

SENATE BILL NO. 402
INTRODUCED BY V. COCCHIARELLA

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA MORTGAGE BROKER AND LOAN ORIGINATOR LICENSING ACT; PROVIDING DEFINITIONS; ESTABLISHING LICENSING REQUIREMENTS; REQUIRING RECORD RETENTION, SURETY BONDS, AND THE MAINTENANCE OF TRUST ACCOUNTS; PROHIBITING CERTAIN ACTIVITIES AND PROVIDING PENALTIES; AUTHORIZING RULEMAKING BY THE DEPARTMENT OF ADMINISTRATION; PROVIDING FOR SUSPENSION, REVOCATION, AND REINSTATEMENT OF LICENSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Short title and purpose. (1) [Sections 1 through 22] may be cited as the "Montana Mortgage Broker and 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 residential mortgage brokers and 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.

NEW SECTION. Section 2. License requirement. A person or entity may not act as a residential mortgage broker or loan originator unless licensed under the provisions of [sections 1 through 22].

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 22], the following definitions apply:

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

(2) "Borrower" means an individual who is solicited to purchase or who purchases the services of a mortgage broker for other than commercial mortgage lending.

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

(4) "Designated manager" means a person employed by a mortgage broker entity, other than a sole proprietorship, as the person responsible for operating the business at the location where the person is employed. A designated manager must be licensed as a mortgage broker.

(5) "Lender" means an entity that funds or services a residential mortgage loan.

(6) "Loan originator" means a licensed individual employed by a mortgage broker to assist borrowers in obtaining a residential loan.

(7) "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.

(8) "Mortgage banker" means a person or entity that makes, services, or buys and sells mortgage loans and that may be required to submit audited financial statements to the United States department of housing and urban development, the United States department of veterans affairs, the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association.

(9) "Mortgage broker" means a person or entity that provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for the borrower that is to be secured by a residential dwelling for between one and four families located on real property purchased by the borrower with the loan provided by the lender.

(10) "Originate" means:

(a) to negotiate or arrange or to offer to negotiate or arrange a mortgage loan between a borrower and a person or entity that makes or funds mortgage loans;

(b) to issue a commitment for a mortgage loan to a borrower; or

(c) to place, assist in placing, or find a mortgage loan for a borrower.

(11) "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 and that is maintained solely for the holding and payment of bona fide third-party fees.

NEW SECTION. Section 4. Exemptions. The provisions of [sections 1 through 22] do not apply to:

(1) a person or entity that makes or collects loans, to the extent that those activities are subject to licensure or registration by this state under other provisions of Montana law unless the person or entity is also acting as a mortgage broker or loan originator;

(2) a bank or trust company chartered under Title 32, chapter 1, a bank or trust company chartered under the National Bank Acts in Title 12 of the United States Code, a building and loan association chartered under Title

32, chapter 2, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under Title 32, chapter 3, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code;

(3) a person or entity engaged solely in commercial mortgage lending;

(4) a political subdivision or governmental entity of the United States or any state of the United States;

or

(5) a mortgage banker, except that a mortgage banker that also provides services as a mortgage broker must be licensed as a mortgage broker with respect to those mortgage broker services.

NEW SECTION. Section 5. Overall licensing requirements. All persons and entities desiring to conduct business as a mortgage broker or to work as a loan originator shall apply to the department for a license and pay a license fee under the provisions of [sections 1 through 22] by July 1, 2004. Except as provided in [section 8], applicants shall comply with all requirements of [sections 1 through 22], including but not limited to requisite work experience, successful completion of an examination, and completion of an application approved by the department.

NEW SECTION. Section 6. Experience requirements. (1) Except as provided in [section 8]:

(a) an individual applying for a license as a mortgage broker must have a minimum of 3 years of experience working as a loan originator or in a related field; and

(b) an individual applying for a license as a loan originator must have a minimum of 6 months of experience working in a related field.

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

NEW SECTION. Section 7. Examination requirements. (1) Except as provided in [section 8], all individuals seeking a mortgage broker's license as a sole proprietor or as the designated manager of a mortgage broker business and individuals seeking a loan originator's license must submit to an examination provided for by the department. The department may use a third party to perform examination and grading services.

(2) The examination must be designed to demonstrate that the applicant possesses competency to originate loans. The test may cover subject matter areas including but not limited to:

(a) knowledge of [sections 1 through 22];

(b) knowledge of disclosures and protections that borrowers are entitled to by state and federal law;

(c) the ability to read, understand, and explain appraisal basics, credit reports, and title commitments;
and

(d) the ability to evaluate credit, calculate a basic debt-to-income ratio, calculate loan-to-value ratios, and complete a basic loan application.

NEW SECTION. Section 8. Exception to experience and examination requirements. A person providing services as a mortgage broker or an individual acting as a loan originator on or before December 31, 2002, must be licensed by the department in the same capacity as that person was operating on or before December 31, 2002. However, by July 1, 2004, the person or individual shall apply to the department for the appropriate license, pay the required fees, and have the application approved by the department. A person or individual entitled to licensure under this section is not subject to the experience requirements of [section 6] or the examination requirements of [section 7].

NEW SECTION. Section 9. Application for mortgage broker license. (1) An application for a mortgage broker license must include:

(a) the proposed location of the business, with a photograph of each location at which business will be transacted. If the business is to be conducted out of a residence, verification must be supplied concerning compliance with all zoning laws and regulations.

(b) (i) the name and address of the sole proprietor;

(ii) the name and address of each partner; or

(iii) the name and address of any person that owns 5% or more of a mortgage broker entity that is other than a sole proprietorship or partnership;

(c) evidence of an irrevocable letter of credit or surety bond required by [section 15];

(d) a statement as to whether the applicant or, to the best of the applicant's knowledge, any shareholder, member, partner, designated manager, or employee of the applicant is currently under investigation, has been convicted of or has pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing; and

(e) evidence that the designated manager meets the requirements for licensure as a mortgage broker.

(2) The department shall investigate each applicant. The investigation shall include a criminal records check based on the fingerprints of each individual applicant and a civil records check. The department shall require each individual applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency,

and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential, and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation.

NEW SECTION. Section 10. Application for loan originator license -- employment of loan originator. (1) An application for a loan originator license must include:

(a) the name and address of the applicant;

(b) evidence of the applicant's experience and knowledge of the mortgage industry; and

(c) a statement as to whether the applicant is under investigation, has been convicted of or pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing.

(2) The department shall investigate each applicant. The investigation shall include a criminal records check based on the fingerprints of the applicant and a civil records check. The department shall require each applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation.

(3) A loan originator may transact business only for an employing mortgage broker licensed in accordance with the provisions of [sections 1 through 22]. Each original license issued to a loan originator must be provided to and maintained by the employing mortgage broker at the mortgage broker's main office. A copy of the loan originator's license must be displayed at the office where that loan originator principally transacts business.

(4) If the employment of a loan originator is terminated, the mortgage broker shall return the loan originator's license to the department within 5 business days after the termination. For a period of 6 months after

the termination of employment, the loan originator may request the transfer of the license to another mortgage broker by submitting a relocation application to the department, along with a fee established by the department by rule. The return of the license of any loan originator to the department that is not transferred to another mortgage broker terminates the right of the loan originator to engage in any residential mortgage loan origination activity until department procedures have been followed to reinstate the license. The license of any loan originator that has been returned to the department and not transferred within 6 months of termination of employment must be canceled.

NEW SECTION. Section 11. Fees -- license renewal -- disposition of fees. (1) A mortgage broker shall pay an initial nonrefundable license application fee of \$500 for each business location in this state. A loan originator shall pay an initial nonrefundable license application fee of \$200. The department shall prorate the license fee for initial licenses that will be valid for less than a full year.

(2) The license of a mortgage broker or loan originator is valid for a 1-year period and expires on June 30. Every licensee shall, on or before May 31 of the year, pay to the department a renewal fee in an amount set by the department by rule. The fees set by the department must be commensurate with the costs of processing the renewal applications. Failure to submit required information or fees within the time prescribed automatically revokes the license.

(3) An application for renewal must be accompanied by evidence that the continuing education requirements provided for in [section 12] have been met and that there has not been a material change in the status of the licensee in the preceding 12 months.

(4) All 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 [sections 1 through 22].

NEW SECTION. Section 12. Continuing education requirements. All loan originators, all sole proprietor mortgage brokers, and all designated managers shall complete and submit to the department evidence of at least 12 hours of continuing education every year at the time they submit their license renewal applications. The 12 hours of continuing education must be in courses or programs of study approved by the department and in areas established by the department by rule.

NEW SECTION. Section 13. In-state office requirement -- records maintenance -- advertising requirement. (1) A person or entity licensed as a mortgage broker shall maintain at least one physical office

located in this state. Licensees shall maintain copies of residential mortgage loan files and trust account records at the Montana office location where services are provided. Each office location must have at least one phone line. Licensees shall pay state income tax on all income earned in Montana.

(2) A mortgage broker 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 shall maintain trust account records for a minimum of 5 years.

(3) A licensee shall disclose in any printed, published, televised, e-mail, or internet advertisement for the provision of services the name and address of the licensee and the number designated on the license issued to the licensee by the department.

NEW SECTION. Section 14. Requirement for designated manager. (1) A mortgage broker that is not a sole proprietorship shall designate to the department a licensed mortgage broker within its organization as the designated manager of the organization.

(2) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker shall designate another licensed mortgage broker as designated manager and shall submit information in writing to the department establishing that the subsequent designated manager is in compliance with the provisions of [sections 1 through 22].

NEW SECTION. Section 15. Irrevocable letter of credit or surety bond -- notice of legal action. (1) A mortgage broker entity shall maintain at all times an irrevocable letter of credit or surety bond, naming the department as a beneficiary, in the amount of \$25,000.

(2) The mortgage broker shall give notice to the department by certified mail within 15 days of the mortgage broker's knowledge of the initiation of an investigation or the entry of a plea or 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, anyone having an ownership interest in a mortgage broker entity, or a loan originator. In the case of a legal action, the notice must include a copy of the criminal or civil plea or judgment.

NEW SECTION. Section 16. Prohibitions -- required disclosure. (1) A mortgage broker or 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 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; or

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

(2) Prior to providing mortgage broker services to a borrower, the licensee, in addition to other disclosures required by [sections 1 through 22] and other state and federal laws, shall provide to the borrower at the time of application 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 broker in Montana authorized to provide mortgage brokerage 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."

NEW SECTION. Section 17. Trust accounts -- fees other than bona fide third-party fees. (1) Every mortgage broker doing business in this state shall:

(a) maintain a trust account at a financial institution located in this state whose deposits or shares are insured, and the trust account funds may not be commingled with any other funds of the mortgage broker;

(b) deposit into the trust account any bona fide third-party fee that the mortgage broker receives unless the borrower pays the bona fide third party directly; and

(c) pay third-party fees to a bona fide third party from the mortgage broker's trust account unless the borrower pays the bona fide third party directly.

(2) A mortgage broker 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 has agreed to perform for the borrower are completed. A mortgage broker 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 directly by the borrower to the bona fide third party providing the services or must be deposited by the borrower, if applicable, into the mortgage broker's trust account 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 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.

NEW SECTION. Section 18. Revocation, suspension, and reinstatement of licenses. (1) The department, upon giving the licensee 10 days' written notice, which includes a statement of the grounds for the

proposed suspension 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 or revoke a license if it finds that the licensee has violated any provision of [sections 1 through 22].

(2) The department may reinstate any suspended or revoked license upon a showing that the licensee has corrected all deficiencies.

NEW SECTION. Section 19. Department authority -- rulemaking. (1) The department shall adopt rules necessary to carry out the intent and purposes of [sections 1 through 22]. 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 and licensees and handling of complaints made by any person in connection with any business transacted by a licensee;
- (c) prescribing forms for applications;
- (d) developing or approving tests to be given as a prerequisite for licensure;
- (e) approval of programs for continuing education; and
- (f) establishing fees for testing, continuing education programs, and 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 [sections 1 through 22].

(4) (a) The department may at any time investigate any transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee that the department has reason to believe is violating or is about to violate [sections 1 through 22] or other state or federal laws relating to mortgage loan practices.

(b) When conducting a financial examination or an audit of a mortgage broker entity, the department may require the mortgage broker entity to pay a fee of \$300 per day for each examiner performing the financial examination or audit.

(c) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the mortgage broker or designated manager for the mortgage broker entity may be suspended or revoked.

(5) (a) The department may exchange information with federal regulatory agencies, the attorney general, the consumer protection office of the department, and the legislative auditor.

(b) Except as provided in subsection (5)(a), the department shall treat all proprietary information of a licensee as confidential unless otherwise required by law.

(6) The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker and a roster of all loan originators and designated managers and the name of their employing brokers.

NEW SECTION. **Section 20. Access to records -- witnesses.** For the purpose of [sections 1 through 22], the department or the department's authorized representatives must be given free access to the offices and places of business and files of all mortgage brokers. The department or the department's authorized representative may require the attendance of any person and examine that person under oath relative to mortgage loans or related business or relative to the subject matter of any examination, investigation, or hearing and may require the production of books, accounts, papers, or records. In the event of disobedience to any subpoena or other process issued by the department or failure to produce any books, accounts, papers, or records, the department apply to the first judicial district court of Lewis and Clark County for an order requiring the evidence and testimony of witnesses and the production of books, accounts, papers, or records.

NEW SECTION. **Section 21. Injunctions -- receivers.** (1) Whenever the department has reasonable cause to believe that any person is violating or is threatening to violate [sections 1 through 22] or a rule adopted under [sections 1 through 22], the department may, in addition to all actions provided for in [sections 1 through 22] and without prejudice to those actions, seek an order requiring the person to desist or to refrain from the violation.

(2) An action may be brought by the department in the district court of the first judicial district, Lewis and Clark County, to enjoin the person from engaging in or continuing the violation or from doing any act or acts in furtherance of the violation. In any action, a preliminary or final injunction may be ordered as considered proper.

(3) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which the action is brought may impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, or records pertaining to the property or business, or as much of the property or business as the court considers reasonably necessary to prevent violations of [sections 1 through 22]. The receiver, when appointed and qualified, has the powers and duties as to custody, collection, administration, winding up, and liquidation of the property and business that are conferred upon the receiver by the court.

NEW SECTION. Section 22. Penalties. (1) A person who acts or offers to act in any capacity as a mortgage broker or loan originator without a license in this state or while a license is suspended or revoked is subject to the penalty provisions of subsections (3) and (5).

(2) Any person who violates a provision of [sections 1 through 22] or a rule adopted under [sections 1 through 22] is subject to the penalty provisions of subsection (3).

(3) For a first violation of subsection (1) or (2), the department may impose a fine of not less than \$5,000 or more than \$10,000. For a second or subsequent violation, the department may impose a fine of not less than \$10,000 or more than \$20,000. Each violation of the provisions of subsection (1) or (2) constitutes a separate offense.

(4) The fines must be deposited in the state general fund.

(5) A person practicing as a mortgage broker or loan originator without being licensed as required under subsection (1) 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.

NEW SECTION. Section 23. Codification instruction. [Sections 1 through 22] are intended to be codified as an integral part of Title 32, and the provisions of Title 32 apply to [sections 1 through 22].

NEW SECTION. Section 24. Effective date. [This act] is effective on passage and approval.

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