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SENATE BILL 445

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

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO LICENSURE; ENACTING THE MORTGAGE LOAN ORIGINATOR
LICENSING ACT; CREATING LICENSING REQUIREMENTS FOR MORTGAGE
LOAN ORIGINATORS; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 16 of this act may be cited as the "Mortgage Loan
Originator Licensing Act".

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

- A. "applicant" means any person seeking to be
licensed as a mortgage loan originator;
- B. "director" means the director of the division;
- C. "division" means the financial institutions
division of the regulation and licensing department;

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1 D. "license" means a license issued by the director
2 pursuant to the Mortgage Loan Originator Licensing Act;

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

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

13 G. "mortgage loan origination" means engaging in,
14 or holding out to the public as being willing to engage in, for
15 compensation or in the expectation of compensation, directly or
16 indirectly, the following activities:

17 (1) soliciting, accepting or offering to
18 accept an application for a mortgage loan;

19 (2) assisting a borrower or offering to assist
20 a borrower in the preparation of an application for a mortgage
21 loan;

22 (3) negotiating or offering to negotiate with
23 or on behalf of a borrower the terms or conditions of a
24 mortgage loan; or

25 (4) quoting mortgage loan payments, rates or

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1 terms;

2 H. "mortgage loan originator" means a natural
3 person who engages in mortgage loan origination activities;

4 I. "primary market" means the market wherein
5 mortgage loans are originated between a lender and a borrower,
6 whether or not through a mortgage broker or other means; and

7 J. "registrant" means a person who is registered as
8 a mortgage loan company or loan broker pursuant to the Mortgage
9 Loan Company and Loan Broker Act.

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

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

19 B. the United States, the state of New Mexico, any
20 other state of the United States or an agency or
21 instrumentality of any such state government; and

22 C. a person who, with the person's own funds for
23 the person's own investment, makes a purchase money mortgage or
24 finances the sale of the person's own property; provided that
25 the person enters into no more than three such investments or

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1 sales in any twelve-month period.

2 Section 4. [NEW MATERIAL] LICENSE REQUIRED TO ORIGINATE
3 MORTGAGE LOANS.--

4 A. Mortgage loan origination shall only be
5 conducted by a licensee.

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

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

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

14 A. An applicant shall submit to the director an
15 application and required fees for licensing on forms prescribed
16 and provided by the director. The application shall contain
17 information that the director deems necessary to identify
18 adequately the location where the person engages in mortgage
19 loan origination activities, the registrants for whom the
20 licensee will originate mortgage loans and other information
21 that the director requires to evaluate the condition,
22 character, qualifications and fitness of the applicant and the
23 applicant's compliance with the provisions of the Mortgage Loan
24 Originator Licensing Act. Each application shall be
25 accompanied by a nonrefundable fee pursuant to the Mortgage

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1 Loan Originator Licensing Act.

2 B. An application shall be approved and a license
3 shall be issued to the applicant if the director:

4 (1) has received the complete application and
5 fee required by this subsection; and

6 (2) determines that the character,
7 qualifications and fitness of the applicant warrant a belief
8 that the business of the applicant will be conducted
9 competently, honestly, fairly and in accordance with all
10 applicable state and federal laws.

11 C. An applicant shall complete satisfactorily a
12 course of mortgage lending study approved by the director and
13 shall pass a written examination approved by the director to
14 ensure the applicant has sufficient knowledge to conduct
15 mortgage business in compliance with state and federal law.

16 D. An applicant shall satisfy a background check
17 authorized and approved by the director.

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

19 A. A license shall become effective as of the date
20 specified on the face of the license.

21 B. A license shall be renewed annually by filing
22 with the director, at least thirty days prior to the expiration
23 of the license, a renewal application containing information
24 that the director requires to determine the existence of
25 material changes from the information contained in the

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1 applicant's original license application or prior renewal
2 applications, including evidence of satisfactory completion of
3 a minimum of twelve hours of continuing professional education
4 approved by the director.

5 C. Each renewal application shall be accompanied by
6 a nonrefundable fee pursuant to Section 14 of the Mortgage Loan
7 Originator Licensing Act.

8 Section 7. [NEW MATERIAL] APPLICATION DENIAL--APPEAL.--If
9 the director denies an initial license application or a license
10 renewal application, the applicant may make a written request
11 for a hearing. The director shall conduct a hearing to
12 determine if the denial was warranted.

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

18 A. the applicant or licensee has violated a section
19 of the Mortgage Loan Originator Licensing Act or a rule
20 promulgated pursuant to that act;

21 B. facts or conditions exist that would have
22 justified the denial of the license or renewal application had
23 those facts or conditions existed or been known to exist at the
24 time the application for an initial license or license renewal
25 was made;

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1 C. the applicant or licensee has filed with the
2 division a document or statement containing a false
3 representation of a material fact or fails to state a material
4 fact;

5 D. the applicant or licensee, or an employee of the
6 applicant or licensee, has been convicted of a crime involving
7 fraud, dishonesty or deceit;

8 E. the applicant or licensee, or an employee of the
9 applicant or licensee, has engaged in or is engaging in
10 deceptive business practices;

11 F. the applicant or licensee, or an employee of the
12 applicant or licensee, has been the subject of a disciplinary
13 action by the division or any other state or federal regulatory
14 agency;

15 G. a final judgment has been entered against the
16 applicant or licensee, or an employee of the applicant or
17 licensee, in a civil action and the director finds, based upon
18 the conduct on which the judgment is based, that the licensing
19 of that applicant or licensee would be contrary to the public
20 interest;

21 H. the applicant or licensee, or an employee of the
22 applicant or licensee, has been convicted of engaging in
23 mortgage business activity without authorization pursuant to
24 the Mortgage Loan Originator Licensing Act or a substantially
25 similar offense in another state; or

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1 I. the applicant or licensee has refused to furnish
2 information required by the director within a reasonable period
3 of time as established by the director.

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

9 Section 10. [NEW MATERIAL] SURETY BONDS.--

10 A. A licensee who originates mortgage loans only
11 from a location within the state shall post and maintain with
12 the director a corporate surety bond in the amount of twenty
13 thousand dollars (\$20,000). A licensee who originates mortgage
14 loans from a location outside the state shall post and maintain
15 with the director a corporate surety bond in the amount of
16 fifty thousand dollars (\$50,000). Every bond shall provide for
17 suit thereon by any person who has a cause of action under the
18 Mortgage Loan Originator Licensing Act. In no event shall the
19 total liability of the surety to all persons, cumulative or
20 otherwise, exceed the amount specified in the bond. Every bond
21 shall provide that no suit shall be maintained to enforce any
22 liability on the bond unless brought within three years after
23 the act upon which it is based.

24 B. Bonds shall be in substantially the form as the
25 director prescribes.

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1 Section 11. [NEW MATERIAL] DUTIES OF THE DIRECTOR.--In
2 addition to the powers of the director as set forth in Section
3 8 of the Mortgage Loan Originator Licensing Act, the director
4 shall:

5 A. promulgate rules necessary to carry out the
6 intent and purpose of the Mortgage Loan Originator Licensing
7 Act;

8 B. order a licensee to cease any activity or
9 practice that the director deems to be deceptive, dishonest,
10 violative of state or federal law or unduly harmful to the
11 interests of the public;

12 C. exchange any information regarding the
13 administration of the Mortgage Loan Originator Licensing Act
14 with an agency of the United States or an agency of any state
15 that regulates the licensee or administers statutes, rules or
16 programs related to mortgage loans;

17 D. disclose that an applicant's or licensee's
18 application or license has been denied, suspended, revoked or
19 refused renewal;

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

25 F. follow the procedures set forth in the Uniform

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1 Licensing Act in carrying out the director's duties pursuant to
2 the Mortgage Loan Originator Licensing Act.

3 Section 12. [NEW MATERIAL] DUTIES OF LICENSEES--UNFAIR
4 PRACTICE.--

5 A. A licensee shall:

6 (1) conduct the licensee's business with
7 reasonable skill, care and diligence;

8 (2) act in good faith and engage in fair
9 dealing in any transaction, practice or course of business
10 regarding mortgage loans; and

11 (3) comply with the provisions of the federal
12 Real Estate Settlement Procedure Act of 1974 and the federal
13 Truth in Lending Act.

14 B. A licensee shall not:

15 (1) originate a mortgage loan that would
16 violate the provisions of the Home Loan Protection Act;

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

20 (3) misrepresent or conceal facts;

21 (4) make false promises;

22 (5) make false advertisements; or

23 (6) receive or accept payment of any
24 commission, fee or other compensation for a mortgage loan, the
25 payment or receipt of which would be in violation of state or

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1 federal law.

2 C. A violation of Subsection A or B of this section
3 shall constitute an unfair trade practice pursuant to the
4 Unfair Practices Act.

5 Section 13. [NEW MATERIAL] CEASE AND DESIST ORDER--CIVIL
6 FINES.--

7 A. If the director determines after notice and
8 opportunity for a hearing that a person has engaged, is
9 engaging or is about to engage in any act or practice
10 constituting a violation of any provision of the Mortgage Loan
11 Originator Licensing Act or any rule pursuant to that act, the
12 director by order may require any or all of the following:

13 (1) that the person cease and desist from the
14 unlawful act or practice;

15 (2) that the person pay a fine not to exceed
16 five thousand dollars (\$5,000) per incident for the unlawful
17 act or practice; and

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

21 B. Whenever it appears to the director that a
22 person has engaged, is engaging or is about to engage in any
23 act or practice constituting a violation of a provision of the
24 Mortgage Loan Originator Licensing Act or any rule pursuant to
25 that act, the director may bring an action in any court of

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1 competent jurisdiction to enjoin the acts or practices and to
2 require compliance with that act or any rule pursuant to that
3 act. Upon a proper showing, a permanent or temporary
4 injunction, restraining order, restitution, writ of mandamus or
5 other equitable relief shall be granted and a receiver or
6 conservator may be appointed for the defendant or the
7 defendant's assets.

8 Section 14. [NEW MATERIAL] MORTGAGE LOAN ORIGINATOR
9 FEES.--At the time of filing any application, an applicant,
10 licensee or registrant shall pay to the division the following
11 nonrefundable fees as may be applicable:

- 12 Application for licensing as mortgage loan
- 13 originator \$200
- 14 Renewal application for licensing as mortgage loan
- 15 originator \$125
- 16 Amendment of any license \$50.00.

17 Section 15. [NEW MATERIAL] LOAN ORIGINATOR FUND--CREATED--
18 APPROPRIATION.--

19 A. The "loan originator fund" is created as a
20 nonreverting fund in the state treasury and shall be
21 administered by the division. The fund shall consist of
22 licensing or renewal fees received pursuant to Section 14 of
23 the Mortgage Loan Originator Licensing Act and money that is
24 appropriated or donated or that otherwise accrues to the fund.
25 Money in the fund shall be invested by the state investment

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1 officer in the manner that land grant permanent funds are
2 invested pursuant to Chapter 6, Article 8 NMSA 1978. Income
3 from investment of the fund shall be credited to the fund.

4 B. Money in the loan originator fund is
5 appropriated to the division to carry out the provisions of the
6 Mortgage Loan Originator Licensing Act. Money shall be
7 disbursed from the loan originator fund only on warrant of the
8 secretary of finance and administration upon vouchers signed by
9 the director or the director's authorized representative. Any
10 unexpended or unencumbered balance remaining at the end of a
11 fiscal year shall not revert to the general fund.

12 Section 16. [NEW MATERIAL] CONTINUING PROFESSIONAL
13 EDUCATION--REQUIREMENTS--WAIVER.--A licensee shall annually
14 complete at least twelve hours of approved continuing
15 professional education as a condition of licensing renewal as
16 follows:

17 A. each continuing professional education course
18 shall first be approved by the director;

19 B. continuing professional education courses shall
20 focus on issues of mortgage business or related industry
21 topics;

22 C. evidence of satisfactory completion of approved
23 continuing professional education courses shall be submitted on
24 forms provided by the director. The form may be submitted by
25 the licensee seeking continuing professional education credit

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1 or the person sponsoring the continuing professional education
2 course. A licensee shall be ultimately responsible for
3 ensuring that continuing professional education credit has been
4 properly submitted to the director and shall maintain
5 verification records in the form of completion certificates or
6 other documents supporting evidence of attendance at approved
7 continuing professional education courses;

8 D. a continuing professional education year shall
9 be the calendar year;

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

12 F. a licensee issued a license on or after July 1
13 of a year shall have until December 31 of the following year to
14 comply with annual continuing professional education
15 requirements;

16 G. a licensee who fails to renew a license pursuant
17 to the provisions of the Mortgage Loan Originator Licensing Act
18 shall obtain all delinquent continuing professional education
19 hours before receiving a new license, unless a period of twelve
20 months has elapsed from the initial expiration date of the
21 license. In that case, the licensee may renew with the
22 completion of only twelve hours of continuing professional
23 education; and

24 H. the requirement for completion of continuing
25 professional education may be waived or the deadline for

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1 completion may be extended by the director if the licensee is
2 called to active duty in the armed forces of the United States
3 for a period exceeding one hundred twenty consecutive days in
4 any continuing professional education year.

5 Section 17. A new section of the Mortgage Loan Company
6 and Loan Broker Act is enacted to read:

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

14 Section 18. SEVERABILITY.--If any part or application of
15 this act is held invalid, the remainder or its application to
16 other situations or persons shall not be affected.

17 Section 19. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2009.