



New Mexico Mortgage Loan Originator Licensing Act

CHAPTER 58 ARTICLE 21B

New Mexico Mortgage Loan Originator Licensing

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58-21B-1. Short title.

Sections 1 through 24 [58-21B-1 through 58-21B-24 NMSA 1978] of this act may be cited as the "New Mexico Mortgage Loan Originator Licensing Act".

58-21B-2. Findings; purpose.

A. The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon New Mexico's consumers, New Mexico's economy, the neighborhoods and communities of New Mexico and the housing and real estate industry. The legislature finds that accessibility to mortgage credit is vital to New Mexico's residents. The legislature also finds that it is essential for the protection of the residents of New Mexico and the stability of New Mexico's economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The legislature further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process.

B. The purpose of the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 NMSA 1978] is to protect consumers seeking mortgage loans.

58-21B-3. Definitions.

As used in the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 NMSA 1978]:

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

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

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

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

C. "director" means the director of the financial institutions division of the regulation and licensing department;

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

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

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

- G. "individual" means a natural person;
- H. "license" means a license issued pursuant to Section 6 [58-21B-6 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act;
- I. "loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, pursuant to the Mortgage Loan Company Act [58-21-1 NMSA 1978];
- J. "mortgage loan company" means any person defined as such in the Mortgage Loan Company Act;
- K. "mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include:
- (1) an individual engaged solely as a loan processor or underwriter except as otherwise provided in Subsection I of this section;
 - (2) a person that only performs real estate brokerage activities and is licensed or registered in accordance with New Mexico law, unless the person is compensated by a lender, a mortgage loan company or other mortgage loan originator or by any agent of such lender, mortgage loan company or other mortgage loan originator; and
 - (3) a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11 of the United States Code;
- L. "nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of licensed mortgage loan originators;
- M. "nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage;
- N. "person" means a natural person, corporation, company, limited liability company, partnership or association;
- O. "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:
- (1) acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;
 - (2) bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;
 - (3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property, other than in connection with providing financing with respect to any such transaction;
 - (4) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker pursuant to any applicable law; and
 - (5) offering to engage in any activity or to act in any capacity described in Paragraphs (1) through (4) of this subsection;
- P. "registered mortgage loan originator" means any individual who:

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

- (a) a depository institution;
 - (b) a subsidiary that is: 1) owned and controlled by a depository institution; and 2) regulated by a federal banking agency; or
 - (c) an institution regulated by the farm credit administration; and
- (2) is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry;

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

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

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

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

58-21B-4. License and registration required to originate mortgage loans. (Effective July 31, 2010.)

A. Unless specifically exempted from the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 NMSA 1978] pursuant to Subsection B of this section, an individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in New Mexico without first obtaining and maintaining annually a license pursuant to that act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry. All new licenses and license renewals shall expire on December 31 of each year. All license renewal applications shall be submitted on or before November 1 of each year.

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

- (1) registered mortgage loan originators when acting for an entity defined in Subparagraphs (a) through (c) of Paragraph (1) of Subsection P of Section 3 [58-21B-3 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act;
- (2) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;
- (3) an individual who offers or negotiates terms of a real property sale financed in whole or in part by the seller and secured by the seller's real property; or
- (4) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage loan company or

other mortgage loan originator or by any agent of such lender, mortgage loan company or other mortgage loan originator.

C. A loan processor or underwriter who is an independent contractor shall not engage in the activities of a loan processor or underwriter unless the independent contractor loan processor or underwriter obtains and maintains a license pursuant to Subsection A of this section. Each contractor loan processor or underwriter licensed as a mortgage loan originator shall have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

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

58-21B-5. State license and registration application and issuance.

A. Applicants for a license shall apply in a form as prescribed by the director. Each form shall contain content as set forth by rule, instruction or procedure of the director and may be changed or updated as necessary by the director in order to carry out the purposes of the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 NMSA 1978].

B. In order to fulfill the purposes of the New Mexico Mortgage Loan Originator Licensing Act, the director may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensed mortgage loan originators or other individuals subject to that act.

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

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

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

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

(b) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

D. For the purposes of this section and in order to reduce the points of contact that the federal bureau of investigation may have to maintain for purposes of Paragraph (1) of Subsection C of this section and Subparagraph (b) of Paragraph (2) of Subsection

C of this section, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the federal department of justice or any governmental agency with mortgage industry oversight authority.

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

58-21B-6. Issuance of license.

The director shall not issue a mortgage loan originator license unless the director makes at a minimum the following findings:

A. the applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a formal vacation of such revocation shall not be deemed a revocation;

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

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

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

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

C. the applicant has demonstrated financial responsibility, good character and general fitness so as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently within the purposes of the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 NMSA 1978]. For the purposes of this subsection, an individual has shown that the individual is not financially responsible when the individual has shown a disregard in the management of the individual's own financial condition. A determination that an individual has not shown financial responsibility may include but is not limited to:

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

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

(3) foreclosures within the past three years; or

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

D. the applicant has completed the pre-licensing education requirement set forth in Section 7 [58-21B-7 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act;

E. the applicant has passed a written test that meets the test requirement set forth in Section 8 [58-21B-8 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act; and

F. the applicant has met the surety bond requirements set forth in Section 17 [58-21B-17 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act.

58-21B-7. Pre-licensing education of mortgage loan originators.

A. In order to meet the pre-licensing education requirement referred to in Subsection D of Section 6 [58-21B-6 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act, an individual shall complete at least twenty hours of education approved in accordance with Subsection B of this section, which shall include at least:

- (1) three hours of federal law and regulations;
- (2) three hours of ethics, including instruction on fraud, consumer protection and fair lending issues;
- (3) two hours of training related to lending standards for the nontraditional mortgage product marketplace; and
- (4) three hours of New Mexico law and administrative rules.

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

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

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

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

F. An individual previously licensed pursuant to the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 NMSA 1978] subsequent to the effective date of that act applying to be licensed again shall prove that the individual has completed all of the continuing education requirements for the year in which the license was last held.

58-21B-8. Testing of mortgage loan originators.

A. In order to meet the written test requirement referred to in Subsection E of Section 6 [58-21B-6 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act, an individual shall pass, in accordance with the standards established pursuant to this section, a qualified written test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.

B. A written test shall not be treated as a qualified written test for purposes of Subsection A of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

- (1) ethics;
- (2) federal law and regulations pertaining to mortgage origination;
- (3) New Mexico law and rules pertaining to mortgage origination; and

(4) federal and New Mexico law and regulations and rules, including those concerning fraud, consumer protection, the nontraditional mortgage product marketplace and fair lending issues.

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

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

E. An individual may retake a test two consecutive times, provided that each retake occurs at least thirty days after the preceding test. After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

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

58-21B-9. Standards for license renewal.

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

(1) the mortgage loan originator continues to meet the minimum standards for license issuance pursuant to Section 6 [58-21B-6 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act;

(2) the mortgage loan originator has satisfied the annual continuing education requirements set forth in Section 10 [58-21B-10 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act; and

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

B. The license of a mortgage loan originator who fails to satisfy the minimum standards for license renewal shall expire. The director may adopt rules for the reinstatement of expired licenses consistent with the standards established by the nationwide mortgage licensing system and registry.

58-21B-10. Continuing education for mortgage loan originators.

A. In order to meet the annual continuing education requirements set forth in Paragraph (2) of Subsection A of Section 9 [58-21B-9 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with Subsection B of this section, which shall include at least:

(1) three hours of federal law and regulations;

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

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

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

B. For the purposes of Subsection A of this section, continuing education courses shall be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

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

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

E. A licensed mortgage loan originator:
(1) except for the provisions of Subsection B of Section 9 [58-21B-9 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act and Subsection I of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

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

F. A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours' credit for every one hour taught.

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

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

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

58-21B-11. Authority to require license and to set fees.

A. In addition to any other duties imposed upon the director by law, the director shall require mortgage loan originators to be licensed and registered through the nationwide mortgage licensing system and registry. In order to carry out this requirement, the director may participate in the nationwide mortgage licensing system and registry. For this purpose, the director may establish requirements as necessary, including but not limited to:

- (1) background checks for:
 - (a) criminal history through fingerprint or other databases;
 - (b) civil or administrative records;
 - (c) credit history; or
 - (d) any other information deemed necessary by the nationwide mortgage licensing system and registry;

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

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

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

B. The director shall establish by rule fees sufficient to cover the costs of administering the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 NMSA 1978]. These fees may include:

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

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

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

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

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

D. For the purposes of implementing an orderly and efficient licensing process, the director may establish licensing rules and interim procedures for licensing and acceptance of applications. For individuals previously registered or licensed pursuant to the Mortgage Loan Company and Loan Broker Act [Mortgage Loan Company Act, 58-21-1 NMSA 1978], the director may establish expedited review and licensing procedures.

58-21B-12. Nationwide mortgage licensing system and registry information challenge process.

The director shall establish rules whereby mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the director.

58-21B-13. Enforcement; violations; penalties.

A. In order to ensure the effective supervision and enforcement of the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 NMSA 1978], the director may:

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

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

(a) fails at any time to meet the requirements of Section 6 [58-21B-6 NMSA 1978] or 9 [58-21B-9 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act; or

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

(3) order restitution against mortgage loan originators for violations of that act;

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

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

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

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

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

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

(c) enter immediate temporary orders to cease business pursuant to a license issued pursuant to the authority granted pursuant to Section 4 of the New Mexico Mortgage Loan Originator Licensing Act if the director determines that the license was erroneously granted or the licensed mortgage loan originator is currently in violation of that act.

B. The director may initiate one or more of the actions set forth in Section 15 [58-21B-15 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act.

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

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

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

(3) obtain property by fraud or misrepresentation;

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

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

(6) conduct any business covered by the New Mexico Mortgage Loan Originator Licensing Act without holding a valid license as required pursuant to that act, or assist or aid and abet any person in the conduct of business pursuant to that act without a valid license as required pursuant to that act;

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

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

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

(10) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the director or another governmental agency;

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

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

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

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

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

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

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

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

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

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

(21) misrepresent a borrower's credit rating;

(22) misrepresent, inflate or fabricate, or encourage 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 twenty-five percent per current agency guidelines as set by the director, in the application or underwriting process for a residential mortgage loan;

(23) originate a residential mortgage loan when the terms of that loan are in violation of the Home Loan Protection Act [58-21A-1 NMSA 1978];

(24) originate a residential mortgage loan that does not require documentation and consideration of 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 payment history or other similar reliable documentation. The provisions of this paragraph shall not apply to a residential mortgage 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 mortgage 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; or

(25) originate a residential mortgage loan that does not require a determination of the borrower's reasonable ability to pay the costs set forth in this paragraph. In the case of an adjustable rate residential mortgage 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 mortgage 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.

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

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

F. Each violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

58-21B-14. Notice of contemplated action; hearings.

A. When the director contemplates taking any action specified in Paragraphs (1) through (6) of Subsection A or in Subsection D of Section 13 [58-21B-13 NMSA

1978] of the New Mexico Mortgage Loan Originator Licensing Act, the director shall serve upon the licensed mortgage loan originator a written notice containing a statement:

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

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

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

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

C. If the licensed mortgage loan originator mails a request for a hearing as required by this section, the director shall, within thirty days of receipt of the request, notify the licensed mortgage loan originator of the time and place of the hearing, the name of the person who shall conduct the hearing for the director and the statutes and regulations authorizing the director to take the contemplated action.

58-21B-15. Power of the court to grant relief.

A. Upon a showing by the director that a person has or is about to violate the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 NMSA 1978] or any rule or order of the director pursuant to that act, the district court of the first judicial district or other appropriate district court in the state may grant or impose one or more of the following appropriate legal or equitable remedies:

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

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

(3) disgorgement;

(4) declaratory judgment;

(5) restitution to consumers;

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

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

(8) other relief as the court deems just.

B. In determining the appropriate relief to grant, the court shall consider enforcement actions taken and sanctions imposed by the director pursuant to Section 13 [58-21B-13 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act in connection with the transactions constituting violations of that act.

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

58-21B-16. Unlicensed activity. (Effective July 31, 2010.)

A. An individual who acts as a mortgage loan originator without being properly licensed pursuant to the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 NMSA 1978] is, for a first offense, guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Subsection A of Section 31-19-1 NMSA 1978.

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

C. An individual who violates Subsection A of this section is, for a second or subsequent offense, guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

58-21B-17. Surety bond required.

A. Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event the mortgage loan originator is an employee or exclusive agent of a mortgage loan company subject to the Mortgage Loan Company Act [58-21-1 NMSA 1978], the surety bond of the mortgage loan company subject to that act may be used in lieu of the mortgage loan originator's surety bond requirement.

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

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

D. The director may promulgate rules with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 NMSA 1978].

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

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

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

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

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

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

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

58-21B-18. Confidentiality.

In order to promote more effective regulation and reduce regulatory burden through supervisory information-sharing, except as otherwise provided in Public Law 110-289, Section 1512, the requirements pursuant to any federal law or pursuant to the Inspection

of Public Records Act [14-2-4 NMSA 1978] regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising pursuant to federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or the Inspection of Public Records Act, and the director may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators or other associations representing governmental agencies as established by rule or order of the director.

58-21B-19. Powers and duties of director.

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

B. In addition to the other duties imposed on the director by law, the director shall make reasonable rules necessary for the implementation of the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 NMSA 1978]; provided that promulgated rules shall be subject to judicial review in the manner set forth in Section 12-8-8 NMSA 1978. In addition to any authority allowed pursuant to the New Mexico Mortgage Loan Originator Licensing Act, the director may conduct investigations and examinations as follows:

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

(a) criminal, civil and administrative history information, including nonconviction data as specified in the Arrest Record Information Act [29-10-1 NMSA 1978];

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

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

(2) for the purposes of investigating violations or complaints arising pursuant to the New Mexico Mortgage Loan Originator Licensing Act, or for the purposes of examination, the director may review, investigate or examine any individual subject to that act as often as necessary in order to carry out the purposes of that act. The director may direct, subpoena or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation and may direct, subpoena or order such

persons to produce books, accounts, records, files and any other documents the director deems relevant to the inquiry;

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

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

(a) accounting compilations;

(b) information lists and data concerning loan transactions in a format prescribed by the director; and

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

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

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

(a) retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in the conduct of examinations or investigations;

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

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

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

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

(7) the authority of this section shall remain in effect whether such a licensed mortgage loan originator or individual subject to the New Mexico Mortgage Loan Originator Licensing Act acts or claims to act pursuant to any licensing or registration law of New Mexico or claims to act without such authority;

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

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

58-21B-20. Mortgage loan originator duties.

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

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

(2) follow reasonable and lawful instructions from the borrower;

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

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

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

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

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

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

(9) maintain all information provided by the borrower or obtained regarding the borrower in strict confidence. However, the mortgage loan originator may disclose confidential information if required by law or rule or if the borrower authorizes the disclosure in writing in advance of the disclosure. Any such authorization shall specifically identify the nature of the information to be disclosed.

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

(1) disclose at least two days prior to closing of the loan the total amount of any compensation the mortgage loan company expects to receive specific to

the loan being offered, including origination fees, broker fees, yield spread premiums and other fees payable to the mortgage loan company by the lender or other third party at the time the loan is funded to the borrower; and

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

58-21B-21. Private right of action; damages; enforcement by attorney general.

A. Any person who has suffered injury by reason of any method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 NMSA 1978] may sue in district court. Upon a showing that that act is being or has been violated and a showing that the plaintiff has suffered injury, the court may award damages, punitive damages and injunctive relief and shall award the cost of the suit, including reasonable attorney fees.

B. Whenever the attorney general has reasonable belief that a person is using, has used or is about to use any method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act and enforcement proceedings would be in the public interest, the attorney general may bring an action in the name of the state alleging violations of that act. An enforcement action by the attorney general may be brought in the district court of the county in which the person that allegedly is using, has used or is about to use a method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act resides or has its principal place of business, or in the district court in any county in which the person allegedly is using, has used or is about to use a method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act. In any action filed by the attorney general pursuant to the New Mexico Mortgage Loan Originator Licensing Act, the attorney general may petition the district court for temporary or permanent injunctive relief and restitution. The attorney general acting on behalf of the state shall not be required to post bond when seeking a temporary or permanent injunction in an action brought pursuant to this section.

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

58-21B-22. Mortgage call reports.

A mortgage loan originator shall submit to the nationwide mortgage licensing system and registry reports of condition, which shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry may require.

58-21B-23. Report to nationwide mortgage licensing system and registry.

Subject to state privacy laws, the director shall report regularly violations of the New Mexico Mortgage Loan Originator Licensing Act [58-21B-1 NMSA 1978], as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry subject to the provisions set forth in Section 18 [58-21B-18 NMSA 1978] of the New Mexico Mortgage Loan Originator Licensing Act.

58-21B-24. Unique identifier shown.

The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations or

advertisements, including business cards or web sites, and on any other documents as established by rule or order of the director.