



AN ACT GENERALLY REVISING MONTANA MORTGAGE LAWS; CHANGING THE NAME OF THE MONTANA MORTGAGE BROKER, MORTGAGE LENDER, AND MORTGAGE LOAN ORIGINATOR LICENSING ACT TO THE MONTANA MORTGAGE ACT; REVISING DEFINITIONS; DEFINING AND PROVIDING FOR THE LICENSING AND REGULATION OF MORTGAGE SERVICERS; REVISING THE MONTANA MORTGAGE ACT TO CONFORM TO FEDERAL LAW; REVISING APPLICATION AND LICENSING REQUIREMENTS; REDUCING THE REQUIRED HOURS FOR CONTINUING EDUCATION; REVISING RECORDKEEPING AND REPORTING REQUIREMENTS; REVISING BONDING REQUIREMENTS; REVISING DISCLOSURE REQUIREMENTS; PROHIBITING CERTAIN ACTS BY MORTGAGE LENDERS AND MORTGAGE SERVICERS; EXPANDING THE DEPARTMENT OF ADMINISTRATION'S RULEMAKING AUTHORITY; AMENDING SECTIONS 31-1-202, 32-5-102, 32-7-103, 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-105, 32-9-106, 32-9-107, 32-9-112, 32-9-113, 32-9-116, 32-9-117, 32-9-118, 32-9-120, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-125, 32-9-126, 32-9-128, 32-9-129, 32-9-130, 32-9-133, 32-9-145, 32-9-148, 32-9-150, 32-9-151, AND 32-9-160, MCA; AND REPEALING SECTIONS 32-9-114 AND 32-9-127, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 31-1-202, MCA, is amended to read:

"31-1-202. Definitions -- scope. (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services that are the subject matter of the retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money, or things in action, or dwellings as defined in 15 U.S.C. 1602(v). ~~The term includes goods that, at the time of the sale or subsequently, are to be so affixed to realty as to become a part of the realty, whether or not severable from it.~~

(e) "Holder" means:

(i) the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers;

(ii) the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or

(iii) any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

(g) (i) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway.

(ii) The term does not include any vehicle that runs only on rails or tracks or in the air.

(iii) The term does not include a dwelling as defined in 15 U.S.C. 1602(v).

(h) "Official fees" means:

(i) the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction; or

(ii) the premium for insurance in lieu of filing, recording, or otherwise perfecting any title or lien retained or taken by a seller in connection with a retail installment transaction to the extent that the premium does not

exceed the fees that would otherwise be payable for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services that are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's downpayment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions that may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge may be computed in relation to the buyer's average daily balance in the account during the billing cycle or the buyer's balance from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, a conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under

a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(q) (i) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if engaged in purchasing retail installment contracts.

(ii) The term does not include a person who makes only isolated purchases of retail installment contracts that are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made for insurance and benefits, and the amounts of the official fees and the finance charge.

(2) (a) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions.

(b) This part applies to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions.

(c) This part does not apply to a transaction governed by Title 32, chapter 9, part 1.

Section 2. Section 32-5-102, MCA, is amended to read:

"32-5-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Balloon payment" means any repayment option in which the borrower is required to repay the entire amount of any outstanding balance as of a specific date or at the end of a specified term and the aggregate amount of the required minimum periodic payments would not fully amortize the outstanding balance by the specific date or at the end of the loan term.

(2) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are not primarily secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include:

(i) deferred deposit loans provided for in Title 31, chapter 1, part 7; ~~or~~

(ii) title loans provided for in Title 31, chapter 1, part 8; or

(iii) residential mortgage loans as defined in 32-9-103.

(3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(4) "Interest" means the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money and includes loan origination fees, points, and prepaid finance charges, as defined in 12 CFR 226.2.

(5) "License" means a license provided for by this chapter.

(6) "Licensee" means the person holding a license.

(7) "Person" means individuals, partnerships, associations, corporations, and all legal entities."

Section 3. Section 32-7-103, MCA, is amended to read:

"32-7-103. Exemptions. (1) The provisions of this part do not apply to the following:

(a) a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is not actively engaged in the escrow business;

(b) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who is not actively engaged in the escrow business;

(c) a person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies and the person is regulated by the commissioner of insurance;

(d) a person licensed pursuant to Title 32, chapter 9, part 1, as a mortgage broker, mortgage lender, or mortgage servicer;

~~(d)~~(e) a financial institution, as defined in 32-6-103, that has its escrow accounts regularly audited or examined. The financial institution shall supply a copy of the most recently prepared audit or examination to the director upon the director's request.

~~(e)~~(f) except as provided in subsection (2), any broker licensed by the Montana board of realty regulation if the broker is performing an act:

- (i) in the course of or incidental to a single real estate transaction; and
- (ii) for which a real estate license is required; and

~~(f)~~(g) any person furnishing escrow services under the order of a court.

(2) A trust account of a broker licensed by the Montana board of realty regulation is not an escrow account within the meaning of this part."

Section 4. Section 32-9-101, MCA, is amended to read:

"32-9-101. Short title and purpose. (1) This part may be cited as the "Montana Mortgage ~~Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act~~".

(2) The legislature recognizes that buying or financing a home is one of the largest, most complicated, and vitally important decisions facing consumers in Montana. Therefore, the legislature finds it desirable to license certain persons in the residential mortgage industry that are outside of the traditional banking industry and that have a direct involvement in consumers' financial welfare, including mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators, to promote honesty, education, and professionalism, to ensure the availability and diversity of residential mortgage funding, and to protect Montana consumers and the stability of Montana's economy.

(3) The legislature finds that it is necessary to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and, together with the residential mortgage industry, recognizes the importance of statewide participation in the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

Section 5. Section 32-9-102, MCA, is amended to read:

"32-9-102. License requirement -- registration. (1) Unless exempt under 32-9-104, a person may not act as a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator with respect to any residential ~~real estate~~ mortgage loan located in Montana unless licensed under the provisions of this part.

(2) ~~Any~~ A person acting as a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator under this part is required to be licensed ~~and through~~, registered with, and maintain a valid unique

identifier issued by the nationwide mortgage licensing system and registry ~~by the date set forth in 32-9-105(4).~~
 (See compiler's comment regarding contingent suspension.)"

Section 6. Section 32-9-103, MCA, is amended to read:

"32-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(2) "Approved education course" means any course approved by the nationwide mortgage licensing system and registry.

(3) "Approved test provider" means any test provider approved by the nationwide mortgage licensing system and registry.

(4) "Bona fide third party" means a person that provides services relative to the origination of a residential mortgage loan transactions. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(5) "Borrower" means a person seeking a residential mortgage loan or an obligor on a residential mortgage loan.

(6) "Branch office" means a location at which a licensee conducts business other than a licensee's principal place of business. The location is considered a branch office if:

(a) the address of the location appears on business cards, stationery, or advertising used by the entity;

(b) the entity's name or advertising suggests that mortgages are made at the location;

(c) the location is held out to the public as a licensee's place of business due to the actions of an employee or independent contractor of the entity; or

(d) the location is controlled directly or indirectly by the entity.

(7) (a) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.

(b) A person is presumed to control an entity if that person:

- (i) is a director, general partner, or executive officer;
- (ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;
- (iii) in the case of a limited liability company, is a managing member; or
- (iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital.

(8) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(9) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.

(10) "Designated manager" means a mortgage loan originator with at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an entity as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control.

(11) "Dwelling" has the meaning provided in 15 U.S.C. 1602(v).

~~(11)~~(12) "Entity" means a business organization, including a sole proprietorship.

~~(12)~~(13) "Escrow account" means a depository account with a financial institution that provides deposit insurance and that is separate and distinct from any personal, business, or other account of the mortgage lender or mortgage servicer and is maintained solely for the holding and payment of escrow funds.

~~(13)~~(14) "Escrow funds" means funds entrusted to a mortgage lender or mortgage servicer by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

~~(14)~~(15) "Federal banking agency" 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, or the federal deposit insurance corporation.

~~(15)~~(16) "Immediate family member" means a spouse, child, sibling, grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based upon adoptive relationships.

~~(16)~~(17) "Individual" means a natural person.

~~(17)~~(18) "Licensee" means a person authorized pursuant to this part to engage in activities regulated by

this part. The term does not include an individual who is a registered mortgage loan originator.

~~(18)~~(19) "Loan commitment" means a statement transmitted in writing or electronically by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.

~~(19)~~(20) "Loan processor or underwriter" means an individual who performs administrative or clerical tasks as an employee, subsequent to the receipt of a residential mortgage loan application, at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

~~(20)~~(21) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

~~(21)~~(22) (a) "Mortgage broker" means an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration.

(b) For purposes of this subsection ~~(21)~~ (22), attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

~~(22)~~(23) "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a mortgage loan applicant.

~~(23)~~(24) (a) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:

- (i) takes a residential mortgage loan application; or
 - (ii) offers or negotiates terms of a residential mortgage loan.
- (b) The term does not include an individual:
- (i) engaged solely as a loan processor or underwriter, except as provided in 32-9-129; or
 - (ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C.

101(53D).

~~(24) "Mortgage servicer loss mitigation specialist" means a person who on behalf of the person making the residential mortgage loan works with a borrower who is in default or in a foreseeable likelihood of a default~~

to modify or refinance either temporarily or permanently the borrower's obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process:

(25) "Mortgage servicer" means an entity that:

(a) engages, for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payment from a borrower pursuant to the terms of a residential mortgage loan, residential mortgage servicing documents, or a residential mortgage servicing contract; or

(b) meets the definition of "servicer" in 12 U.S.C. 2605(i)(2) with respect to residential mortgage loans.

~~(25)~~(26) "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 registration of state-licensed mortgage brokers, state-licensed mortgage lenders, state-licensed mortgage servicers, state-licensed mortgage loan originators, and registered mortgage loan originators.

~~(26)~~(27) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.

~~(27)~~(28) "Person" means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

~~(28)~~(29) "Real estate brokerage activities" means activities that involve offering or providing real estate brokerage services to the public, including:

(a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) 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 the transaction;

(d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law; or

(e) offering to engage in any activity or act in any capacity described in subsections ~~(28)(a)~~ (29)(a) through ~~(28)(d)~~ (29)(d).

~~(29)~~(30) "Registered mortgage loan originator" means an individual who:

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

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the farm credit administration; and

(b) is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.

~~(30)~~(31) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, ~~as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. 1602(v),~~ or on residential real estate located in Montana.

~~(31)~~(32) "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.

~~(32)~~(33) "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker or the mortgage lender and that is maintained solely for the holding and payment of bona fide third-party fees.

(34) "Trust account funds" means money entrusted to a mortgage lender or mortgage broker during the origination of a mortgage loan for the payment of services provided by a bona fide third party, which does not include the services of a mortgage broker, mortgage lender, or mortgage loan originator. The term includes appraisal fees, credit report fees, and other fees required for the mortgage loan origination.

~~(33)~~(35) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

~~(34)~~(36) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

Section 7. Section 32-9-104, MCA, is amended to read:

"32-9-104. Exemptions -- proof of exemption. (1) The provisions of this part do not apply to:

- (a) an entity that is an agency of the federal, state, or municipal government;
- (b) an entity described in 32-9-103~~(29)(a)(i)~~(30)(a)(i) through ~~(29)(a)(iii)~~ (30)(a)(iii);
- (c) a registered mortgage loan originator when acting for an entity described in 32-9-103~~(29)(a)(i)~~(30)(a)(i) through ~~(29)(a)(iii)~~ (30)(a)(iii);
- (d) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of that individual;
- (e) a person who offers, negotiates, or provides financing in conjunction with the sale of real property owned by that person and that is secured by a contract for deed, mortgage, deed of trust, or other equivalent security interest on the real property sold;
- (f) a loan that is made by an entity to an employee of the entity if the proceeds of the loan are used to assist the employee in meeting the employee's housing needs;
- (g) an entity engaged solely in commercial real estate lending;
- (h) an entity qualified as a pension plan under 26 U.S.C. 401 if the plan makes residential mortgages only to the plan's participants;
- (i) the federal national mortgage association, the federal home loan mortgage corporation, and the government national mortgage association;
- (j) a 501(c)(3) corporation, which is not otherwise engaged in or holding itself out to the public as being engaged in the mortgage loan business, that makes mortgage loans to promote home ownership or improvements for bona fide low-income individuals;
- (k) a person that performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301 unless the person is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator;
- (l) a ~~licensed~~ Montana-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 mortgage lender, mortgage broker, or mortgage loan originator or any agent of the mortgage lender, mortgage broker, or mortgage loan originator; or
- (m) a ~~licensed~~ Montana-licensed certified public accountant or a ~~licensed~~ Montana-licensed public

accountant who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to providing public accounting services to the client unless the accountant is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator.

~~———(2) The department or the secretary of housing and urban development may exempt from this part mortgage servicer loss mitigation specialists if the department or the secretary of housing and urban development determines by guideline, interpretation, or rule that an exemption of a mortgage servicer loss mitigation specialist is not in violation of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act, Public Law 110-289:~~

~~(3)(2) The burden of proving an exemption under this section is on the person claiming the exemption. A person seeking an exemption under subsection (1)(a), (1)(b), (1)(c), (1)(f), (1)(h), (1)(j), (1)(l), or (1)(m) is required to obtain a written exemption from the department before the exemption applies. The department shall create a form for requesting an exemption.~~

~~(3) A person who is exempt from licensure under subsection (1) may register on the nationwide mortgage licensing system as an exempt registrant for purposes of sponsoring a mortgage loan originator and for purposes of satisfying the mortgage loan originator bonding requirements. (See compiler's comment regarding contingent suspension.)"~~

Section 8. Types of licenses. (1) The four types of licenses under this part are mortgage broker licenses, mortgage lender licenses, mortgage servicer licenses, and mortgage loan originator licenses.

(2) A mortgage broker license may be issued to an entity that meets the requirements of 32-9-112, 32-9-113, 32-9-116, 32-9-117, 32-9-122, and 32-9-123 and employs at least one Montana-licensed mortgage loan originator.

(3) A licensee-owned mortgage broker entity license may be issued to an entity that meets the requirements of subsection (2) and is owned by a Montana-licensed mortgage loan originator.

(4) A mortgage lender license may be issued to an entity that meets the requirements of 32-9-112, 32-9-113, 32-9-116, 32-9-117, 32-9-122, and 32-9-123 and employs at least one Montana-licensed mortgage loan originator.

(5) A mortgage servicer license may be issued to an entity that meets the requirements of 32-9-112,

32-9-113, 32-9-117, and 32-9-123.

(6) A mortgage loan originator license may be issued to an individual who meets the requirements of 32-9-107, 32-9-109, 32-9-110, 32-9-112, 32-9-116, and 32-9-117 and is sponsored by a Montana-licensed mortgage broker or mortgage lender.

(7) A Montana-licensed entity may have one or more branch offices if the entity meets the requirements of 32-9-122 and has paid the fee required under 32-9-117.

(8) Licenses under this part may not be assigned or transferred.

Section 9. Section 32-9-105, MCA, is amended to read:

"32-9-105. ~~Overall licensing requirements~~ Nationwide mortgage licensing system and registry for mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators. (1) The department is ~~authorized to~~ may participate in the nationwide mortgage licensing system and registry and shall require mortgage lenders, mortgage brokers, mortgage servicers, and mortgage loan originators to apply for state licensure on applications approved by the nationwide mortgage licensing system and registry ~~by the dates set forth in subsection (4).~~

(2) The department may establish requirements through rulemaking as necessary to comply with the nationwide mortgage licensing system and registry, including requirements:

(a) for payment of nonrefundable fees to apply for, maintain, and renew licenses through the nationwide mortgage licensing system and registry;

(b) for renewal or reporting dates;

(c) for procedures ~~for amending to amend~~ or ~~surrendering to surrender~~ a license; and

(d) ~~requirements~~ pertaining to any other activity necessary for participation in the nationwide mortgage licensing system and registry.

(3) The state portion of the licensing fees collected by the nationwide mortgage licensing system and registry under this section must be deposited into the department's account in the state special revenue fund to be used for administering this part.

~~———— (4) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the implementation date of subsection (1) is:~~

~~———— (a) April 1, 2010, for all new applicants applying after July 1, 2009;~~

- ~~_____ (b) June 30, 2010, for all licensees with current licenses as of July 1, 2009; and~~
- ~~_____ (c) for mortgage servicer loss mitigation specialists, if not exempt under 32-9-104(2), a date as set by the department by rule.~~
- ~~_____ (5) The provisions of this part apply to the activities of retail sellers of manufactured homes and recreational vehicles to the extent determined by the United States department of housing and urban development through guidelines, regulations, or interpretive letters.~~
- (4) The provisions of this part apply to the activities of retail sellers of manufactured homes and recreational vehicles to the extent determined by the United States department of housing and urban development through guidelines, regulations, or interpretive letters. (See compiler's comment regarding contingent suspension.)"

Section 10. Section 32-9-106, MCA, is amended to read:

"32-9-106. Dual Simultaneous licensure. An entity may be simultaneously licensed as a mortgage lender, mortgage servicer, and a mortgage broker ~~provided that~~ if the entity meets all requirements for licensure for each license type as a mortgage lender and a mortgage broker. (See compiler's comment regarding contingent suspension.)"

Section 11. Section 32-9-107, MCA, is amended to read:

"32-9-107. Prelicensing education requirements for mortgage loan originators. (1) An individual seeking a mortgage loan originator's license shall complete at least 20 hours of approved education courses, which must include at least:

- (a) ~~at least~~ 3 hours of training on federal law and regulations;
 - (b) 3 hours of training in ethics, including instruction on fraud, consumer protection, and fair lending issues; and
 - (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.
- (2) The prelicensing education courses that comply with the requirements of subsection (1) and that are approved by the nationwide mortgage licensing system and registry for any other state must be accepted with respect to the completion of prelicensing education requirements in Montana.

~~_____ (3) If allowed by the nationwide mortgage licensing system and registry, the department is authorized~~

to certify to the nationwide mortgage licensing system and registry that continuing education hours that were previously approved by the department have been completed by a mortgage loan originator. (See compiler's comment regarding contingent suspension.)"

Section 12. Section 32-9-112, MCA, is amended to read:

"32-9-112. Application for mortgage broker, mortgage lender, mortgage servicer, and mortgage loan originator license -- renewals. (1) An applicant under this part shall apply for a state license ~~in~~ or renewal of a license on a form prescribed by the department that complies with the requirements of the nationwide mortgage licensing system and registry. Each form must contain content as set forth by the nationwide mortgage licensing system and registry and may be changed or updated by the department as necessary to comply with the nationwide mortgage licensing system and registry.

(2) The department may establish a relationship or contract with the nationwide mortgage licensing system and registry or another entity designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part.

(3) An applicant for a license or license renewal shall furnish information to the nationwide mortgage licensing system and registry concerning the applicant's identity, including but not limited to:

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

~~—— (b) legal name, birth date, and social security number for submission to the criminal investigation bureau of the Montana department of justice as authorized for a state criminal history background check; and~~

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

(i) an independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and

(ii) information related to administrative, civil, or criminal findings by a governmental jurisdiction.

(4) To reduce the points of contact that the federal bureau of investigation may be required to maintain for purposes of subsection (3), the department may use the nationwide mortgage licensing system and registry

as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agencies.

(5) To reduce the points of contact that the department may be required to maintain for purposes of subsection (3), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source directed by the department.

(6) The department shall issue a license to an applicant that has met all the requirements of this section, has paid the fee required under 32-9-117, and is not determined ineligible under 32-9-120. (See compiler's comment regarding contingent suspension.)"

Section 13. Section 32-9-113, MCA, is amended to read:

"32-9-113. Application for licensure license -- renewal. In order for an entity to be considered for a state ~~licensure~~ license or license renewal, each of the following is required to independently meet the requirements established in 32-9-120(1)(a) through ~~(1)(d)~~ (1)(c) and (1)(g):

- (1) ultimate equity owners of 25% or more of the applicant if the equity owners are individuals;
- (2) control persons of the applicant if the control persons are individuals; and
- (3) individuals that control, directly or indirectly, the election of 25% or more of the members of the board of directors of the entity. (See compiler's comment regarding contingent suspension.)"

Section 14. Section 32-9-116, MCA, is amended to read:

"32-9-116. Employment of mortgage loan originator. (1) A mortgage loan originator may transact business ~~only for an~~ only one employing mortgage broker or one employing mortgage lender licensed in accordance with the provisions of this part. ~~Each original license issued to a mortgage loan originator must be provided to and maintained by the employing mortgage broker or employing mortgage lender at the employing licensee's main office. A copy of the mortgage loan originator's license must be displayed at the office where that mortgage loan originator principally transacts business.~~

(2) If the employment of a mortgage loan originator is terminated, the mortgage broker or the mortgage lender shall ~~return the mortgage loan originator's license to the department within 5 business days after the termination and~~ remove sponsorship of the mortgage loan originator on the nationwide mortgage licensing system and registry within 5 business days of the termination. The mortgage loan originator's license must be placed in

"Approved-Inactive" status until the license is sponsored by a mortgage broker or mortgage lender. If at the end of the next renewal period the license is not sponsored by a mortgage broker or mortgage lender, it must be automatically placed in "Terminated-Expired" status for failure to renew. For a period of 6 months after the termination of employment, the mortgage loan originator may request the transfer of the license to another mortgage broker or mortgage lender by complying with the nationwide mortgage licensing system and registry procedures and paying a fee established by the department by rule. The removal of sponsorship of the license of any mortgage loan originator that is not transferred to another mortgage broker or mortgage lender terminates extinguishes the right of the mortgage loan originator to engage in any residential mortgage loan origination activity until nationwide mortgage licensing system and registry procedures have been followed to sponsor the license. The license of any mortgage loan originator that has been removed from sponsorship and not transferred within 6 months of termination of employment must be canceled. (See compiler's comment regarding contingent suspension.)"

Section 15. Section 32-9-117, MCA, is amended to read:

"32-9-117. Fees -- license renewal -- disposition of fees. (1) (a) ~~Except as provided in subsection (1)(b), an~~ An entity seeking licensure as a mortgage broker shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of \$500 and an additional application fee of \$250 for any branch ~~location~~ office. A mortgage loan originator shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of \$400. An entity seeking licensure as a mortgage lender shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of \$750 and an additional application fee of \$250 for any branch ~~location~~ office. ~~An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than 6 months.~~ An entity seeking licensure as a mortgage servicer shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of \$750 and an additional nonrefundable application fee of \$250 for each branch office.

(b) ~~An individual who is seeking licensure as a mortgage loan originator and who is the owner of an entity that is seeking licensure as a mortgage broker~~ A mortgage broker entity owned by a Montana-licensed mortgage loan originator shall pay a single initial nonrefundable through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of \$500 \$100.

(2) The license of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator is valid for up to a 1-year period and expires on December 31. A state licensee shall submit a renewal application and pay to the nationwide mortgage licensing system and registry a renewal fee in an amount set by the department by rule. The department shall establish by rule the requirements for renewal applications. ~~The department shall establish a single renewal fee for individuals and entities described in subsection (1)(b). An individual described in subsection (1)(b) may act as a designated manager under 32-9-122 and is not subject to any additional license fees for acting in the capacity of a designated manager.~~ The fees set by the department must be commensurate with the costs of the program. ~~Failure to submit~~ If the required information or fees are not submitted within the time prescribed, ~~means~~ the license will automatically ~~expires~~ be placed in "Terminated-Expired" status. The department may adopt procedures for reinstatement of expired licenses that are consistent with the standards established by the nationwide mortgage licensing system and registry.

(3) An application for renewal of a mortgage loan originator license must be accompanied by evidence that the continuing education requirements provided for in 32-9-118 have been met and that there has not been a material change in the status of the licensee in the preceding 12 months. An application for renewal also must demonstrate that the licensee continues to meet the standards for licensure under this part and that the licensee has paid all fees for renewal of the license.

(4) The state portion of the fees collected under this section must be deposited in the department's state special revenue fund to be used by the department in administering the provisions of this part.

(5) An applicant for a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license renewal shall apply for state licensure on an application form approved by the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

Section 16. Section 32-9-118, MCA, is amended to read:

"32-9-118. Continuing education requirements for mortgage loan originators. (1) All mortgage loan originators shall complete and submit to the nationwide mortgage licensing system and registry evidence of at least 42 8 hours of continuing education every year at the time they submit their license renewal applications. The 42 8 hours of continuing education must be obtained in ~~an~~ approved education ~~course~~ courses.

(2) The 42 8 hours of education must include at least:

(a) 3 hours of training on federal laws and regulations;

(b) 2 hours of training in ethics, including instruction on fraud prevention, consumer protection, and fair lending issues; and

(c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(3) A person who has successfully completed the education requirements that comply with the requirements of ~~subsection~~ subsections (1) and (2) and that are approved by the nationwide mortgage licensing system and registry for any other state must be given credit toward completion of continuing education requirements in Montana.

(4) Except as provided in subsection (6), a licensed mortgage loan originator may receive credit for a continuing education course only in the year in which the course is taken and may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(5) 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 2 hours credit for every 1 hour taught.

~~(4)~~(6) 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. The continuing education requirements of this subsection are not subject to the provisions of subsection (4). (See compiler's comment regarding contingent suspension.)"

Section 17. Section 32-9-120, MCA, is amended to read:

"32-9-120. Denial of mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license application or license renewal. (1) The department may not issue or renew any mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license if any of the following facts are found during the application procedure:

(a) the applicant has ever had a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license or ~~their~~ an equivalent license revoked in any governmental jurisdiction. A subsequent formal vacation of a revocation means that the revocation may not be considered a revocation. The department may by order vacate a revocation of a license and enter an appropriate order.

(b) the applicant has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for licensing or renewal

or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. The pardon of a conviction is not a conviction for the purposes of this subsection (1)(b).

(c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section;

(d) the applicant has not ~~met~~ provided the surety bond ~~or net worth requirement~~ as required pursuant to 32-9-123;

(e) the applicant has not completed the prelicensing education requirement described in 32-9-107;

(f) the applicant has not passed a written test that meets the test requirements described in 32-9-110;

(g) the applicant made a material misstatement of fact or material omission of fact in the application.

(2) The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred to in subsection (1)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection (1)(c). (See compiler's comment regarding contingent suspension.)"

Section 18. Section 32-9-121, MCA, is amended to read:

"32-9-121. Records maintenance -- advertising requirement. (1) Licensees shall maintain books, accounts, records, and copies of residential mortgage loan files and trust account or escrow account records that are necessary to enable the department to determine whether a licensee is in compliance with the applicable laws and rules. The materials must be maintained in accordance with generally accepted accounting principles and good business practices. Each office location must have at least one phone line. Whenever a licensee's usual business location is outside of this state the licensee shall, at its election, either maintain its books and records at a location in this state or reimburse the department for expenses incurred, including but not limited to staff time, transportation, food, and lodging expenses, relating to an examination or investigation under this part.

(2) A mortgage broker, ~~or mortgage lender,~~ or mortgage servicer shall maintain a residential mortgage file for a minimum of 5 years from the date of the last activity pertaining to the file. A mortgage broker, ~~or mortgage lender,~~ or mortgage servicer shall maintain trust account or escrow account records for a minimum of 5 years.

(3) An entity that ceases operation as a licensee under the provisions of this part shall:

(a) 30 days prior to the discontinuance of business, notify the department of the physical location where required records will be preserved; and

(b) designate a custodian of records and notify the department of the name, physical address, electronic mail address, and telephone number of the custodian of records. The custodian of records shall preserve records required under this part and allow the department access for examination and investigation purposes upon request of the department.

(4) The department shall adopt rules to control the maintenance, storage, transfer, and destruction of records after a licensee ceases operation.

~~(3)~~(5) (a) In any printed, published, e-mail, or internet advertisement for the provision of services, the following information must be included:

(i) a name and ~~license number~~ unique identifier for each mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator advertising as an individual; or

(ii) the name and ~~license number~~ unique identifier only of the licensed entity when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage brokers, mortgage lenders, mortgage servicers, or mortgage loan originators also listed.

(b) For the purposes of this subsection ~~(3)~~ (5), advertising does not include stationery or business forms but does include business cards. A business card must include a mortgage broker's, a mortgage lender's, a mortgage servicer's, or a mortgage loan originator's ~~license number~~ unique identifier but is not required to list the entity's ~~license number~~ unique identifier if the entity's name is listed. (See compiler's comment regarding contingent suspension.)"

Section 19. Section 32-9-122, MCA, is amended to read:

"32-9-122. Designated manager and branch office license requirements. (1) A mortgage broker, or mortgage lender, or mortgage servicer entity shall apply for a license for a main office and for every branch office through the nationwide mortgage licensing system and registry and maintain a unique identifier.

(2) A mortgage broker entity shall designate to the nationwide mortgage licensing system and registry an individual who is licensed by this state as a mortgage loan originator to serve as the designated manager of the main office and a separate designated manager to serve at each branch ~~location~~ office.

(3) A mortgage lender entity shall designate to the nationwide mortgage licensing system and registry for each office that originates a residential mortgage loan an individual who is licensed as a mortgage loan originator as the designated manager of the main office and shall designate a separate designated manager to serve each branch ~~location~~ office that originates a residential mortgage loan.

(4) A designated manager must have 3 years of experience as either a mortgage loan originator or a registered mortgage loan originator.

(5) A designated manager is responsible for the operation of the business at the location under the designated manager's full charge, supervision, and control.

(6) A mortgage broker or mortgage lender entity is responsible for the conduct of a designated manager or mortgage loan originator while the designated manager or mortgage loan originator is employed by the mortgage broker or mortgage lender entity, including for violations of federal laws and regulations that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part.

(7) A designated manager is responsible for conduct that violates federal laws and regulations that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part. The designated manager's responsibility includes conduct by the designated manager and each mortgage loan originator employed by the entity while the designated manager is employed at the location that the designated manager manages.

(8) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker or mortgage ~~loan originator~~ lender shall designate another individual licensed as a mortgage ~~broker~~ loan originator as designated manager and shall submit information to the nationwide mortgage licensing system and registry establishing that the subsequent designated manager is in compliance with the provisions of this part.

(9) If the employment of a designated manager is terminated, the mortgage broker or mortgage lender shall ~~return the designated manager's license to the department within 5 business days of the termination and~~ remove the sponsorship of the designated manager on the nationwide mortgage licensing system and registry within 5 business days of the termination.

(10) A mortgage servicer is responsible for the acts and omissions of its employees, agents, and independent contractors acting in the course and scope of their employment, agency, or contract. (See compiler's comment regarding contingent suspension.)"

Section 20. Section 32-9-123, MCA, is amended to read:

"32-9-123. Surety bond or net worth requirement -- notice of legal action. (1) (a) A mortgage loan originator must be covered by a surety bond in accordance with this section. If a mortgage loan originator is an employee of ~~or exclusive agent for~~ a licensed mortgage lender or mortgage broker, the surety bond of the licensed mortgage lender or mortgage broker may be used in lieu of a mortgage loan originator's surety bond.

(b) The bond must run to the state of Montana as obligee and must run first to the benefit of the borrower and then to the benefit of the state and any person who suffers loss by reason of the obligor's or its loan originator's violation of any provision of this part or rules adopted under this part. The department shall use the proceeds of the surety bonds to reimburse borrowers, the department, or bona fide third parties who successfully demonstrate a financial loss because of an act of a mortgage broker, mortgage lender, or mortgage loan originator that violates ~~the provisions~~ any provision of this part.

(2) (a) ~~A An entity licensed as a mortgage broker, or mortgage lender, and mortgage servicer~~ is required to maintain one surety bond for each entity license.

(b) The amount of the required surety bond must be calculated by combining the annual loan production amounts for all persons originating residential mortgage loans and for all business locations of the mortgage broker or mortgage lender and must be in the following amount:

- (i) \$25,000 for a combined annual loan production that does not exceed \$50 million a year;
- (ii) \$50,000 for annual loan production of \$50 million but not exceeding \$100 million a year; or
- (iii) \$100,000 for annual loan production of more than \$100 million a year.

(c) The amount of the required surety bond for a mortgage servicer is \$100,000.

~~(3) (a) In lieu of a surety bond, a mortgage broker may meet a minimum net worth requirement.~~

~~(b) Minimum net worth must be maintained in an amount determined by the department that reflects the dollar amount of loans originated.~~

~~(c) The department shall adopt rules with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this part.~~

~~(4) Evidence that a mortgage broker is approved by the department of housing and urban development to originate loans insured by the federal housing administration must be considered as satisfying the net worth requirement provided that the actual net worth determined in the department of housing and urban development's~~

~~approval is equivalent to the bond amount set forth for the corresponding dollar amount range set forth in subsections (2)(b)(i) through (2)(b)(iii).~~

~~(5)(3) A mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator shall give notice to the department by certified mail within 15 days of the mortgage ~~broker's broker~~, mortgage lender's ~~lender~~, mortgage servicer, or mortgage loan ~~originator's originator~~ obtaining knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, a mortgage lender, a mortgage servicer, a mortgage loan originator, or anyone having an ownership interest in a mortgage broker entity, ~~or mortgage lender entity~~, or ~~a mortgage loan originator~~ mortgage servicer entity. In the case of a legal action, the notice must include a copy of the criminal or civil judgment.~~

~~(4) (a) An obligor shall give written notice to the department of any action that may be brought against it by any creditor or borrower when the action:~~

~~(i) is brought under this part;~~

~~(ii) involves a claim against the bond filed with the department for the purposes of compliance with this section; or~~

~~(iii) involves a claim for damages in excess of \$20,000 for a mortgage broker or mortgage loan originator or \$200,000 for a lender or servicer.~~

~~(b) An obligor shall give written notice to the department of any judgment that may be entered against it by any creditor or any borrower or prospective borrower.~~

~~(c) The written notice must provide details sufficient to identify the action or judgment and must be submitted within 30 days after the commencement of any action or within 30 days after the entry of any judgment.~~

~~(5) A corporate surety shall, within 10 days after it pays any claim or judgment to any claimant, give written notice to the department of the payment with details sufficient to identify the claimant and the claim or judgment paid. Whenever the principal sum of a required bond is reduced by one or more recoveries or payments on the bond, the obligor shall furnish a new or additional bond so that the total or aggregate principal sum of the bond or bonds equals the sum required under this section or the obligor shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum.~~

~~(6) A bond filed with the department for the purpose of compliance with this section may not be canceled by the obligor or the corporate surety except upon written notice to the department. The cancellation may not~~

take effect until 30 days after receipt by the department of the notice. The cancellation is effective only with respect to any occurrence after the effective date of the cancellation. (See compiler's comment regarding contingent suspension.)"

Section 21. Reports. (1) A licensee shall file a written report with the department within 30 business days of any material change to the information provided in a licensee's application.

(2) A licensee shall file a written report with the department within 1 business day after the licensee has reason to know of the occurrence of any of the following:

(a) the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. 101, et seq., for bankruptcy or reorganization;

(b) the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for the licensee's dissolution or reorganization, or the making of a general assignment for the benefit of the licensee's creditors;

(c) the licensee's decision to cease doing business for any reason;

(d) the commencement of a proceeding to revoke or suspend the licensee's license in a state in which the licensee engages in business or is licensed;

(e) the cancellation or other impairment of the licensee's or an exempt company's bond; or

(f) a felony conviction of the licensee, employee of a licensee, or control person of a licensee.

(3) A licensee shall file a written report with the department within 15 business days after the licensee has reason to know of the occurrence of any of the following:

(a) fraud, theft, or conversion by a borrower against the licensee;

(b) fraud, theft, or conversion by a licensee; or

(c) fraud, theft, or conversion by an employee or independent contractor of a licensee;

(d) violation of a provision of 32-9-124;

(e) the discharge of any employee or termination of an independent contractor for dishonest or fraudulent acts; or

(f) any administrative, civil, or criminal action initiated against the licensee or any of its control persons by any government entity.

(4) (a) In the absence of malice, fraud, or bad faith, a person may not be subjected to civil liability arising

from the filing of a complaint with the department or furnishing of other information required by this section or required by the department under the authority granted in this section.

(b) In the absence of malice, fraud, or bad faith, a civil cause of action of any nature may not be brought against a person for any information:

(i) relating to suspected prohibited acts and furnished to or received from law enforcement officials, their agents, or employees or furnished to or received from other regulatory or licensing authorities;

(ii) furnished to or received from other persons subject to the provisions of this part; or

(iii) furnished in complaints filed with the department.

Section 22. Change of control. (1) Without the prior approval of the department, it is unlawful for an action to be taken that results in a change of control of an entity licensed under this part. Prior to a change of control of a licensed entity, a person seeking to acquire control shall apply for an amendment to the license or a new license as required by the nationwide mortgage licensing system and pay all applicable fees.

(2) The department shall approve or disapprove the application for an amendment or new license in accordance with the provisions of this part.

Section 23. Section 32-9-124, MCA, is amended to read:

"32-9-124. Prohibitions -- required disclosure. (1) A mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator may not do any of the following:

(a) retain original documents owned by the borrower and submitted in connection with the loan application;

(b) directly or indirectly employ any scheme to defraud or mislead a borrower, a mortgage lender, or any other person;

(c) make any misrepresentation or deceptive statement in connection with a residential mortgage loan, including but not limited to interest rates, points, costs at closing, or other financing terms or conditions;

(d) fail to pay a bona fide third party ~~later than~~ within 30 days after recording of the loan closing documents or within 90 days after completion of the bona fide third-party service, whichever is earlier, unless otherwise agreed by the parties;

(e) accept any fees or compensation at closing that were not disclosed as required by state or federal

law;

(f) accept any fees or compensation in excess of those allowed by state or federal law;

(g) sign a borrower's application or related documents on behalf of or in lieu of another mortgage broker, mortgage lender, or mortgage loan originator;

(h) (i) assist or aid and abet any person in the conduct of business under this part without a valid license as required under this part; or

(ii) conduct any business covered by the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, without holding a valid license as required under this part;

(i) fail to comply with this part or rules promulgated under this part or fail to comply with any other state or federal laws, including the rules and regulations adopted pursuant to those laws, applicable to any business authorized by or conducted under this part;

(j) fail to account for or deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan that the mortgage lender, mortgage broker, mortgage servicer, or mortgage loan originator is not entitled to retain under the circumstances;

(k) refuse to permit an investigation or examination of the mortgage lender's, mortgage broker's, mortgage servicer's, or mortgage loan originator's books and records or refuse to comply with a department subpoena or subpoena duces tecum;

(l) knowingly withhold, abstract, remove, mutilate, destroy, alter, or keep secret any books, records, computer records, or other information from the department; or

~~(j)~~(m) 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 government agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the department or another governmental agency.

~~———— (2) A mortgage lender may not do any of the following:~~

~~———— (a) 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 property insurer;~~

~~———— (b) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:~~

~~———— (i) direct deposit to a borrower's account;~~

- ~~———— (ii) wire;~~
- ~~———— (iii) bank or certified check;~~
- ~~———— (iv) attorney's check drawn on a trust account; or~~
- ~~———— (v) other form as specifically authorized by applicable law;~~
- ~~———— (c) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;~~
- ~~———— (d) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;~~
- ~~———— (e) fail to take the actions required to effect a release of the lender's security interest in the property as described in 71-1-212;~~
- ~~———— (f) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of down payment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;~~
- ~~———— (g) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;~~
- ~~———— (h) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants; or~~
- ~~———— (i) falsely advertise or misuse names in violation of 18 U.S.C. 709.~~

~~(3)(2)~~ Prior to providing residential mortgage services to a borrower, Within 3 business days of taking an application, the mortgage loan originator working for a mortgage broker, in addition to other disclosures required by this part, ~~subsection (3),~~ and other state and federal laws, shall provide to the borrower a written disclosure containing substantially the following language, which must be signed by the borrower:

"MORTGAGE LOAN ORIGINATION DISCLOSURE

(Name of licensee) is a licensed mortgage loan originator in Montana authorized to provide mortgage loan origination services to you in connection with your real estate loan. Lenders whose loan products we distribute generally provide their loan products to us at a wholesale rate. The rate you pay may be higher.

SECTION 1. NATURE OF RELATIONSHIP. In connection with this mortgage loan:

- (1) (name of licensee) is acting as an independent contractor and not as your agent;
- (2) (name of licensee) enters into separate independent contractor agreements with various lenders; and
- (3) while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does not distribute products of all lenders or investors in the market and cannot guarantee the lowest price or best terms available.

SECTION 2. OUR COMPENSATION.

(1) The retail price (name of licensee) offers you, including the interest rate, total points, and fees, will include (name of licensee's) compensation.

(2) In some cases, (name of licensee) may be paid all of (name of licensee's) compensation by either you or the lender.

(3) Alternatively, (name of licensee) may be paid a portion of (name of licensee's) compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay more money in upfront points and fees. Also, in some cases, if you would rather pay less money up front, you may be able to pay some or all of our compensation indirectly through a higher interest rate, in which case (name of licensee) will be paid directly by the lender.

(4) (Name of licensee) may also be paid by the lender based on the value of the mortgage loan or related servicing rights in the market place or based on other services, goods, or facilities performed or provided by (name of licensee) to the lender.

By signing below, you acknowledge that you have received a copy of this disclosure."

~~(4)~~(3) The disclosure must include the address of the department's division of banking and financial institutions, the division's phone number and website, and a statement informing borrowers that the division can provide information about whether a mortgage broker or mortgage loan originator is licensed as well as other legally available information.

~~(5)~~(4) The disclosure must include the ~~state license number and the~~ unique identifier issued by the nationwide mortgage licensing system and registry for the mortgage loan originator. (See compiler's comment regarding contingent suspension.)"

Section 24. Mortgage lender prohibitions. A mortgage lender may not:

- (1) 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 property insurer;
- (2) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:
 - (a) direct deposit to a borrower's account;
 - (b) wire transfer;
 - (c) bank or certified check;
 - (d) attorney's check drawn on a trust account; or
 - (e) other form as specifically authorized by applicable law;
- (3) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;
- (4) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;
- (5) fail to take the actions required to effect a release of the lender's security interest in the property as described in 71-1-212;
- (6) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of downpayment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;
- (7) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;
- (8) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants; or
- (9) falsely advertise or misuse names in violation of 18 U.S.C. 709 or 32-1-402.

Section 25. Mortgage servicer prohibitions. A mortgage servicer may not:

- (1) fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601,

et seq., and regulations adopted under that act;

(2) fail to comply with applicable state and federal laws and regulations related to mortgage servicing;

(3) fail to provide written notice to a borrower upon taking action to place hazard, homeowner's, or flood insurance on the mortgaged property or to place the insurance when the mortgage servicer knows or has reason to know that there is insurance in effect;

(4) place hazard, homeowner's, or flood insurance on a mortgaged property for an amount that exceeds either the value of the insurable improvements or the last known coverage amount of insurance;

(5) fail to provide to the borrower a refund of unearned premiums paid by a borrower or charged to the borrower for hazard, homeowner's, or flood insurance placed by a mortgage lender or mortgage servicer if the borrower provides reasonable proof that the borrower has obtained coverage so that the forced placement is no longer necessary and the property is insured. If the borrower provides reasonable proof within 12 months of the placement that no lapse in coverage occurred so that the forced placement was not necessary, the mortgage servicer shall refund the entire premium.

(6) fail to make all payments from any escrow account held for the borrower for insurance, taxes, and other charges with respect to the property in a timely manner so as to ensure that late penalties are not assessed or other negative consequences result regardless of whether the loan is delinquent unless there are not sufficient funds in the account to cover the payments and the mortgage servicer has a reasonable basis to believe that recovery of the funds will not be possible.

Section 26. Section 32-9-125, MCA, is amended to read:

"32-9-125. Trust accounts -- bona fide third-party fees. (1) Every mortgage broker and mortgage lender that accepts borrower funds for bona fide third-party fees ~~doing business in this state~~ shall:

(a) maintain a trust account at a federally insured financial institution, and the trust account funds may not be commingled with any other funds of the mortgage broker or mortgage lender;

(b) deposit into the trust account any bona fide third-party fee that the mortgage broker or mortgage lender receives; and

(c) pay third-party fees to a bona fide third party from the trust account unless the borrower, the seller, or another person involved in the transaction pays is contractually bound to pay the bona fide third party directly.

(2) A mortgage broker or mortgage lender may not charge or receive, directly or indirectly, fees for

assisting a borrower in obtaining a mortgage until all of the services that the mortgage broker or mortgage lender has agreed to perform for the borrower are completed. A mortgage broker or mortgage lender may not charge a residential loan application fee in excess of the amount allowed by federal law. Prior to completion of services, the fees provided for in subsection (3) incurred by a bona fide third party in assisting the borrower to obtain a mortgage must be paid.

(3) The following fees must be paid by the borrower, the seller, or another person involved in the transaction directly to the bona fide third party providing the services or must be paid by the borrower, the seller, or another person involved in the transaction to the mortgage broker or mortgage lender for payment of services performed by the bona fide third party:

- (a) credit report fees;
- (b) notary fees;
- (c) title search, appraisal, or survey fees;
- (d) rate-lock fees not exceeding 3% of the mortgage loan amount; and
- (e) fees paid directly by the borrower, the seller, or another person involved in the transaction to a state or federal government agency or instrumentality for purposes of processing a mortgage application relating to a government-sponsored or guaranteed mortgage program.

(4) The department shall by rule define the meaning of "another person involved in the transaction". (See compiler's comment regarding contingent suspension.)"

Section 27. Section 32-9-126, MCA, is amended to read:

"32-9-126. Revocation, suspension, conditioning, and reinstatement of licenses. (1) The department, upon giving a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator licensee 10 days' written notice, which includes a statement of the grounds for the proposed suspension, conditioning, or revocation, and informing the licensee that the licensee has the right to be heard at an administrative hearing if requested by the licensee, may suspend, condition, or revoke a license if it finds that the licensee has violated any provision of this part.

(2) ~~All notices, hearing schedules, and orders must be mailed to the licensee by certified mail to the address for which the license was issued. The license of a licensee that refuses to make documents and records relating to the operation of the licensee available upon request by the department must be summarily suspended.~~

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) ~~The department may reinstate any suspended license if there is not a fact or condition existing at the time of reinstatement that would have justified the department's refusal to originally issue the license~~ the suspended licensee has complied with all the reinstatement conditions set forth at the time the license was suspended and if the licensee is otherwise qualified to have the license reinstated.

(5) The department may by order vacate a revocation of a license and enter an appropriate order.

(6) The department may refuse to accept a licensee's offer to surrender a license under the following circumstances:

(a) a final order has been issued in an enforcement action and the licensee has not fully complied with the order regardless of whether compliance is yet due;

(b) the licensee has violated or is under investigation for a suspected violation of this part or any rule adopted under this part;

(c) there is an enforcement action or complaint pending against the licensee; or

(d) the licensee has not made arrangements satisfactory to the department regarding loans in process at the time of the offer of surrender.

(7) A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(8) In the event of a revoked, suspended, or surrendered mortgage broker, mortgage lender, mortgage servicer, or loan originator license, fees may not be refunded by the department. (See compiler's comment regarding contingent suspension.)"

Section 28. Section 32-9-128, MCA, is amended to read:

~~"32-9-128. Registered agent for mortgage broker, mortgage lender, or mortgage loan originator licensee without physical office in state~~ Registration and registered agent of foreign entities -- service of process -- venue. (1) ~~An applicant for a mortgage broker, mortgage lender, or mortgage loan originator license under 32-9-113 who does not maintain a physical office within the state shall file, in a form prescribed by the department, an irrevocable consent appointing the department as the registered agent of the applicant for the purpose of receiving service of any lawful process in a noncriminal suit, action, or proceeding against the~~

applicant or its successors, executor, or administrator that is based on an alleged violation of this part or any administrative rule adopted pursuant to this part. Service on the department has the same force and validity as if served personally on the applicant or the person filing the consent.

~~———— (2) Service must be made by leaving a copy of the process in the office of the department and is effective only if:~~

~~———— (a) notice of the service and a copy of the process are sent by certified mail to the defendant or respondent at the last-known address on file with the department by the plaintiff, which may be the department, in an action, suit, or proceeding; and~~

~~———— (b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within a time the court allows. (1) A foreign mortgage broker, mortgage lender, or mortgage servicer shall register to do business in this state as a foreign corporation, limited liability company, limited liability partnership, or limited partnership with the secretary of state.~~

(2) A foreign mortgage broker, mortgage lender, or mortgage servicer shall provide the name and address of its registered agent for service of process to the department in order to be licensed in this state and shall notify the department in writing within 5 days of a change in the licensee's registered agent's name or address.

(3) For purposes of this part, the department is considered to have complied with the requirements of law concerning service of process upon mailing by certified mail any notice required or permitted to a licensee under this part, postage prepaid and addressed to the last-known address of the licensee's registered agent for service of process on file with the department, the last-known address of the licensee on file with the department for an in-state licensee, or in the case of an unlicensed person, the last-known address of the person.

~~(3)~~(4) In a judicial action, suit, or proceeding arising under this part or any administrative rule adopted pursuant to this part between the department and a licensee who does not maintain a physical office in this state, venue must be exclusively in Lewis and Clark County.

~~———— (4) A notice, hearing schedule, or order must be mailed to the person or licensee by certified mail at the last-known address for which the license was issued or, in the case of an unlicensed person, at the last-known address of the person. (See compiler's comment regarding contingent suspension.)"~~

Section 29. Section 32-9-129, MCA, is amended to read:

"32-9-129. Loan processors and underwriters. (1) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communication, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities pertaining to originating a residential mortgage loan.

(2) A loan processor or underwriter who is an independent contractor may not engage in mortgage loan originator activities as a loan processor or underwriter unless licensed as a mortgage loan originator under this part. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

Section 30. Section 32-9-130, MCA, is amended to read:

"32-9-130. Department authority -- rulemaking. (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable through the power of suspension or revocation of licenses.

(2) The rules must address:

(a) revocation or suspension of licenses for cause;

(b) investigation of applicants, licensees, and unlicensed persons alleged to have violated a provision of this part and handling of complaints made by any person in connection with any business transacted by a licensee;

(c) (i) ensuring that all persons are informed of their right to contest a decision by the department under the Montana Administrative Procedure Act; and

(ii) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs;

(d) prescribing forms for applications; and

(e) establishing fees for license renewals.

(3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.

(4) (a) For the purposes of investigating violations or complaints arising under this part or for the purposes of examination, the department may review, investigate, or examine any licensee or person subject to

this part as often as necessary in order to carry out the purposes of this part.

(b) The commissioner may direct, subpoena, or order the attendance of and may examine under oath any person whose testimony may be required about the subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner considers relevant to the inquiry.

(5) Each licensee or person subject to this part shall make available to the department upon request the documents and records relating to the operations of the licensee or person. The department may access the documents and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, or customers of the licensee or person concerning the business of the licensee or person or any other person having knowledge that the department considers relevant.

(6) (a) The department may conduct investigations and examinations for the purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation, or license termination or to determine compliance with this part.

(b) The department has the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including but not limited to:

(i) criminal, civil, and administrative history information, including confidential criminal justice information as defined in 44-5-103;

(ii) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and

(iii) any other documents, information, or evidence the department considers relevant to an inquiry or investigation regardless of the location, possession, control, or custody of the documents, information, or evidence.

(7) (a) The total cost for any examination or investigation must be in accordance with fees determined by the department by rule pursuant to this section and may include expenses for necessary travel outside the state for the purposes of conducting the examination or investigation. The fees set by the department must be commensurate with the cost of the examination or investigation. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of conducting examinations and investigations.

(b) The cost of an examination or investigation must be paid by the licensee or person within 30 days after the date of the invoice. Failure to pay the cost of an examination or investigation when due must result in the suspension or revocation of a licensee's license.

(8) (a) The department may:

(i) exchange information with federal and state regulatory agencies, the attorney general, the consumer protection office of the department, and the legislative auditor;

(ii) exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations; and

(iii) refer any matter to the appropriate law enforcement agency for prosecution of a violation of this part.

(b) To carry out the purposes of this section, the department may:

(i) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce the regulatory burden by sharing resources, adopting standardized or uniform methods or procedures, and sharing documents, records, information, or evidence obtained under this ~~section~~ part, including agreements to maintain the confidentiality of information under laws, rules, or evidentiary privileges of another state, the federal government, or this state;

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

(iii) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this part;

(iv) accept and rely on examination or investigation reports by other government officials, within or outside of this state, without the loss of any privileges or confidentiality protection afforded by state or federal laws, rules, or evidentiary privileges that cover those reports;

(v) accept audit reports made by an independent certified public accountant for the licensee or person subject to this part if the examination or investigation covers at least in part the same general subject matter as the audit report and may incorporate the audit report in the report of the examination, report of the investigation, or other writing of the department under this part; and

(vi) assess against the licensee or person subject to this part the costs incurred by the department in conducting the examination or investigation.

(c) Except as provided in 32-9-160 and subsection (8)(a)(i) of this section, the department shall treat all

confidential criminal justice information as confidential unless otherwise required by law.

~~(9) The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker and mortgage lender and a roster of all mortgage loan originators and designated managers and the name of their employing mortgage brokers or employing mortgage lenders. The roster must be available to interested persons and to the general public.~~

~~(10)(9)~~ Pursuant to section 1508(d) of the of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized to:

- (a) supervise and enforce the provisions of this part, including the suspension, termination, revocation, or nonrenewal of a license for violation of state or federal law;
- (b) participate in the nationwide mortgage licensing system and registry;
- (c) ensure that all mortgage broker, mortgage lender, and mortgage loan originator applicants under this part apply for state licensure and pay any required nonrefundable fees to and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry; and
- (d) regularly report violations of state or federal law and enforcement actions to the nationwide mortgage licensing system and registry.

~~(11)(10)~~ (a) The department may, if the U.S. department of housing and urban development determines that a provision of this part does not meet the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, or that additional persons are subject to this part, refrain from enforcing the provision that is determined to be noncompliant and shall by rule invalidate any noncompliant exemption to this part or require that additional persons be temporarily subject to this part to be compliant with federal law, including the provisions for licensure and registration with and maintenance of a valid unique identifier with the nationwide mortgage licensing system and registry.

(b) The department shall propose to the regular session of the legislature that follows the determination by the U.S. department of housing and urban development legislation to address the incompatibility with federal law. The provisions that the United States department of housing and urban development determines to not be in compliance with the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Public Law 110-289, must be amended in the correcting legislation.

(11) The department may be approved by the nationwide mortgage licensing system and registry as a

provider of educational courses. If the department chooses to become an approved provider of educational courses, it may charge fees to attendees. The amount of the fees must be set by rule and must be commensurate with the total course costs, including the costs of becoming an approved provider. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of presenting education courses. (See compiler's comment regarding contingent suspension.)"

Section 31. Section 32-9-133, MCA, is amended to read:

"32-9-133. Penalties -- restitution. (1) If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative of the person or licensee, whether licensed or unlicensed, has violated any of the provisions of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed \$5,000 for the first violation and not to exceed \$10,000 for each subsequent violation.

(2) The department may issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action. In addition, the department may issue an order revoking, conditioning, or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan origination business.

(3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record.

(4) The fines must be deposited in the department's account in the state special revenue fund and used to administer the provisions of this part.

(5) In addition to the penalties in subsection (1), a person practicing as a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be punished by a fine of not less than \$250 or more than \$1,000, by

imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate offense. (See compiler's comment regarding contingent suspension.)"

Section 32. Section 32-9-145, MCA, is amended to read:

"32-9-145. Escrow fund. (1) An escrow fund authorized for any purpose by a mortgage loan contract is subject to applicable state and federal requirements. Money received from a borrower by a mortgage lender or mortgage servicer licensed under this part must be considered as held in trust immediately upon receipt. The mortgage lender or mortgage servicer shall place escrow funds in a depository institution prior to the end of the third business day following their receipt.

(2) An escrow fund account must be a separate account established to hold only borrowers' funds. The account must be designated and maintained for the benefit of borrowers. Escrow funds may not be commingled with any other funds.

(3) Escrow funds must be kept in the segregated account until disbursement. Money maintained in an escrow fund account is exempt from execution, attachment, or garnishment.

(4) A licensee may not encumber the corpus of an escrow fund account or commingle other operating funds with account funds.

(5) An escrow fund account may be used only for:

(a) a payment authorized by the borrower or the mortgage loan contract or required by federal or state law;

(b) a refund to the borrower;

(c) transfer to a depository institution;

(d) transfer to the appropriate mortgage lender or mortgage servicer in the case of a transfer of servicing;

(e) a purpose authorized by the mortgage loan contract; or

(f) purposes of complying with an order issued by the commissioner or a court.

(6) Accounting for escrow funds must be performed in compliance with the aggregate accounting rules established in regulation X, 24 CFR 3500, and in compliance with 71-1-115. (See compiler's comment regarding contingent suspension.)"

Section 33. Section 32-9-148, MCA, is amended to read:

"32-9-148. Disclosure of mortgage costs by mortgage lender. (1) ~~Within 3 business days of taking a mortgage loan application and prior to receiving any consideration from the borrower, the~~ A mortgage lender shall disclose the terms of the loan to the borrower in compliance with the disclosure requirements of the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and any regulations promulgated under those acts.

(2) A mortgage lender shall disclose the terms of any prepayment penalty on the mortgage loan, including the amount of the prepayment penalty or the formula for calculating the prepayment penalty. ~~If the initial mortgage loan offer does not include a prepayment penalty, but a prepayment penalty is later included in the mortgage loan offer, disclosure of the terms of the prepayment penalty must be made within 3 business days of the prepayment penalty being added to the mortgage loan offer.~~ A mortgage lender shall comply with federal laws and rules regarding prepayment penalties.

(3) A licensed mortgage lender may not require a borrower to pay any fees or charges prior to the mortgage loan closing, except:

(a) charges to be incurred by the mortgage lender on behalf of the borrower for services from third parties necessary to process the application, such as credit reports and appraisals;

(b) an application fee;

(c) an interest rate lock-in fee if the borrower is provided an interest rate lock-in agreement, the terms of which must include but are not limited to:

(i) the expiration date of the interest rate lock-in agreement;

(ii) the principal amount of the mortgage loan, the term of the mortgage loan, and identification of the residential real estate;

(iii) the initial interest rate and the discount points to be paid; and

(iv) the amounts and payment terms of the interest rate lock-in, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund; and

(d) a loan commitment fee, upon approval of the mortgage loan application, if the borrower is provided with a loan commitment in writing that is signed by the mortgage lender and the borrower and the terms include the terms and conditions of the mortgage loan as well as the terms and conditions of the loan commitment, including but not limited to:

(i) the time period during which the loan commitment is irrevocable and may be accepted by the borrower, which may not be less than 7 calendar days from the date of the loan commitment or the date of mailing, whichever is later;

(ii) the amount and payment terms of the loan commitment fee, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund;

(iii) the expiration date of the loan commitment;

(iv) conditions precedent to closing; and

(v) the terms and conditions, if any, for obtaining a refund of fees for third-party services or arranging for the transfer of third-party service work products to another mortgage lender.

(4) Any amount collected under subsection (3) in excess of the actual costs must be returned to the borrower within 60 days after rejection, withdrawal, or closing.

(5) (a) Except as provided in subsection (5)(b), fees or charges collected pursuant to this section, other than fees for third-party services collected pursuant to subsection (3)(a), must be refunded if a valid loan commitment is not produced or if closing does not occur.

(b) Applicable fees may be retained by the licensee in accordance with the terms of the loan commitment upon the licensee's ability to demonstrate any of the following:

(i) the borrower withdraws the mortgage loan application after the lender has issued a loan commitment on the same terms and conditions disclosed to the borrower on the most recent good faith estimate;

(ii) the borrower has made a material misrepresentation or omission on the mortgage loan application;

or

(iii) the borrower has failed to provide documentation necessary to the processing or closing of the mortgage loan application and closing does not occur without fault of the lender. (See compiler's comment regarding contingent suspension.)"

Section 34. Mortgage servicer duties. In addition to any duties imposed by other statutes or the common law, a mortgage servicer 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) file with the department a complete, current schedule of the ranges of costs and fees the mortgage servicer charges borrowers for servicing-related activities with the mortgage servicer's application and renewal and with any supplemental filings made from time to time;

(5) file with the department upon request a report in a form and format acceptable to the department detailing the mortgage servicer's activities in this state, including:

(a) the number of mortgage loans the mortgage servicer is servicing;

(b) the type and characteristics of the loans in this state;

(c) the number of serviced loans in default, along with the breakdown of 30-day, 60-day, and 90-day delinquencies;

(d) information on loss mitigation activities, including details on workout arrangements undertaken; and

(e) information on foreclosures in this state;

(6) at the time the mortgage servicer accepts assignment of servicing rights for a mortgage loan, disclose to the borrower:

(a) any notice required under federal law or regulation;

(b) a schedule of the ranges and categories of the mortgage servicer's costs and fees for its servicing-related activities, which may not exceed those reported to the department; and

(c) a notice in the form and content acceptable to the department that the mortgage servicer is licensed in Montana and that complaints about the mortgage servicer may be submitted to the department; and

(7) in the event of a delinquency or other act of default on the part of the borrower, act in good faith to inform the borrower of the facts concerning the loan and the nature and extent of the delinquency or default and, if the borrower replies, negotiate with the borrower, subject to the mortgage servicer's duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout pertaining to the delinquency or default.

Section 35. Section 32-9-150, MCA, is amended to read:

"32-9-150. Unique identifier for mortgage brokers, mortgage lenders, mortgage servicers, mortgage loan originators, and registered mortgage loan originators. (1) Each licensed mortgage broker, mortgage lender, mortgage servicer, and mortgage loan originator shall post the mortgage broker's, mortgage lender's, mortgage servicer's, or mortgage loan originator's unique identifier in a conspicuous place within the

office where the licensee principally transacts business.

(2) The department shall ~~post on its website the names of all licensees, together with their license numbers. In conjunction with that posting, the department shall also provide the unique identifier of all licensed mortgage brokers, mortgage lenders, and mortgage loan originators so that consumers, borrowers, and the public may access that information for use in conjunction with the nationwide mortgage licensing system and registry provide a link to the consumer access portion of the nationwide mortgage licensing system and registry on the department's website.~~

~~— (3) The department shall also post on its website the names and unique identifiers of all registered mortgage loan originators conducting business in the state. (See compiler's comment regarding contingent suspension.)"~~

Section 36. Section 32-9-151, MCA, is amended to read:

"32-9-151. Mortgage call reports. (1) ~~Each mortgage broker and mortgage lender entity licensee~~ shall submit to the nationwide mortgage licensing system and registry reports of condition, which must be in the form and must contain information that the nationwide mortgage licensing system and registry may require.

(2) Each mortgage loan originator shall ensure that all residential mortgage loans that close as a result of the mortgage loan originator's loan origination activities are included in the report of condition submitted to the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

Section 37. Section 32-9-160, MCA, is amended to read:

"32-9-160. Confidentiality. (1) (a) Except as otherwise provided in section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry and any privilege arising under federal or state law, including the rules of a federal or state court, pertaining to the information or material continue to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry.

(b) Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority and with the board of governors of the federal reserve system without the loss of

confidentiality protections or the loss of privilege provided by federal law, the Montana constitution, or Montana law.

(2) The department 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 associations representing governmental agencies as established by rule of the department.

(3) Information or material subject to confidentiality or a privilege under subsection (1) is not subject to:

(a) disclosure under a federal or state law governing disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) subpoena, discovery, or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system and registry concerning the information or material, the person to whom the information or material pertains waives, in whole or in part, that privilege.

(4) Montana law relating to the disclosure of confidential supervisory information or information or material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements of section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289.

(5) Examination reports, information contained in examination reports, and examiners' work papers are confidential material that retain their status as trade secrets or confidential proprietary information of the entities that are the subject of the reports despite having been compelled to be produced to the state for examination purposes. Confidential material is not subject to public inspection, subpoena, or discovery. To the extent that examination reports, work papers, and other confidential material contain personal financial information and personal identification information of individuals, those individuals retain a reasonable expectation of privacy in their personal financial or personal identification information, subject to the licensee's and any uninformed person's reasonable expectation of privacy and; although filed with the department as provided in this part, are that information is not subject to public inspection, subpoena, or discovery except as directed by a court of law.

(6) This section does not apply to information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage servicers, mortgage brokers, and mortgage loan originators included in the nationwide mortgage licensing system and registry that is available for public access. (See compiler's comment regarding contingent suspension.)"

Section 38. Repealer. The following sections of the Montana Code Annotated are repealed:

- 32-9-114. Provisional licenses and previously licensed persons.
- 32-9-127. Compliance of current mortgage brokers, mortgage lenders, and mortgage loan originator licensees with background check and minimum standards -- renewals.

Section 39. Codification instruction. [Sections 8, 21, 22, 24, 25, and 34] are intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [sections 8, 21, 22, 24, 25, and 34].

- END -

I hereby certify that the within bill,
HB 0090, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2011.

President of the Senate

Signed this _____ day
of _____, 2011.

HOUSE BILL NO. 90
INTRODUCED BY W. MCNUTT
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

AN ACT GENERALLY REVISING MONTANA MORTGAGE LAWS; CHANGING THE NAME OF THE MONTANA MORTGAGE BROKER, MORTGAGE LENDER, AND MORTGAGE LOAN ORIGINATOR LICENSING ACT TO THE MONTANA MORTGAGE ACT; REVISING DEFINITIONS; DEFINING AND PROVIDING FOR THE LICENSING AND REGULATION OF MORTGAGE SERVICERS; REVISING THE MONTANA MORTGAGE ACT TO CONFORM TO FEDERAL LAW; REVISING APPLICATION AND LICENSING REQUIREMENTS; REDUCING THE REQUIRED HOURS FOR CONTINUING EDUCATION; REVISING RECORDKEEPING AND REPORTING REQUIREMENTS; REVISING BONDING REQUIREMENTS; REVISING DISCLOSURE REQUIREMENTS; PROHIBITING CERTAIN ACTS BY MORTGAGE LENDERS AND MORTGAGE SERVICERS; EXPANDING THE DEPARTMENT OF ADMINISTRATION'S RULEMAKING AUTHORITY; AMENDING SECTIONS 31-1-202, 32-5-102, 32-7-103, 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-105, 32-9-106, 32-9-107, 32-9-112, 32-9-113, 32-9-116, 32-9-117, 32-9-118, 32-9-120, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-125, 32-9-126, 32-9-128, 32-9-129, 32-9-130, 32-9-133, 32-9-145, 32-9-148, 32-9-150, 32-9-151, AND 32-9-160, MCA; AND REPEALING SECTIONS 32-9-114 AND 32-9-127, MCA.