 of
4 that act, provided that the employee:

5 (1) performs only clerical and ministerial
6 tasks;

7 (2) is under the direct and continuous
8 supervision of a principal broker or managing broker who has a
9 current mortgage broker license;

10 (3) does not hold himself out to the general
11 public as a mortgage broker; and

12 (4) acts within the scope of employment.

13 G. The burden of establishing the right to an
14 exemption from a provision of the Mortgage Lenders and Brokers
15 Licensure Act rests upon the party claiming the benefit of the
16 exemption.

17 Section 5. VALIDITY OF MORTGAGE LOANS.--The provisions of
18 the Mortgage Lenders and Brokers Licensure Act shall not be
19 construed to alter the validity or enforceability of any
20 existing or future mortgage loan under common or other
21 statutory laws; provided that this section shall not be
22 construed as a limitation of the rights of a borrower to pursue
23 all available remedies for violations of the provisions of the
24 Mortgage Lenders and Brokers Licensure Act.

25 Section 6. MORTGAGE LOANS SUBJECT TO ACT.--A mortgage

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1 loan is subject to the provisions of the Mortgage Lenders and
2 Brokers Licensure Act notwithstanding the method or location in
3 which the mortgage loan is provided. A person who provides a
4 mortgage brokering service or a mortgage lending service by
5 mail, telephone or electronic means in connection with a
6 mortgage loan is subject to the Mortgage Lenders and Brokers
7 Licensure Act. A person who solicits or provides a mortgage
8 loan by mail, telephone or electronic means is subject to the
9 provisions of the Mortgage Lenders and Brokers Licensure Act.

10 Section 7. LICENSE REQUIREMENT. --

11 A. It is unlawful for a person to act as a mortgage
12 lender or to hold himself out to a borrower or to the general
13 public as a mortgage lender without a current mortgage lender
14 license issued by the director.

15 B. It is unlawful for a person to act as a mortgage
16 broker or to hold himself out to a borrower or to the general
17 public as a mortgage broker without a current mortgage broker
18 license issued by the director.

19 Section 8. APPLICATION FOR LICENSE. --

20 A. An application for a license pursuant to the
21 Mortgage Lenders and Brokers Licensure Act shall be in writing,
22 under oath and in a form prescribed by the director.

23 B. The director may require each applicant for a
24 license to provide information reasonably necessary for the
25 director to make a determination of the applicant's eligibility

1 for a license and to provide appropriate supervision of the
2 applicant if the license is granted.

3 C. An applicant for a license shall:

4 (1) complete, within three years immediately
5 preceding the date of the application:

6 (a) a mortgage lending fundamentals
7 course approved by the director, which consists of at least
8 twenty-four hours of classroom instruction in subjects related
9 to mortgage lending; and

10 (b) a written examination approved by
11 the director; or

12 (2) obtain approval from the director of
13 residential mortgage lending of the applicant's education or
14 experience in residential mortgage lending transactions.

15 D. A complete license application form shall be
16 accompanied by the following:

17 (1) evidence of the applicant's compliance
18 with the financial responsibility requirements of the Mortgage
19 Lenders and Brokers Licensure Act;

20 (2) an application for a branch office permit,
21 if applicable;

22 (3) evidence that the applicant and its
23 employees and agents satisfy the education or experience
24 requirements of the director pursuant to Subsection C of this
25 section;

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1 (4) if the applicant is a company,
2 documentation that the company is incorporated, registered or
3 otherwise formed as a lawful entity pursuant to the laws of the
4 state in which it was organized and that the company is
5 authorized to transact business in this state; and

6 (5) any fees required pursuant to the Mortgage
7 Lenders and Brokers Licensure Act.

8 Section 9. LICENSE RENEWAL. --

9 A. On or before March 1 of each year, a person
10 shall apply to renew a license issued to that person pursuant
11 to the Mortgage Lenders and Brokers Licensure Act by submitting
12 a license renewal application in a form prescribed by the
13 director.

14 B. The director may require an applicant for
15 license renewal to provide any information reasonably necessary
16 for the director to make a determination that the applicant
17 continues to be eligible for a license.

18 C. As a condition of license renewal, the director
19 shall adopt rules requiring and administering annual continuing
20 education of licensees consisting of at least eight hours of
21 courses each year for the purpose of enhancing the professional
22 competence and professional responsibility of all licensees.
23 The rules may include criteria for:

24 (1) the content of continuing education
25 courses;

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1 (2) accreditation of continuing education
2 sponsors and programs;

3 (3) computation of credit for courses;

4 (4) special cases and exemptions;

5 (5) general compliance procedures; and

6 (6) sanctions for noncompliance.

7 D. A completed license renewal application shall be
8 accompanied by the following:

9 (1) evidence of the applicant's compliance
10 with the financial responsibility requirements pursuant to the
11 Mortgage Lenders and Brokers Licensure Act;

12 (2) an application for a branch office permit,
13 if applicable; and

14 (3) any fee required pursuant to the Mortgage
15 Lenders and Brokers Licensure Act.

16 E. A person who has a license and submits a
17 completed license renewal application in a timely manner,
18 including all supporting documents and supplemental information
19 and all applicable fees, shall be permitted to continue to
20 operate pending final approval or disapproval of the license
21 renewal application if final approval or disapproval is not
22 granted before May 1 following submission of the license
23 renewal application.

24 F. A person who has a license and does not file a
25 complete license renewal application on or before March 1 but

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1 files a complete license renewal application before April 1 may
2 be required by the director to pay, in addition to a license
3 renewal fee, a late filing fee pursuant to the Mortgage Lenders
4 and Brokers Licensure Act.

5 G. A license issued pursuant to the Mortgage
6 Lenders and Brokers Licensure Act shall expire immediately and
7 automatically on April 30 without further action by the
8 director if the licensee fails to file a proper license renewal
9 application pursuant to this section.

10 Section 10. EDUCATION PROVIDERS--REQUIREMENTS--FEES.--

11 A. The director may require a provider of a
12 mortgage lending fundamentals course required of a license
13 applicant or a continuing education course required of a
14 license renewal applicant pursuant to the Mortgage Lenders and
15 Brokers Licensure Act to file information regarding the
16 contents of course materials.

17 B. The director may require a provider of a
18 mortgage lending fundamentals course or a continuing education
19 course required of license applicants or license renewal
20 applicants pursuant to the Mortgage Lenders and Brokers
21 Licensure Act to pay a filing fee:

22 (1) for the initial review of courses for
23 which credit hours will be granted in an amount not to exceed
24 five hundred dollars (\$500); and

25 (2) for the continued annual review of courses

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1 in an amount not to exceed two hundred fifty dollars (\$250).

2 Section 11. INVESTIGATION OF APPLICANTS--APPROVAL AND
3 DENIAL OF APPLICATIONS. --

4 A. Upon receipt of an application for a license or
5 for the renewal of a license, the director shall conduct any
6 investigation the director deems necessary to determine whether
7 the applicant qualifies for the issuance or renewal of the
8 requested license. The director's investigation may include
9 matters relating to the financial responsibility, criminal
10 record, credit history, experience, training, character and
11 general fitness of the applicant and its principals and
12 employees.

13 B. The director shall not approve an application
14 for a license or for renewal of a license unless the director
15 makes the following findings:

16 (1) the financial responsibility, criminal
17 record, credit history, experience, training, character or
18 general fitness of the applicant and its principals and
19 employees demonstrate that:

20 (a) the applicant will command the
21 confidence of the community; and

22 (b) the business of the applicant will
23 be operated honestly, fairly and in an ethical manner
24 consistent with the laws of this state;

25 (2) the applicant is in material compliance

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1 with all provisions of the Mortgage Lenders and Brokers
2 Licensure Act; and

3 (3) grounds do not exist to justify
4 disciplinary action against the applicant pursuant to the
5 Mortgage Lenders and Brokers Licensure Act.

6 C. If an application for a license or for the
7 renewal of a license is denied, the director shall promptly
8 notify the applicant of the denial and reasons for the denial.

9 Section 12. LICENSES. -- A license issued pursuant to the
10 Mortgage Lenders and Brokers Licensure Act shall state the name
11 of the licensee and the address of the principal place of
12 business of the licensee. The licensee shall post a copy of
13 the license in a conspicuous place in the licensee's principal
14 place of business. A license shall not be transferred or
15 assigned, by operation of law or otherwise. A licensee shall
16 not transact business as a mortgage lender or as a mortgage
17 broker under any name other than that designated on the
18 license. A license shall remain valid until it expires or is
19 surrendered, revoked or suspended. The expiration, surrender,
20 revocation or suspension of a license shall not affect any
21 preexisting legal right or obligation of a licensee.

22 Section 13. CHANGE OF CONTROL. --

23 A. Except as provided in this section, a person
24 shall not acquire a twenty-five percent interest or larger
25 controlling interest in a licensee that is a company unless

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1 that person first:

2 (1) files an application for change of control
3 with the director in a form prescribed by the director;

4 (2) delivers to the director information
5 required by the director concerning the financial
6 responsibility, criminal record, credit history, experience,
7 training, character and general fitness of the applicant or of
8 the applicant and its principals;

9 (3) provides evidence that the licensee
10 satisfies the financial responsibility requirements of the
11 Mortgage Lenders and Brokers Licensure Act; and

12 (4) pays fees required pursuant to the
13 Mortgage Lenders and Brokers Licensure Act.

14 B. Upon receipt of an application for a change of
15 control, the director shall conduct any investigation that the
16 director deems necessary to determine whether the application
17 should be approved or denied. The director's investigation may
18 include matters relating to the financial responsibility,
19 criminal record, credit history, experience, training,
20 character and general fitness of the applicant and its
21 principals and employees.

22 C. Unless otherwise provided by Subsection D of
23 this section, the director shall approve an application for a
24 change of control and permit the applicant for a change of
25 control to acquire the interest in the licensee if the director

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1 finds that the applicant and its principals demonstrate the
2 financial responsibility, criminal record, credit history,
3 experience, training, character and general fitness required to
4 command the confidence of the community and to operate
5 honestly, fairly and in an ethical manner consistent with the
6 laws of this state.

7 D. The director may deny an application for change
8 of control if:

9 (1) the applicant or the licensee is not in
10 material compliance with the provisions of the Mortgage Lenders
11 and Brokers Licensure Act;

12 (2) requirements for approval of a change in
13 control are not met; and

14 (3) any ground exists to justify disciplinary
15 action against the applicant or licensee pursuant to the
16 Mortgage Lenders and Brokers Licensure Act.

17 E. The director shall grant or deny an application
18 for change of control within sixty days from the date a
19 completed application for change of control accompanied by the
20 required information and fee is filed, unless the director by
21 order extends that period and states the reasons for the
22 extension. If the application is denied, the director shall
23 promptly notify the applicant of the denial and the reasons for
24 the denial.

25 F. The provisions of this section do not apply to:

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1 (1) the acquisition of an interest in a
2 licensee by merger or consolidation with:

3 (a) a person affiliated through common
4 ownership or control with the licensee; or

5 (b) a person licensed pursuant to the
6 Mortgage Lenders and Brokers Licensure Act or a person exempt
7 from the provisions of that act; or

8 (2) the acquisition of an interest in a
9 licensee by a person by bequest, descent or survivorship or by
10 operation of law.

11 Section 14. FINANCIAL RESPONSIBILITY REQUIREMENTS. --

12 A. A licensee pursuant to the Mortgage Lenders and
13 Brokers Licensure Act shall have and continuously maintain the
14 following as long as the license remains in effect:

15 (1) for a licensee who holds both a mortgage
16 lender license and a mortgage broker license, a surety bond in
17 an amount set by the director, but not less than two hundred
18 thousand dollars (\$200,000) and not more than five hundred
19 thousand dollars (\$500,000);

20 (2) for a licensee who holds a mortgage lender
21 license, a surety bond in an amount set by the director, but
22 not less than two hundred thousand dollars (\$200,000) and not
23 more than four hundred thousand dollars (\$400,000);

24 (3) for a licensee who holds a mortgage broker
25 license, a surety bond in an amount set by the director, but

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1 not less than one hundred thousand dollars (\$100,000) and not
2 more than two hundred fifty thousand dollars (\$250,000); and

3 (4) for a licensee that is a company and that
4 employs one or more licensed mortgage brokers, a surety bond in
5 the name of the company that covers the licensed mortgage
6 brokers and that is in an amount equal to or in excess of the
7 total of the bond amounts required by this section for each
8 broker covered by the surety bond.

9 B. If a person is licensed as a mortgage lender or
10 as both a mortgage lender and mortgage broker, that person
11 shall obtain a surety bond required pursuant to Subsection A of
12 this section in that person's own name and that meets the
13 requirements of Subsection E of this section.

14 C. If a person is licensed solely as a mortgage
15 broker, that person shall obtain a surety bond required
16 pursuant to Subsection A of this section in that person's own
17 name and that meets the requirements of Subsection E of this
18 section or shall be covered under the terms of a surety bond
19 issued to that person's employer that is issued in accordance
20 with Subsection D of this section.

21 D. A company employing a mortgage broker may obtain
22 a bond in the name of the company that by its terms covers
23 certain named persons who are licensed as mortgage brokers
24 employed by the company and the amount of the bond shall be
25 equal to the aggregate bond amounts pursuant to this section

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1 for each broker covered by the company bond.

2 E. A surety bond required pursuant to this section
3 shall be issued by a bonding company or an insurance company
4 authorized to conduct business in this state. The bond shall
5 be in a form prescribed by the director. The licensee shall be
6 the obligor. The aggregate liability for a claim on a bond
7 shall not exceed the face amount of the bond. A surety
8 obligation on a bond shall not be terminated unless ninety days
9 of prior written notice is given by the surety to the obligor
10 and the director. The bond shall run to the director for the
11 benefit of the state and persons damaged by the failure of the
12 obligor or the obligor's employees to comply with the
13 provisions of the Mortgage Lenders and Brokers Licensure Act.
14 The bond shall be conditioned upon the licensee conducting
15 business in accordance with the Mortgage Lenders and Brokers
16 Licensure Act. A person damaged by noncompliance of a licensee
17 or employee of the licensee with a condition of the bond may
18 proceed on the bond against the principal or surety or both, to
19 recover damages. That proceeding shall not preclude any other
20 remedy available to that person.

21 F. The director may waive the requirements of
22 Subsections A and E of this section for a licensee that has
23 maintained a net worth of at least one million dollars
24 (\$1,000,000) for at least three years before the date of
25 application for a license or application for renewal.

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1 Section 15. **PRINCIPAL LOAN OFFICER AND MANAGING LOAN**
2 **OFFICER REQUIREMENTS. --**

3 A. A licensed mortgage lender shall designate a
4 principal loan officer. The principal loan officer shall be
5 responsible for the mortgage lending activities of the
6 licensee, including general supervision of all managing loan
7 officers and other employees of the licensee. The principal
8 loan officer may be designated as the managing loan officer for
9 the principal place of business or for one branch office.
10 Each licensed mortgage lender shall maintain on file with the
11 director a form prescribed by the director designating the
12 principal loan officer and confirming the principal loan
13 officer's acceptance of that responsibility.

14 B. A principal loan officer and a managing loan
15 officer shall have at least three years of mortgage-related
16 experience. The director may prescribe additional
17 qualifications for principal brokers and managing brokers.

18 C. A licensed mortgage lender shall report a change
19 in the identity of a designated principal loan officer or
20 managing loan officer to the director in writing and in a form
21 prescribed by the director within thirty days following the
22 change.

23 Section 16. **PRINCIPAL BROKER AND MANAGING BROKER**
24 **REQUIREMENTS. --**

25 A. A licensee that is a mortgage broker shall

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1 designate as its principal broker a mortgage broker licensed
2 pursuant to the Mortgage Lenders and Brokers Licensure Act.
3 The principal broker shall be responsible for the mortgage
4 brokering activities of the licensee, including general
5 supervision of all managing brokers and other employees of the
6 licensee. The principal broker may be designated as the
7 managing broker for the principal place of business or for one
8 branch office. If the licensee operates as a sole proprietor
9 or independent contractor, the principal broker shall be the
10 licensee. A licensed mortgage broker shall maintain on file
11 with the director a form prescribed by the director designating
12 the principal broker and confirming the principal broker's
13 acceptance of the responsibility.

14 B. A licensee that is a mortgage broker shall
15 designate a separate managing broker for the principal place of
16 business and for each branch office. A designated managing
17 broker shall be licensed pursuant to the Mortgage Lenders and
18 Brokers Licensure Act as a mortgage broker. A managing broker
19 shall not be designated for more than one location. The
20 managing broker shall have an office at that location and shall
21 be responsible for the direct control and continuous
22 supervision of the licensee's business and employees at that
23 location. A licensed mortgage broker shall maintain a form on
24 file with the director as prescribed by the director
25 designating the identity and location of the principal place of

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1 business or branch office, the name and address of the
2 designated managing broker assigned to that location and the
3 designated managing broker's acceptance of that responsibility.

4 C. A principal broker or a managing broker shall
5 have at least three years of mortgage-related experience. The
6 director may issue rules prescribing additional qualifications
7 for principal brokers and managing brokers.

8 D. A licensed mortgage broker shall report a change
9 in the identity of a designated principal broker or managing
10 broker to the director in writing and in a form prescribed by
11 the director within thirty days following the change.

12 Section 17. RECORD-KEEPING REQUIREMENTS. --

13 A. A licensee shall maintain books, accounts,
14 records and documents regarding mortgage loans subject to the
15 Mortgage Lenders and Brokers Licensure Act prescribed by the
16 director to enable the director to determine the licensee's
17 compliance with that act.

18 B. A licensee shall keep the books, accounts,
19 records and documents in a secure location under conditions
20 that will not lead to their damage or destruction. The
21 director may require production of those books, accounts,
22 records and documents at any reasonable and convenient location
23 in this state for inspection and examination.

24 C. If the director determines that it is effective
25 and cost-efficient to perform a review or examination of the

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1 books, accounts, records and documents of a licensee at an out-
2 of-state location, the director may require production of the
3 books, accounts, records and documents at that location.

4 D. A licensee shall satisfy the record retention
5 requirements prescribed by the director. A licensee may
6 dispose of any record that has been retained for the prescribed
7 period.

8 E. A licensee may record, copy or reproduce a book,
9 account, record or document kept by the licensee by any
10 document imaging or other electronic means or by other
11 photographic, photostat or miniature photographic or
12 reproduction process of a kind that is capable of conversion
13 into written form within a reasonable time and that correctly,
14 accurately and permanently copies, reproduces or forms a medium
15 for copying or reproducing the original book, account, record
16 or document on film or other durable material.

17 F. An electronic imaging, photographic, photostat
18 or miniature photographic copy or reproduction of any kind,
19 including electronic or computer-generated data that is capable
20 of conversion into written form within a reasonable time, is an
21 original record for all purposes and shall be treated as an
22 original record in all courts and administrative agencies for
23 the purpose of its admissibility in evidence. A facsimile,
24 exemplification or certified copy of a photographic copy or
25 reproduction shall, for all purposes, be deemed a facsimile,

1 exemplification or certified copy of the original record.

2 Section 18. REPORTING REQUIREMENTS. --

3 A. A licensee shall by March 31 of each year file a
4 written report with the director containing information
5 required by the director as necessary to determine the
6 licensee's compliance with the Mortgage Lenders and Brokers
7 Licensure Act and other information required by the director
8 concerning the licensee's business and operations during the
9 preceding calendar year. Reports shall be under oath and in a
10 form prescribed by the director.

11 B. A mortgage lender or a mortgage broker licensed
12 pursuant to the Mortgage Lenders and Brokers Licensure Act
13 shall file with the director an audit of that licensee's
14 operations during the licensee's preceding fiscal year and the
15 licensee's financial condition at the end of the preceding
16 fiscal year within one hundred twenty days after the end of the
17 licensee's fiscal year.

18 C. A licensee that does not comply with the filing
19 date requirements of this section shall pay a late filing fee
20 pursuant to the Mortgage Lenders and Brokers Licensure Act.

21 Section 19. BRANCH OFFICES. --

22 A. A licensee is responsible for the
23 administration, operation, control and oversight of that
24 licensee's branch offices.

25 B. A licensee shall not open a branch office

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1 without first obtaining a branch office permit for that branch
2 office from the director.

3 C. An application for a branch office permit shall
4 be in writing and in a form prescribed by the director. The
5 director may require each applicant for a branch office permit
6 to provide information reasonably necessary for the director to
7 supervise the branch office effectively. An application for a
8 branch office permit of a licensed mortgage lender shall
9 include the name and address of the managing loan officer who
10 will have responsibility for supervision of the branch office.
11 An application for a branch office permit of a licensed
12 mortgage broker shall include the name and address of the
13 managing broker who will be responsible for the supervision of
14 the branch office. A completed application for a branch office
15 permit shall be accompanied by a fee required pursuant to the
16 Mortgage Lenders and Brokers Licensure Act.

17 D. An application for a branch office permit
18 submitted with an application for a license shall be considered
19 with the license application. If the application for a license
20 is approved, the director may approve the application for a
21 branch office permit. If the application for a license is
22 denied, the director shall deny the application for a branch
23 office permit. If the application is approved, the applicant
24 shall give written notice to the director within thirty days
25 after the licensee commences business at the branch office.

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1 E. The director may deny an application for a
2 branch office permit if the director finds that:

3 (1) the applicant has not conducted business
4 pursuant to the Mortgage Lenders and Brokers Licensure Act
5 efficiently, fairly, ethically, in the public interest and in
6 accordance with the laws of this state;

7 (2) the licensee's surety bond is insufficient
8 to cover the licensee's employees and activities;

9 (3) the licensee's staff at the branch office
10 does not satisfy training and experience requirements
11 prescribed by the director;

12 (4) the licensee has not accepted full
13 financial responsibility for the operation and activities of
14 the branch office;

15 (5) the applicant is not in material
16 compliance with the provisions of the Mortgage Lenders and
17 Brokers Licensure Act;

18 (6) requirements for the issuance of the
19 branch office permit have not been met; or

20 (7) grounds exist to justify disciplinary
21 action against the applicant pursuant to the Mortgage Lenders
22 and Brokers Licensure Act.

23 F. An application for a branch permit shall be
24 deemed approved if notice to the contrary has not been mailed
25 by the director to the applicant within thirty days after the

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1 date the completed application, accompanied by all required
2 information and the required fees, is filed, unless the period
3 is extended by the order of the director. The director shall
4 promptly notify the applicant of the denial and the reasons for
5 the denial.

6 G. A branch office permit shall be renewed with the
7 renewal of a license issued pursuant to the Mortgage Lenders
8 and Brokers Licensure Act. A fee shall be paid for renewal of
9 a licensee's branch office permit in accordance with the
10 Mortgage Lenders and Brokers Licensure Act.

11 H. A licensee shall notify the director in writing
12 of the closing or relocation of that licensee's branch office
13 within thirty days of the closing or relocation. The notice
14 shall be in writing, in a form prescribed by the director and
15 accompanied by a fee in accordance with the Mortgage Lenders
16 and Brokers Licensure Act.

17 I. A licensee that possesses a branch office permit
18 shall post a copy of the branch office permit in a conspicuous
19 place in the branch office.

20 J. A branch office permit shall not be transferred
21 or assigned.

22 K. A licensee's personal residence shall not be
23 considered a branch office unless that licensee's personal
24 residence is specifically designated as a branch office.

25 Section 20. RESPONSIBILITIES OF LICENSEES. -- A licensee

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1 has a continuing obligation and responsibility to:

2 A. maintain a staff with training and experience
3 required by the director;

4 B. promptly report to the director the conviction
5 of that licensee or of a principal or employee of that licensee
6 of:

7 (1) a crime in any jurisdiction that involves
8 fraud, dishonest dealing or any other act of moral turpitude;
9 or

10 (2) a felony in any jurisdiction;

11 C. account for any fund, document or other item of
12 value that comes into the licensee's possession and that is not
13 property owned by the licensee and that the licensee is not
14 entitled to retain under the circumstances;

15 D. submit a written notice of the following actions
16 or proceedings to the director within thirty days after the
17 commencement of those actions or proceedings:

18 (1) an administrative proceeding or order that
19 is initiated or entered against the licensee or a principal or
20 employee of the licensee related to mortgage brokering or the
21 provision of mortgage loans;

22 (2) an action or proceeding that is brought
23 against the licensee or a principal or employee of the licensee
24 by a person when the action is brought pursuant to the Mortgage
25 Lenders and Brokers Licensure Act or that involves a claim

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1 against the surety bond filed with the director to satisfy the
2 requirements of the Mortgage Lenders and Brokers Licensure Act;

3 (3) a judgment that is entered against the
4 licensee or any principal or employee of the licensee arising
5 out of an action brought pursuant to the Mortgage Lenders and
6 Brokers Licensure Act or that involves a claim against the
7 surety bond filed with the director to satisfy the requirements
8 of the Mortgage Lenders and Brokers Licensure Act; or

9 (4) a bankruptcy or insolvency proceeding that
10 is instituted by or against the licensee or a principal or
11 employee of the licensee;

12 E. notify the director in writing of a material
13 change to the information required on the most recent
14 application for a license or license renewal within thirty days
15 of the change; and

16 F. comply with the provisions of the Mortgage
17 Lenders and Brokers Licensure Act.

18 Section 21. **MORTGAGE BROKER DUTIES.** -- A mortgage broker
19 licensed pursuant to the Mortgage Lenders and Brokers Licensure
20 Act in addition to duties imposed by other statutes or at
21 common law shall act as a fiduciary of the borrower and:

22 A. safeguard and account for money handled for the
23 borrower;

24 B. follow reasonable and lawful instructions from
25 the borrower;

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1 C. act with reasonable skill, care and diligence;

2 D. disclose to the borrower information reasonably
3 accessible to the mortgage broker that may reasonably be
4 expected to influence the borrower's decision;

5 E. make reasonable efforts to secure a mortgage
6 loan with rates, charges and repayment terms that are
7 advantageous to the borrower; and

8 F. if the mortgage broker presents the borrower
9 with a loan that contains a prepayment penalty, the mortgage
10 broker shall advise the borrower in writing, at or before the
11 time that a good faith estimate is given to the borrower,
12 whether the borrower qualifies for a loan on comparable terms
13 without a prepayment penalty.

14 Section 22. MORTGAGE LENDERS AND MORTGAGE BROKERS--
15 PROHIBITED ACTIVITIES.--It is unlawful for a mortgage lender,
16 mortgage broker or any person required to be licensed pursuant
17 to the Mortgage Lenders and Brokers Licensure Act to:

18 A. misrepresent the material facts or knowingly
19 make a false promise likely to influence, persuade or induce a
20 borrower to take a mortgage loan or pursue a course of
21 misrepresentation through agents or otherwise;

22 B. misrepresent to or conceal from a borrower
23 material factors, terms or conditions of a mortgage loan
24 transaction;

25 C. participate in a transaction in which a

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1 disclosure mandated by the federal Truth in Lending Act or the
2 federal Real Estate Settlement Procedures Act is not made;

3 D. fail to disburse funds in accordance with
4 agreements;

5 E. refuse to issue a satisfaction of a mortgage
6 loan in violation of Section 48-7-4 NMSA 1978;

7 F. fail to account for any fund, document or other
8 item of value that comes into the possession of the mortgage
9 lender or mortgage broker that is not the property of the
10 mortgage lender or mortgage broker and that the mortgage lender
11 or mortgage broker is not entitled to retain under the
12 circumstances;

13 G. engage in a transaction, practice or course of
14 business that is not in good faith or fair dealing, that
15 operates a fraud upon a person or that violates the Unfair
16 Practices Act;

17 H. advertise a mortgage loan product unless the
18 product will be available to a significant number of borrowers
19 responding to the advertisement;

20 I. fraudulently or deceitfully advertise a mortgage
21 loan or misrepresent the terms, conditions or charges incident
22 to a mortgage loan in an advertisement;

23 J. recommend or encourage default on an existing
24 loan or other debt prior to and in connection with the closing
25 or planned closing of a mortgage loan that refinances all or a

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1 portion of that existing loan or debt;

2 K. hold himself out to the general public as a
3 mortgage lender or as a mortgage broker without possessing a
4 valid license in accordance with the Mortgage Lenders and
5 Brokers Licensure Act;

6 L. fail to disclose, at the first significant
7 contact with borrowers, all fees to be paid to the mortgage
8 broker by the borrower or lender, including the amount and
9 method of calculation, in writing on a form prescribed by the
10 director;

11 M knowingly and intentionally engage in the unfair
12 act or practice of flipping a home loan in violation of Section
13 58-21A-4 NMSA 1978 when engaged in mortgage brokering;

14 N. broker a loan that includes a prepayment penalty
15 in violation of the Home Loan Protection Act;

16 O. fail to pay promptly for completed appraisals or
17 other services ordered by or for the mortgage lender or
18 mortgage broker; or

19 P. influence or attempt to influence through direct
20 or indirect means, the outcome of a real estate appraisal
21 sought in connection with a mortgage loan or to otherwise
22 engage in a practice or course of business that induces or
23 attempts to induce a real estate appraiser to violate the
24 Uniform Standards of Professional Appraisal Practice in
25 connection with a mortgage loan.

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1 Section 23. COMPLAINTS-- INVESTIGATIONS-- EXAMINATIONS. --

2 A. A person who has reason to believe that the
3 Mortgage Lenders and Brokers Licensure Act has been violated by
4 a person who is required to be licensed pursuant to that act
5 may file a written complaint with the director setting forth
6 details of the alleged violation.

7 B. The director shall refer a written complaint
8 relating to a person exempt from any of the provisions of the
9 Mortgage Lenders and Brokers Licensure Act to state or federal
10 regulatory agencies responsible for regulation or oversight of
11 that person or to federal or state law enforcement authorities.
12 The division shall notify the complainants of those referrals.

13 C. The director shall conduct a public or private
14 investigation of a licensee or of a person who is required to
15 be licensed pursuant to the Mortgage Lenders and Brokers
16 Licensure Act when the director has reason to believe, either
17 upon complaint or otherwise, that the person has violated or is
18 about to violate that act.

19 D. Upon reasonable notice, the director may conduct
20 examinations of a licensee or of a person required to be
21 licensed pursuant to the Mortgage Lenders and Brokers Licensure
22 Act to determine that person's compliance with the provisions
23 of that act.

24 E. If the director finds as a result of an
25 investigation that the person investigated has materially

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1 violated the Mortgage Lenders and Brokers Licensure Act, the
2 person investigated shall pay the cost of the investigation and
3 reimburse the director who conducted the investigation.

4 F. The director shall annually determine
5 examination costs and may include in those costs reimbursement
6 of all expenses, including salaries for each examiner
7 designated by the director who participates in the examination.
8 The person examined shall pay to the director costs of all
9 examinations.

10 G. The payment of investigation and examination
11 costs are due within thirty days after receipt of an invoice
12 from the director. If the person who receives the invoice does
13 not pay the costs of an investigation or examination, the
14 director may bring an action for the recovery of the costs in a
15 court of competent jurisdiction.

16 Section 24. POWERS OF THE DIRECTOR. --The director shall
17 administer and enforce the provisions the Mortgage Lenders and
18 Brokers Licensure Act. In furtherance of that duty, and in
19 addition to any other powers of the director pursuant to the
20 Mortgage Lenders and Brokers Licensure Act, the director may:

21 A. issue and serve subpoenas for witnesses and
22 documents relevant to an inquiry authorized by the Mortgage
23 Lenders and Brokers Licensure Act and to administer oaths in
24 connection with those subpoenas;

25 B. require information with regard to an

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1 application, report, investigation or examination as the
2 director deems necessary, with due regard to the paramount
3 interest of the public to the experience, training, background,
4 criminal record, credit history, honesty, truthfulness,
5 integrity and competency of the person and its principals,
6 employees and agents;

7 C. institute proceedings in a court of competent
8 jurisdiction in furtherance of the purposes of the Mortgage
9 Lenders and Brokers Licensure Act;

10 D. appoint designees, investigators, supervisors,
11 experts, special assistants and other agents needed to
12 effectively and efficiently administer the Mortgage Lenders and
13 Brokers Licensure Act; provided that any of those appointees
14 shall have any power of the director, which is delegated by the
15 director; and

16 E. conduct checks of criminal records and credit
17 records for a licensee, applicant or employee or agent of a
18 licensee or applicant.

19 Section 25. DISCIPLINARY ACTION--LICENSE VIOLATIONS.--

20 A. In addition to any other power or authority
21 granted to the director pursuant to the Mortgage Lenders and
22 Brokers Licensure Act, when the director finds that grounds for
23 disciplinary action exist pursuant to this section, the
24 director may impose one or more of the following disciplinary
25 measures against a person required to be licensed pursuant to

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1 the Mortgage Lenders and Brokers Licensure Act and the person's
2 principals and employees:

3 (1) deny an application or approve an
4 application under reasonable conditions determined by the
5 director;

6 (2) revoke a license or branch office permit;

7 (3) suspend a license or branch office permit,
8 subject to reinstatement upon satisfaction of all reasonable
9 conditions specified by the director;

10 (4) place a licensee on provisional status for
11 a period of time and subject to all reasonable conditions that
12 the director specifies;

13 (5) issue a public letter of warning or a
14 public reprimand;

15 (6) issue cease and desist orders;

16 (7) require an increase in a licensee's surety
17 bond in accordance with the Mortgage Lenders and Brokers
18 Licensure Act;

19 (8) enter into consent agreements;

20 (9) require a person to disgorge profits; and

21 (10) impose civil penalties in an amount not
22 to exceed five thousand dollars (\$5,000) for each incident or
23 violation of the Mortgage Lenders and Brokers Licensure Act.

24 B. The director may take disciplinary actions
25 against a person pursuant to Subsection A of this section on

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1 the basis of the following independent grounds:

2 (1) conviction of:

3 (a) a crime in any jurisdiction that
4 involves fraud, dishonest dealing or any other act of moral
5 turpitude; or

6 (b) a felony in any jurisdiction;

7 (2) fraud, misrepresentation, deceit,
8 negligence or incompetence in providing mortgage brokering
9 services, making a mortgage loan or in connection with any
10 mortgage loan transaction;

11 (3) material misstatement of fact on a license
12 renewal application;

13 (4) failure to place immediately upon receipt
14 or to maintain until authorized to disburse, money entrusted to
15 the licensee by a person dealing with the licensee as a
16 mortgage broker or mortgage lender in a trust account or a
17 segregated account in a federally insured financial
18 institution;

19 (5) failure to account for a fund, document or
20 other item of value that comes into the licensee's possession,
21 that is not the licensee's property and that the licensee
22 cannot legally retain;

23 (6) failure to disburse funds in accordance
24 with agreements;

25 (7) misuse, misapplication or misappropriation

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1 of funds or other personal property entrusted to the care of
2 the person required to be licensed pursuant to the Mortgage
3 Lenders and Brokers Licensure Act and to which that person does
4 not have a property right at the time of entrustment;

5 (8) having a license or the equivalent of a
6 license to practice any profession or occupation revoked,
7 suspended or otherwise acted against, including the denial of
8 licensure by a licensing authority of this state or any other
9 state or the federal government for fraud, dishonest dealing or
10 other act of moral turpitude;

11 (9) failure to comply with an order or consent
12 agreement made or issued pursuant to the Mortgage Lenders and
13 Brokers Licensure Act;

14 (10) acting as a mortgage broker in violation
15 of the Mortgage Lenders and Brokers Licensure Act;

16 (11) acting as a mortgage lender in violation
17 of the Mortgage Lenders and Brokers Licensure Act;

18 (12) failure to timely pay a fee, charge or
19 civil penalty pursuant to the Mortgage Lenders and Brokers
20 Licensure Act;

21 (13) failure to maintain, preserve or keep
22 available for examination all books, accounts records and other
23 documents required pursuant to the Mortgage Lenders and Brokers
24 Licensure Act;

25 (14) refusal to permit an investigation or

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1 examination of books or records;

2 (15) refusal to comply with a lawful subpoena;

3 (16) repeatedly and materially underestimating
4 closing costs in communication to borrowers;

5 (17) violation of a provision of the Mortgage
6 Lenders and Brokers Licensure Act;

7 (18) fraud, misrepresentation, concealment,
8 dishonest dealing by trick, scheme or device, culpable
9 negligence or breach of trust in a business transaction; or
10 aiding, assisting or conspiring with another person engaged in
11 that misconduct; and

12 (19) failure to continuously satisfy the
13 financial responsibility requirements of the Mortgage Lenders
14 and Brokers Licensure Act.

15 C. An employee of a person required to be licensed
16 pursuant to the Mortgage Lenders and Brokers Licensure Act is
17 subject to the disciplinary action specified in this section
18 arising from the employee's own conduct.

19 Section 26. NOTICE AND HEARING. --

20 A. A party shall be afforded notice and a hearing
21 before enforcement or opportunity for hearing before any of the
22 enforcement or disciplinary actions pursuant to the Mortgage
23 Lenders and Brokers Licensure Act are concluded by the
24 director; provided that, in cases involving extraordinary
25 circumstances requiring immediate action, including, without

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1 limitation, an effort to prevent imminent loss or damage to a
2 consumer or to the general public, the director may take action
3 without notice or a hearing, but the director shall promptly
4 afford, upon written request, a subsequent hearing to rescind
5 or modify an action taken.

6 B. On an enforcement or disciplinary action taken
7 or proposed to be taken by the director, the person against
8 whom the action is taken or proposed to be taken shall be
9 entitled to an informal hearing in writing within twenty days
10 after the director has mailed or otherwise delivered notice of
11 the action. In the event of an informal hearing, which shall
12 be held with reasonable promptness in the office of the
13 director, the director shall reconsider the matter and, after
14 the informal hearing, issue a written order affirming,
15 modifying or cancelling the enforcement or disciplinary action.
16 The right of a person to an informal hearing pursuant to this
17 subsection is in addition to and not in derogation of the
18 person's rights to an administrative hearing and judicial
19 review.

20 Section 27. ENFORCEMENT BY BORROWERS. --

21 A. A licensee found by a preponderance of the
22 evidence to have violated the Mortgage Lenders and Brokers
23 Licensure Act is liable to the borrower for:

24 (1) actual damages, including consequential
25 and incidental damages; provided that the borrower is not

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1 required to demonstrate reliance to receive actual damages;

2 (2) statutory damages not less than three
3 times the fees received by the licensee;

4 (3) punitive damages, when the violation is
5 malicious or reckless; and

6 (4) any other legal or equitable relief.

7 B. In a suit in which a borrower prevails on a
8 claim that a licensee violated the Mortgage Lenders and Brokers
9 Licensure Act, the borrower shall be awarded costs, including
10 reasonable attorney fees, in addition to other relief to which
11 the borrower is entitled.

12 C. Upon a showing that a mortgage lender or a
13 mortgage broker required to be licensed pursuant to the
14 Mortgage Lenders and Brokers Licensure Act was not licensed at
15 the time the mortgage lender provided a mortgage loan to a
16 borrower or at the time the mortgage broker provided mortgage
17 brokering services to a borrower, the unlicensed mortgage
18 lender or mortgage broker shall not be entitled to recover or
19 retain fees or charges connected with the loan.

20 D. For conduct that constitutes a violation of the
21 Mortgage Lenders and Brokers Licensure Act, the Home Loan
22 Protection Act and the Unfair Practices Act, the borrower may
23 recover damages pursuant to the Mortgage Lenders and Brokers
24 Licensure Act, the Home Loan Protection Act and the Unfair
25 Practices Act.

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1 E. The duties imposed on mortgage brokers or
2 mortgage lenders pursuant to the Mortgage Lenders and Brokers
3 Licensure Act or pursuant to common or statutory law are not
4 subject to waiver or disclaimer unless otherwise provided by
5 law.

6 F. A remedy available to a borrower pursuant to the
7 Mortgage Lenders and Brokers Licensure Act is supplemental to
8 the power of the division to impose disciplinary action or
9 otherwise enforce the provisions of that act.

10 G. Without regard to whether a borrower acts
11 individually or on behalf of others similarly situated, a
12 provision of an agreement with a licensee that allows a party
13 to require a borrower to assert a claim or defense in a forum
14 that is less convenient, more costly, or more dilatory for the
15 resolution of a dispute than a judicial forum established in
16 this state when the borrower may otherwise properly bring a
17 claim or defense or that limits in any way any claim or defense
18 the borrower may have is unconscionable and void.

19 Section 28. MAKING OR BROKERING LOANS WITHOUT A LICENSE--
20 FELONY.--A person who provides a mortgage loan or mortgage
21 brokering services without a license required pursuant to the
22 Mortgage Lenders and Brokers Licensure Act is guilty of a
23 fourth degree felony.

24 Section 29. DIRECTOR AUTHORITY TO ISSUE RULES.--The
25 director may adopt rules to administer the provisions of the

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1 Mortgage Lenders and Brokers Licensure Act.

2 Section 30. FEES. --The director may prescribe:

3 A. a mortgage lender license application fee not to
4 exceed one thousand dollars (\$1,000);

5 B. a mortgage lender license issuance fee not to
6 exceed eight hundred dollars (\$800);

7 C. a mortgage broker license application fee not to
8 exceed two hundred dollars (\$200);

9 D. a mortgage broker license issuance fee not to
10 exceed two hundred dollars (\$200);

11 E. a mortgage lender and mortgage broker license
12 application fee not to exceed one thousand one hundred dollars
13 (\$1,100);

14 F. a mortgage lender and mortgage broker license
15 issuance fee not to exceed nine hundred dollars (\$900);

16 G. a mortgage lender license renewal fee not to
17 exceed eight hundred dollars (\$800);

18 H. a mortgage broker license renewal fee not to
19 exceed two hundred dollars (\$200);

20 I. a mortgage lender and mortgage broker license
21 renewal fee not to exceed nine hundred dollars (\$900);

22 J. a branch office permit issuance fee not to
23 exceed two hundred dollars (\$200);

24 K. a branch office permit renewal fee not to exceed
25 two hundred dollars (\$200) for each branch office, not to

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1 exceed a total of five thousand dollars (\$5,000) per calendar
2 year for all branch offices;

3 L. a change of control application fee not to
4 exceed five hundred dollars (\$500);

5 M a change of principal place of business notice
6 filing fee not to exceed fifty dollars (\$50.00);

7 N. a closing or relocation of a branch office
8 notice filing fee not to exceed fifty dollars (\$50.00); and

9 O. a late filing penalty fee not to exceed one
10 hundred dollars (\$100).

11 Section 31. LICENSURE OF MORTGAGE BROKERS. --

12 A. A mortgage broker required to be licensed
13 pursuant to the Mortgage Lenders and Brokers Licensure Act
14 shall have until July 1, 2005 to become licensed pursuant to
15 that act for the period beginning May 1, 2005.

16 B. A mortgage lender or a mortgage broker who, upon
17 the effective date of the Mortgage Lenders and Brokers
18 Licensure Act, is registered with the director under the former
19 Mortgage Loan Company and Loan Broker Act shall be
20 automatically licensed pursuant to the Mortgage Lenders and
21 Brokers Licensure Act for the period ending July 1, 2005,
22 provided that the mortgage lender or mortgage broker:

23 (1) is not an adverse part to a pending
24 administrative proceeding, enforcement proceeding, civil or
25 criminal action or other legal proceeding with the director or

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1 attorney general;

2 (2) is not subject to the terms of a consent
3 agreement, final agency decision or court order limiting the
4 mortgage lender's or mortgage broker's authority to engage in
5 that business in this state;

6 (3) complies with the provisions of Section 8
7 of the Mortgage Lenders and Brokers Licensure Act before May 1,
8 2005; and

9 (4) designates, in the case of a mortgage
10 lender, its principal loan officer and managing loan officer of
11 each branch office required pursuant to the Mortgage Lenders
12 and Brokers Licensure Act and in the case of a mortgage broker,
13 designates its principal mortgage broker and the managing
14 mortgage broker of each branch office required pursuant to that
15 act.

16 Section 32. LIBERAL INTERPRETATION. --The Mortgage Lenders
17 and Brokers Licensure Act shall be liberally construed to carry
18 out its purpose.

19 Section 33. REPEAL. --Sections 58-21-1 through 58-21-29
20 NMSA 1978 (being Laws 1983, Chapter 86, Sections 1 through 23,
21 25 and 26; Laws 2001, Chapter 251, Section 15 and Laws 2001,
22 Chapter 264, Section 15; and Laws 2001, Chapter 251, Section 16
23 and Laws 2001, Chapter 264, Section 16, as amended) are
24 repealed.

25 Section 34. SEVERABILITY. --If any part or application of
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1 the Mortgage Lenders and Brokers Licensure Act is held invalid,
2 the remainder or its application to other situations or persons
3 shall not be affected.

4 Section 35. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect immediately.

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