

SB 346 AMENDMENT

Presented by: Greg Van Horssen, State Farm Insurance Companies

A BILL FOR AN ACT ENTITLED "AN ACT REVISING MORTGAGE LOAN ORIGINATOR LAWS APPLYING TO DESIGNATED MANAGERS; AMENDING THE DEFINITION OF DESIGNATED MANAGER; AMENDING THE EXPERIENCE REQUIREMENT FOR CERTAIN DESIGNATED MANAGERS; AND AMENDING ALLOWING A MORTGAGE BROKER TO APPOINT AS ITS DESIGNATED MANAGER AN EMPLOYEE OF A FEDERALLY CHARTERED SAVINGS BANK UNDER CERTAIN CONDITIONS; AND AMENDING SECTIONS 32-9-116 103 AND 32-9-122 109, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA

(Refer to Introduced Bill)

*Strike everything after the enacting clause and insert:***Section 1: MCA 32-9-103 is amended as follows:****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 loan in the mortgage industry, without performing any analysis of the information, and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.
- (2) "Advertising" means a commercial message in any medium that promotes, either directly or indirectly, a residential mortgage lending transaction.
- (3) "Application" means a request, in any form, for an offer of residential mortgage loan terms or a response to a solicitation of an offer of residential mortgage loan terms and includes the information about the borrower that is customary or necessary in a decision on whether to make such an offer.
- (4) "Approved education course" means any course approved by the NMLS.
- (5) "Approved test provider" means any test provider approved by the NMLS.
- (6) "Bona fide not-for-profit entity" means an entity that:
 - (a) maintains tax-exempt status under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(4);
 - (b) promotes affordable housing or provides homeownership education or similar services;
 - (c) conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;
 - (d) receives funding and revenue and charges fees in a manner that does not create incentives for the entity or its employees to act other than in the best interests of its clients;
 - (e) compensates employees in a manner that does not create incentives for employees to act other than in the best interests of clients;
 - (f) provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided

under government housing assistance programs. For purposes of this subsection (6)(f), for residential mortgage loans to have terms that are favorable to the borrower, the department shall determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context.

(g) is either certified by the U.S. department of housing and urban development or has received a community housing development organization designation as defined in 24 CFR 92.2.

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

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

(9) "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.

(10) "Commercial context" means that an individual who acts as a mortgage loan originator does so for the purpose of obtaining profit for an entity or individual for which the individual acts, including a sole proprietorship or other entity that includes only the individual, rather than exclusively for public, charitable, or family purposes.

(11) (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 or is an individual that occupies a similar position or performs a similar function;

(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.

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

(13) "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

(14) "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:

(a) with at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator; or

(b) who meets the requirements of 32-9-109(3).

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

(16) "Entity" means a business organization, including a sole proprietorship.

(17) "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.

(18) "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.

(19) "Expungement" means a court-ordered process that involves the destruction of documentation related to past arrests and convictions.

(20) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the national credit union administration, or the federal deposit insurance corporation.

(21) "Housing finance agency" includes the Montana board of housing provided for in 2-15-1814.

(22) "Independent contractor" means an individual who performs duties other than at the direction of and subject to the supervision and instruction of another individual who is licensed and registered in accordance with this part or who is not required to be licensed in accordance with 32-9-104(1)(b), (1)(d), or (1)(g).

(23) "Individual" means a natural person.

(24) "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.

(25) "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.

(26) (a) "Loan processor or underwriter" means an individual who, with respect to the origination of a residential mortgage loan, performs administrative or clerical tasks as an employee at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

(b) For the purposes of subsection (26)(a), "origination of a residential mortgage loan" means all activities related to a residential mortgage loan from the taking of a residential mortgage loan application through the completion of all required loan closing documents and funding of the residential mortgage loan.

(27) "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.

(28) (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 (28), 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.

(29) "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.

(30) (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).

(31) "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.

(32) "Nationwide mortgage licensing system and registry" or "NMLS" means a licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration and licensing of persons providing nondepository financial services.

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

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

(35) "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 (35)(a) through (35)(d).

- (36) "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 wholly 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 NMLS.
- (37) "Regularly engage" means that a person:
- (a) has engaged in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator on more than 12 residential mortgage loans in the previous calendar year or expects to engage in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator on more than 12 residential mortgage loans in the current calendar year; or
 - (b) has served as the prospective source of financing or performed other phases of loan originations on more than 12 residential mortgage loans in the previous calendar year or expects to serve as the prospective source of financing or perform some other phases of loan origination on more than 12 residential mortgage loans in the current calendar year.
- (38) "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 or on residential real estate located in Montana.
- (39) "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.
- (40) "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.
- (41) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLS. *(See part compiler's comment regarding contingent suspension.)*

Section 2: MCA 32-9-109 is amended as follows:

32-9-109. Experience requirements. (1) An individual may not act as a designated manager without a minimum of 3 years of experience working as a mortgage loan originator or in a related field.

(2) The department shall by rule establish what constitutes work in a related field.

(3) If a mortgage broker is under an exclusive written contract with and originates residential mortgage loans solely on behalf of one federally-chartered savings bank, and holds a current

insurance producer license under Title 33, Chapter 17 that is not suspended or revoked, and has a current notice of appointment under 33-17-231 from an insurer that controls, is controlled by, or is under common control with the same federally-chartered savings bank, that exclusive contract and licensing is sufficient to meet the requirements of subsection (1).

(See part compiler's comment regarding contingent suspension.)

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