

SENATE BILL 365

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Gay G. Kernan

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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AN ACT

RELATING TO MORTGAGE LOAN ORIGINATION; CHANGING THE PROHIBITIONS AND REQUIREMENTS RELATING TO CERTAIN ADJUSTABLE RATE HOME LOANS.

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

**SECTION 1.** Section 58-21A-4 NMSA 1978 (being Laws 2003, Chapter 436, Section 4, as amended) is amended to read:

"58-21A-4. PROHIBITED PRACTICES AND PROVISIONS REGARDING

.219719.1 AIC March 9, 2021 (12:34pm)

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HOME LOANS.--

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

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

C. No creditor shall make a home loan without documenting and considering the borrower's reasonable ability to repay that loan pursuant to its terms. The borrower's ability to repay shall be demonstrated through reasonably reliable documentation that may include payroll receipts, tax returns, bank records, asset and credit evaluations, mortgage

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payment history or other similar reliable documentation. The provisions of this subsection shall not apply to a home loan originated pursuant to a government streamline program or a streamline program administered by a government-sponsored enterprise, to a reverse mortgage insured as part of a government program or to loss mitigation activities of a home loan servicer or lender with which the borrower has a current relationship, so long as each of these exceptions, as applicable, provides the borrower with a reasonable, tangible net benefit.

D. No creditor shall make a home loan without determining the borrower's reasonable ability to pay the costs set forth in this subsection. In the case of an adjustable rate home loan, the reasonable ability to pay shall be determined based on a fully indexed rate and repayment schedule that achieves full amortization over the life of the home loan. The costs, as applicable, to be used in determining the borrower's reasonable ability to pay include principal, interest, real estate taxes, property insurance, property assessments, mortgage insurance premiums and other scheduled long-term monthly debt payments.

E. No creditor shall make or originate an adjustable rate home loan in which caps on payment increases may be less than that necessary to reduce principal and amortize the loan over the entire term of the loan regardless

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of interest rate adjustments resulting in negative amortization.

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

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

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

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

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

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

J. No creditor shall recommend or encourage default

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on an existing loan or other debt prior to and in connection with the closing or planned closing of a home loan that refinances all or any portion of the existing loan or debt.

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

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

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

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

(4) no late payment fee shall be charged unless the creditor notifies the borrower within forty-five days following the date the payment was due that a late payment fee has been imposed for a particular late payment. A late payment fee that the creditor has collected shall be reimbursed if the borrower presents proof of having made a timely payment; and

(5) a creditor shall treat each payment as posted on the same business day as it was received by the creditor, servicer, creditor's agent for making payments or at

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the address provided to the borrower by the creditor, servicer or creditor's agent for making payments.

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

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

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

(1) making a home loan primarily based upon the foreclosure or liquidation value of the borrower's collateral rather than on the borrower's ability to repay the home loan according to its terms;

(2) making or originating an adjustable rate home loan, except a home equity line of credit, SJC→a home loan that is eligible for sale to the federal national mortgage association or the federal home loan mortgage corporation or a home loan that is eligible for insurance under Title II of the federal National Housing Act,←SJC where the interest rate and payment may change more frequently than [~~annually~~] once every

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six months during the term of the loan;

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

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

(b) a periodic interest rate may be increased by more than [~~two percent~~] one percent every six months; and

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

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

(5) misrepresenting a borrower's credit rating;

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

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process of a home loan; and

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

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