

**No. 29. An act relating to home mortgage protection for Vermonters.**

(H.171)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 8 V.S.A. chapter 73 is amended to read:

CHAPTER 73. LICENSED LENDERS

§ 2200. DEFINITIONS

As used in this chapter:

~~(1) “Bank,” shall mean institutions organized and regulated as such under the laws of the United States or any state or territory of the United States and which are engaged in the business of banking, and shall also include any Vermont financial institution as defined in subdivision 11101(65) of this title, any insured depository institution as such term is defined by the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c)(2), and a bank not organized within the United States, or a United States or state branch or agency thereof, which is conducting business pursuant to the International Banking Act of 1978, 12 U.S.C. § 3101 et seq. For purposes of this chapter, “bank” shall also include any credit unions organized and regulated as such under the laws of the United States or any state or territory of the United States.~~

~~(2)~~(1) “Commercial loan” means any loan or extension of credit that is described in section 46(1), (2) or (4) of Title 9 and that is in excess of \$25,000.00. The term does not include a loan or extension of credit for the purpose of farming, as defined in ~~section~~ subdivision 6001(22) of Title 10 and

does not include a loan or extension of credit for the purpose of financing an owner occupied one- to four-unit dwelling.

~~(3)~~(2) “Commissioner” means the commissioner of banking, insurance, securities, and health care administration.

~~(4)~~(3) “Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities or other interest of any other person.

(4) “Depository institution” has the same meaning as in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c), which includes any bank and any savings association as defined in Section 3 of the Federal Deposit Insurance Act. For purposes of this chapter, “depository institution” also includes any credit union organized and regulated as such under the laws of the United States or any state or territory of the United States.

(5) “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift

Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation or any successor of any of these.

(6) “Holder” shall have the meaning set forth in section 1-201(20) of Title 9A.

(7) “Immediate family member” means a spouse, child, sibling, parent, grandparent, or grandchild, including stepparents, stepchildren, stepsiblings, and adoptive relationships.

(8) “Individual” means a natural person.

~~(6)~~(9) “Insurance company” shall mean an institution organized and regulated as such under the laws of the state of Vermont or any state or territory of the United States.

~~(7)~~(10) “Licensee” means any person subject to the provisions of section 2201 of this title.

(11) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.

(A) For purposes of this subdivision (11), the term “clerical or support duties” may include, subsequent to the receipt of a loan application:

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

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

(B) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

~~(8)~~(12) “Mortgage broker” means any person who for compensation or gain, or in the expectation of compensation or gain, directly or indirectly negotiates, places, assists in placement, finds or offers to negotiate, place, assist in placement or find mortgage loans, other than commercial loans, on real property for others. The term shall not include real estate brokers or salespersons, as defined in section 2211 of Title 26, who in connection with services performed in a prospective real estate transaction, provide mortgage information or assistance to a buyer, if such real estate broker or real estate salesperson is not compensated for providing such mortgage information or assistance in addition to the compensation received from the seller or buyer for such real estate ~~services~~ brokerage activity. The term shall not include

attorneys licensed to practice law in this state acting in their professional capacity. The term shall not include persons engaged in the foregoing activities solely in connection with the sale, assignment, or other transfer of one or more previously originated loans.

~~(9)~~(13) “Mortgage loan” means a loan secured primarily by a lien against real estate.

(14) “Mortgage loan originator”:

(A) 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) Does not include:

(i) an individual engaged solely as a loan processor or underwriter, except as otherwise provided in subsection 2201(f) of this chapter;

(ii) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Vermont law, unless the person or entity is compensated by a buyer or a seller in addition to the compensation received for such real estate brokerage activity or is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

(iii) a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code.

(15) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators, or any successor to the Nationwide Mortgage Licensing System and Registry.

(16) “Nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

~~(10)~~(17) “Person” shall have the meaning set forth in section 128 of Title 1 and includes a natural person, corporation, company, limited liability company, partnership, or association.

(18) “Real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including:

(A) Acting as a real estate agent 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 any such transaction);

(D) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(E) Offering to engage in any activity or act in any capacity described in subdivision (A), (B), (C), or (D) of this subdivision (18).

(19) “Registered mortgage loan originator” means any individual who:

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

(i) A depository institution;

(ii) A subsidiary that is:

(I) Owned and controlled by a depository institution, as determined by a federal banking agency; and

(II) 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.

(20) “Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(21) “Residential real estate” means any real property located in Vermont, upon which is constructed or intended to be constructed a dwelling.

~~(11)~~(22) “Sales finance company” means any person who has purchased one or more retail installment contracts, as defined in sections 2351(5) and 2401(7) of Title 9, from one or more retail sellers located in this state. Taking one or more retail installment contracts as security for a loan or loans shall not be construed as purchasing for purposes of this definition.

(23) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

#### § 2201. LICENSES REQUIRED

(a) No person shall without first obtaining a license under this chapter from the commissioner:

(1) engage in the business of making loans of money, credit, goods or things in action and charge, contract for or receive on any such loan interest, a finance charge, discount or consideration therefore;



- (2) act as a mortgage broker;
- (3) act as a mortgage loan originator; or
- (4) act as a sales finance company.

(b) Each licensed mortgage loan originator must register with and maintain a valid unique identifier with the Nationwide Mortgage Licensing System and Registry and must be either:

(1) an employee actively employed at a licensed location of, and supervised and sponsored by, only one licensed lender or licensed mortgage broker operating in this state; or

(2) an individual sole proprietor who is also a licensed lender or licensed mortgage broker.

(c) A person licensed pursuant to subdivision (a)(1) of this section may engage in mortgage brokerage and sales finance if such person informs the commissioner in advance that he or she intends to engage in sales finance and mortgage brokerage. Such person shall inform the commissioner of his or her intention on the original license application under section 2202 of this title, any renewal application under section 2209 of this title, or pursuant to section 2208 of this title.

~~(e)~~(d) No lender license, mortgage broker license, or sales finance company license shall be required of:

- (1) a state agency, political subdivision, or other public instrumentality of the state;
- (2) a federal agency or other public instrumentality of the United States;
- (3) a gas or electric utility subject to the jurisdiction of the public service board engaging in energy conservation or safety loans;
- (4) a ~~bank~~ depository institution;
- (5) a pawnbroker;
- (6) an insurance company;
- (7) a seller of goods or services that finances the sale of such goods or services, other than a residential mortgage loan;
- (8) any individual who offers or negotiates the terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.
- (9) lenders that conduct their lending activities, other than residential mortgage loan activities, through revolving loan funds, that are nonprofit organizations exempt from taxation under section 501(c) of the Internal Revenue Code, and that register with the commissioner of economic development under section 690a of Title 10;
- ~~(9) lenders making only commercial loans of \$1,000,000.00 or more;~~
- (10) persons who loan, other than residential mortgage loans, an aggregate of less than \$50,000.00 in any one year at rates of interest of no more than 12 percent per annum;

~~(11) nonprofit institutions of higher education, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, that make residential mortgage loans to their employees from their own funds;~~

~~(12)~~ a seller who, pursuant to subdivision 2355(f)(1)(D) of Title 9, includes the amount paid or to be paid by the seller to discharge a security interest, lien interest, or lease interest on the traded-in motor vehicle in a motor vehicle retail installment sales contract, provided that the contract is purchased, assigned, or otherwise acquired by a sales finance company licensed pursuant to this title to purchase motor vehicle retail installment sales contracts or a bank depository institution;

~~(13)~~(12)(A) a person making an unsecured commercial loan, which loan is expressly subordinate to the prior payment of all senior indebtedness of the commercial borrower regardless of whether such senior indebtedness exists at the time of the loan or arises thereafter. The loan may or may not include the right to convert all or a portion of the amount due on the loan to an equity interest in the commercial borrower;

(B) for purposes of this subdivision ~~(13)~~(12), “senior indebtedness” means:

(i) all indebtedness of the commercial borrower for money borrowed from ~~banks~~ bank depository institutions, trust companies, ~~credit unions~~, insurance companies, and licensed lenders, and any guarantee thereof; and

(ii) any other indebtedness of the commercial borrower that the lender and the commercial borrower agree shall constitute senior indebtedness;

~~(14)~~(13) nonprofit organizations established under testamentary instruments, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and which make loans for postsecondary educational costs to students and their parents, provided that the organizations provide annual accountings to the probate court pursuant to 14 V.S.A. § 2324;

(14) any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(e) No mortgage loan originator license shall be required of:

(1) Registered mortgage loan originators, when acting for an entity described in subdivision 2200(19) of this chapter.

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's

representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

(f) Independent contractor loan processors or underwriters. A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a mortgage loan originator license. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(g) This chapter shall not apply to commercial loans of \$1,000,000.00 or more.

§ 2202. APPLICATION FOR LICENSE; LICENSE AND INVESTIGATION FEES

(a) Application for a license shall be in writing, under oath, and in the form prescribed by the commissioner, and shall contain the name and the address of the residence and place of business of the applicant, and if the applicant is a partnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, where the business is to be conducted and such further information as the commissioner may require.

(b)(4) At the time of making application, the applicant shall pay to the commissioner a fee for investigating the application and a license fee for a period terminating on the last day of the current calendar year. The following fees are imposed on applicants:

~~(A)(1) For an applicant for a lender's license, \$1,000.00 as a license fee, and \$1,000.00 as an application and investigation fee for the initial license. An additional license fee of \$100.00 shall be required of any applicant for a lender's license who also intends to engage in mortgage brokerage. An additional license fee of \$100.00 shall be required for any applicant for a lender's license who also intends to engage in sales finance.~~

~~(B) For an applicant for a mortgage broker's license, \$250.00 as a license fee, and \$250.00 as an application and investigation fee.~~

~~(C) For an applicant for a sales finance company's license, \$300.00 as a license fee, and \$250.00 For each additional lender license from the same applicant, \$500.00 as a license fee and \$500.00 as an application and investigation fee.~~

(2) For an applicant for a mortgage broker's license, ~~\$350.00~~ other than a mortgage broker that meets each of the requirements of subdivisions (b)(3)(A)–(B), \$500.00 as a license fee, and ~~\$350.00~~ \$500.00 as an application and investigation fee.

(3) For an applicant for a mortgage broker's license that meets each of

the following requirements, \$250.00 as a license fee, and \$250.00 as an application and investigation fee:

(A) The applicant is an individual sole proprietor.

(B) No person, other than the applicant, shall be authorized to act as a mortgage broker under the applicant's license.

(4) For an applicant for a mortgage loan originator license, \$50.00 as a license fee, and \$50.00 as an application and investigation fee.

(5) For an applicant for a sales finance company's license, \$350.00 as a license fee, and \$350.00 as an application and investigation fee.

~~(4) The license fee for an application submitted after September 30 of any year shall be prorated.~~

(c) In connection with an application for a license, the applicant and each officer, director, and control person of the applicant shall furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check.

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the

submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(A) An independent credit report and credit score obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act for the purpose of evaluating the applicant's financial responsibility at the time of application and may obtain additional credit reports and credit scores to confirm the licensee's continued compliance with the financial responsibility requirements of this chapter; and

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) Any other information required by the Nationwide Mortgage Licensing System and Registry or the commissioner.

§ 2203. BOND; LIQUID ASSETS REQUIRED

(a) Prior to issuance of a license, the applicant shall file with the commissioner, and shall keep in force thereafter for as long as the license remains in effect, a bond in a form and substance to be approved by the commissioner in which the applicant shall be the obligor, in such sum as the commissioner may require. The aggregate liability for any and all claims on any bond shall in no event exceed the sum thereof. No surety obligation on a bond shall be terminated unless at least 60 days' prior written notice is given by the surety to the obligor and the commissioner. When one person is issued



licenses to conduct the licensed activity at more than one office, the commissioner may accept a single bond covering all such offices. The bond shall run to the state for the use of the state and of any person or persons who may have cause of action against the obligor of such bond under the provisions of this chapter. Such bond shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this chapter and of all rules and regulations lawfully made by the commissioner hereunder, and will pay to the state and to any such person or persons any and all moneys that may become due or owing to the state or to such person or persons from such obligor under and by virtue of the provisions of this chapter. The commissioner shall require that the amount of the bonds shall be based upon the dollar amount of loans originated in Vermont and, at a minimum:

~~(1) For an applicant for a lender's license, a surety bond of \$50,000.00;~~

~~(2) For an applicant for a mortgage broker's license, a surety bond of \$25,000.00;~~

(1) For licensed lenders:

(A) who annually originate \$0.00 to \$1,000,000.00 in loans, a surety bond not less than \$50,000.00;

(B) who annually originate \$1,000,000.01 to \$15,000,000.00 in loans, a surety bond not less than \$100,000.00;

(C) who annually originate \$15,000,000.01 or more in loans, a surety bond not less than \$150,000.00.

(2) For mortgage brokers:

(A) who annually originate \$0.00 to \$2,000,000.00 in mortgage loans, a surety bond not less than \$25,000.00;

(B) who annually originate \$2,000,000.01 to \$5,000,000.00 in mortgage loans, a surety bond not less than \$50,000.00;

(C) who annually originate \$5,000,000.01 to \$15,000,000.00 in mortgage loans, a surety bond not less than \$75,000.00;

(D) who annually originate \$15,000,000.01 or more in mortgage loans, a surety bond not less than \$100,000.00.

~~(3) For an applicant for a lender's license engaged in commercial lending, a surety bond of \$100,000.00.~~

(3) The commissioner may adopt regulations modifying the minimum bond requirements set forth in this subsection.

(b) Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event that the mortgage loan originator is an employee of a person subject to this chapter, the surety bond of such licensed lender or licensed mortgage broker can be used in lieu of the mortgage loan originator's surety bond requirement, provided that the surety bond shall

provide coverage for each mortgage loan originator in an amount as prescribed in this section.

(c) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

(d) Every applicant for a lender's license shall also prove, in form satisfactory to the commissioner, that the applicant has liquid assets of \$25,000.00, or such greater amount as the commissioner may require, available for the operation of such business at the location specified in the application. Every applicant wishing to make commercial loans shall prove liquid assets in an amount of \$50,000.00 or such greater amount as the commissioner may require.

~~(e)~~(e) Notwithstanding subsections (a) and ~~(b)~~, (d) of this section, the commissioner may waive or modify the requirement for or amount of a bond or liquid asset set forth in this section, or accept other appropriate means of assuring the financial responsibility of a licensee.

#### § 2204. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

(a) Upon the filing of the application, payment of the required fees, approval of the bond, and satisfactory proof of liquid assets, the commissioner shall issue and deliver a license to the applicant upon findings by the commissioner as follows:

(1)(A) That the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter. If the applicant is a partnership or association, such findings are required with respect to each partner, member, and control person. If the applicant is a corporation, such findings are required with respect to each officer, ~~and~~ director, and control person.

(B) For purposes of this subsection, a person has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. A determination that an individual has not shown financial responsibility may include:

(i) Current outstanding judgments, except judgments solely as a result of medical expenses;

(ii) Current outstanding tax liens or other government liens and filings;

(iii) Foreclosures within the past three years;

(iv) A pattern of seriously delinquent accounts within the past three years.

(2) That allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted.

(3) That the applicant is licensed to engage in such business in its state of domicile and is in good standing in its state of domicile with its banking regulator or equivalent financial industry regulator.

(4) That the applicant, and each officer, director, and control person of the applicant, has never had a lender license, mortgage broker license, mortgage loan originator license, or similar license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation.

(5) The applicant, and each officer, director, and control person of the applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:

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

(B) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;

(C) Provided that any pardon of a conviction shall not be a conviction for purposes of this subsection.

(6) That the applicant has satisfied the surety bond and liquid asset requirement of section 2203 of this chapter.

(7) For an application for a mortgage loan originator license, the applicant has satisfied the prelicense education requirement of section 2204a of this chapter and the prelicense testing requirement of section 2204b of this chapter.

(b) If the commissioner does not find as set forth in subsection (a) of this section, the commissioner shall not issue a license. Within 60 days of filing of the completed application, the commissioner shall notify the applicant of the denial, stating the reason or reasons therefore. If after the allowable period, no request for reconsideration under ~~section~~ subsection 2205(a) of this title is received from the applicant, the commissioner shall return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application.

(c) If the commissioner makes findings as set forth in subsection (a) of this section, he or she shall issue the license within 60 days of filing the completed application. ~~The~~ Except as provided in subsection 2209(c) of this chapter with respect to a mortgage loan originator license, the license shall be in full force and effect until surrendered by the licensee, or revocation, suspension, or refusal to renew by the commissioner.

§ 2204a. MORTGAGE LOAN ORIGINATOR PRELICENSING AND  
RELICENSING EDUCATION REQUIREMENT

(a) In order to meet the prelicensing education requirement for a mortgage loan originator, a person shall complete at least 20 hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

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

(b) For purposes of subsection (a) of this section, prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Prelicensing education may be offered either in a classroom, online, or

by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (a)(1), (2), and (3) of this section for any state shall be accepted as credit toward completion of prelicensing education requirements in Vermont.

(f) A person previously licensed as a mortgage loan originator under this chapter applying to be licensed again must prove that he or she has completed all of the continuing education requirements for the year in which the license was last held.

#### § 2204b. TESTING OF MORTGAGE LOAN ORIGINATORS

(a) In order to meet the written test requirement referred to in subdivision 2204(a)(6) of this chapter, an individual applying for a mortgage loan originator license shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas,



including:

(1) Ethics;

(2) Federal law and regulation pertaining to mortgage origination;

(3) State law and regulation pertaining to mortgage origination;

(4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant.

(d) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(e) An individual may retake a test three consecutive times with each consecutive taking occurring at least 30 days after the preceding test. After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

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

originator.

§ 2205. REVIEW OF DENIAL OF APPLICATION

(a) If the application is denied, the applicant may request that the commissioner reconsider the application by making such request in writing, within 15 days of the denial, responding specifically to the commissioner's stated reason or reasons for denial. The commissioner shall then reconsider the application in light of the response stated in the request for reconsideration. Within 60 days of filing the request, upon findings as set forth in section ~~2204(a)~~ 2204 of this title, the commissioner shall issue the license.

(b) If the commissioner is unable to make findings as set forth in section ~~2204(a)~~ 2204 of this title, the commissioner shall not issue a license. Within 60 days of filing of the request for reconsideration, the commissioner shall notify the applicant of the denial, and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The applicant may request review by the superior court in Washington ~~county~~ County upon action brought in the usual form by an aggrieved party, within 15 days after written notice of the denial of the request for reconsideration.

§ 2206. CONTENTS OF LICENSE; NONTRANSFERABILITY; INACTIVE STATUS

(a) The license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a ~~partnership or association, the names of the members thereof, and if a corporation, of other than an individual,~~ the date and place of its organization or incorporation. The commissioner may issue an electronic license. The license or a copy of the electronic license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

(b) The mortgage loan originator license shall fully state the name of the individual and the individual's place of residence. The commissioner may issue an electronic license. The mortgage loan originator license shall not be transferable or assignable.

(c) The license of a mortgage loan originator that has satisfied all of the requirements of licensure, other than being employed by a licensed lender or licensed mortgage broker, may be placed in an approved inactive status.

§ 2207. ADDITIONAL BOND; LIQUID ASSETS TO BE MAINTAINED

(a) If the commissioner finds at any time that a licensee's bond is insecure, exhausted, insufficient, or otherwise doubtful, the commissioner shall require one or more additional bonds meeting the standards set forth in section 2203 of

this title. The licensee shall file the bond within ten days of the commissioner's written demand to do so.

(b) Every licensee, except as set forth in subsection (c) of this section, shall maintain at all times assets in amounts as set forth in section 2203 of this title, or in such greater amount deemed necessary by the commissioner. Assets must be either in liquid form available for the operation of or actually used in the conduct of such business at the location specified in the license.

(c) Every licensee making commercial loans shall maintain liquid assets in an amount deemed necessary by the commissioner, but in no event less than \$50,000.00.

§ 2208. ADDITIONAL PLACES OF BUSINESS; CHANGE OF PLACE OF BUSINESS; CHANGE OF MANAGEMENT OR CONTROL

(a) Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same lender, mortgage broker, or sales finance company licensee upon compliance with all the provisions of this chapter governing an original issuance of a license.

(b) Any change of location or closing of a place of business of the licensee shall require 30 days' prior written notice thereof to the commissioner. ~~Any licensed lender wishing to engage in mortgage brokerage or sales finance, when such was not disclosed to the commissioner in the original application~~

~~for a license to lend or in any renewal application, shall provide the commissioner 30 days' prior written notice thereof. Notice of such change of location or such change in activities shall be accompanied by a fee of \$100.00. Upon receipt of notice and fee, the commissioner shall attach to the license in writing the commissioner's record of the change and the date thereof, which shall be authority for the operation of such business under such license at such new location or, as the case may be, authority for the licensed lender to engage in mortgage brokerage or sales finance. No change in the place of business of a licensee to a location outside of the original state shall be permitted under the same license.~~

(c) The licensee shall notify the commissioner of any change in control of the licensee, and of every change in senior management personnel, and of every change in membership of the board of directors or control persons of the licensee within 30 days of such change.

#### § 2209. RENEWAL OF LICENSE

(a) On or before December 1 of each year, every licensee shall renew its license for the next succeeding calendar year and shall pay to the commissioner a renewal of license fee ~~for the next succeeding calendar year, and shall at~~. At a minimum, the licensee shall continue to meet the standards for license issuance under section 2204 of this title. At the same time file, the licensee shall maintain with the commissioner a bond in the ~~same~~ amount and

of the ~~same~~ character as required by section 2203 of this title or as required by the commissioner under section 2207 of this title. The license renewal fee shall be:

(1) For the renewal of lender's license, \$1,200.00. ~~For a person with ten or more licensed locations, the renewal fee under this subdivision shall be no more than \$12,000.00;~~

(2) For the renewal of a mortgage broker's license, ~~\$350.00;~~ other than a mortgage broker that meets each of the requirements of subdivision (3)(A)–(C), of this subsection, \$500.00.

(3) For the renewal of a mortgage broker's license that meets each of the following requirements, \$250.00:

(A) The mortgage broker license is held by an individual sole proprietor.

(B) No person, other than the individual sole proprietor, is authorized to act as a mortgage broker under this license.

(C) The mortgage broker originated five or fewer loans within the last calendar year.

(4) For the renewal of a sales finance company's license, \$350.00.

(5) For the renewal of a mortgage loan originator license, \$100.00.

(b) Any license originally issued on or after November 1 of the current year shall be valid for the next succeeding year.

(c) An individual holding a mortgage loan originator license must also satisfy the annual continuing education requirement of section 2209a of this title. The license of any mortgage loan originator who fails to pay the annual renewal fee or fails to satisfy all of the minimum license renewal standards by December 1 shall automatically expire on December 31.

§ 2209a. CONTINUING EDUCATION FOR MORTGAGE LOAN

ORIGINATORS

(a) In order to meet the annual continuing education requirements, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) three hours of federal law and regulations;

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

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

(b) For purposes of subsection (a) of this section, continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator, or any subsidiary or affiliate of the employer.

(d) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) A licensed mortgage loan originator:

(1) Except for section 2212 of this title and subsection (i) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

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

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

(g) A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in



subdivisions (a)(1), (2), and (3) of this section for any state shall be accepted as credit toward completion of continuing education requirements in Vermont.

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

(i) A person who otherwise meets the requirements of section 2209 of this title may make up any deficiency in continuing education as established by order, rule, or regulation of the commissioner.

§ 2210. REVOCATION, SUSPENSION OR NONRENEWAL OF LICENSE;

CEASE AND DESIST ORDERS

(a) The commissioner may deny, suspend, revoke, condition, or refuse to renew a license, or order that ~~a~~ any person or licensee cease and desist in any specified conduct if the commissioner finds that:

(1) The licensee has failed to pay the renewal of license fee, or an examination fee as provided in section 2222 of this title, or to maintain in effect the required liquid assets or the bond or bonds required under the provisions of this chapter, or to file any annual report or other report, or to comply with any lawful demand, ruling, or requirement of the commissioner;

or

(2) The licensee has violated any provisions of this chapter, sections 10403 and 10404 of this title or ~~chapters~~ chapter 4, 59, or 61 of Title 9, where applicable, or any rule, order, directive, or regulation lawfully made thereunder; or

(3) The licensee fails to meet the requirements of section 2204 or 2209 of this title, or withholds information, or fails to cooperate with an examination, or makes a material misstatement in a license application, license renewal, or any document submitted to the commissioner or to the Nationwide Mortgage Licensing System and Registry.

(4) Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner at the time of issuance, including unconscionable conduct which takes advantage of a borrower's lack of bargaining power or lack of understanding of the terms or consequences of the transaction.

(b) The commissioner may issue orders or directives to any person:

(1) To cease and desist from conducting business;

(2) To cease any harmful activities or violations of this chapter, sections 10403 and 10404 of this title, chapter 4, 59, or 61 of Title 9, where applicable, or any order, directive, rule, or regulation lawfully made thereunder;

(3) To cease business under a license or any conditional license if the commissioner determines that such license was erroneously granted or the

licensee is currently in violation of this chapter, sections 10403 and 10404 of this title, chapter 4, 59, or 61 of Title 9, where applicable, or any order, directive, rule, or regulation lawfully made thereunder;

(4) Enjoining or prohibiting any person from engaging in the financial services industry in this state;

(5) To remove any officer, director, employee, or control person;

(6) Regarding any other action or remedy as the commissioner deems necessary to carry out the purposes of this chapter.

~~(b)~~(c) The licensee shall receive 15 days' notice and an opportunity to be heard before such order shall be issued. Mailing notice to the licensee's current address as stated on the license shall be presumptive evidence of its receipt by the licensee. However, if the commissioner finds that the public safety or welfare imperatively requires emergency action, action with no prior notice or prior opportunity to be heard may be taken, pending proceedings for revocation or other action.

§ 2211. REVOCATION, SUSPENSION, OR NONRENEWAL WHERE  
MORE THAN ONE PLACE OF BUSINESS

The commissioner may revoke, suspend, or refuse to renew only the particular license with respect to which grounds for revocation, suspension, or refusal to renew may occur or exist, or, if the commissioner shall find that such grounds for revocation, suspension, or refusal to renew are of general

application to all offices, or to more than one office, operated by such licensee, the commissioner shall revoke, suspend, or refuse to renew all of the licenses issued to the licensee or such licenses as such grounds apply to, as the case may be.

§ 2212. SURRENDER OF LICENSE, NO EFFECT ON LIABILITY;  
REINSTATEMENT

(a) Any licensee may surrender any license by delivering to the commissioner the license and notice that the licensee thereby surrenders such license.

(b) Surrender shall not affect the licensee's administrative, civil, or criminal liability for acts committed prior to surrender. No revocation, suspension, refusal to renew, or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

(c) The commissioner shall have authority to reinstate revoked, suspended, expired, inactive, or nonrenewed licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked, suspended, expired, inactive, or nonrenewed if no fact or condition then exists which clearly would have warranted the commissioner in refusing originally to issue such license under this chapter, provided, however, that the commissioner shall not issue a

new license or reinstate a license to any mortgage loan originator whose license has been revoked unless the revocation order has been vacated.

§ 2213. REVIEW OF SUSPENSION, REVOCATION, OR ORDER

The commissioner's findings and order of suspension, revocation, or to cease and desist in specified conduct shall be served on the licensee. Mailing to the licensee's current address as stated on the license shall constitute such service and shall be presumptive evidence of its receipt by the licensee. Within ~~fifteen~~ 15 days of service the licensee may appeal the commissioner's decision to the superior court in Washington ~~county~~ County.

§ 2214. REGULATIONS

The commissioner is hereby authorized and empowered to make such general rules, orders, and regulations and such specific rulings, demands, and findings as may be necessary for the proper conduct of such business and the enforcement of this chapter, in addition hereto and not inconsistent herewith.

§ 2215. PENALTIES

(a) The commissioner may:

(1) Impose an administrative penalty of not more than ~~\$1,000.00~~ \$10,000.00 for each violation upon any person who violates or participates in the violation of this chapter, sections 10403 and 10404 of this title or ~~chapters~~ chapter 4, 59, or 61 of Title 9, or any lawful regulation, directive, or order issued thereunder; and

(2) Order any person to make restitution to any person ~~injured as a result of a~~ for any violation of this chapter, sections 10403 and 10404 of this title, or ~~chapters~~ chapter 4, 59, or 61 of Title 9.

(b) Each violation, or failure to comply with any directive or order of the commissioner, is a separate and distinct violation.

(c) It shall be a criminal offense, punishable by a fine of not more than ~~\$1,000.00~~ \$100,000.00, or not more than a year in prison, or both, for any person, after receipt of an order directing the licensee to cease exercising any duties and powers of a licensee, and assessing an administrative penalty under the authority of this chapter, to perform such duties or exercise such powers of any licensee until the penalty has been satisfied, or otherwise satisfactorily resolved between the parties, or the order is vacated by the commissioner or by a court of competent jurisdiction.

~~(e)~~(d)(1) Any contract of loan made in knowing and willful violation of section 2201(a)(1) of this title, shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever; provided, however, in the case of loans made in violation of section 2201(a)(1) of this title, where no finding of a knowing and willful violation is made, the lender shall have no right to collect or receive any interest or charges whatsoever, but shall have a right to collect and receive principal.

(2) In the case of any person who, after receipt of an order directing such person to cease exercising any duties and powers of a licensee, and assessing an administrative penalty under the authority of this chapter, continues to perform such duties or exercise such powers of any licensee without satisfying the penalty, or otherwise reaching a satisfactory resolution between the parties, or securing a decision vacating the order by the commissioner or by a court of competent jurisdiction, any contract of loan made by such person after receipt of such order shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever.

~~(d)~~(e) The powers vested in the commissioner by this chapter shall be in addition to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the requirements set forth herein.

§ 2216. MORTGAGE LENDING; SPECIFIC REQUIREMENTS;

EXCEPTIONS

Every licensee engaging in the making of loans secured by a lien against real estate located in this state, whether conducting its affairs as an agent or principal and whether operating from facilities within the state or by mail, telephone or by electronic means, shall comply with the general provisions of this chapter unless exempted herein. A licensee making such loans through a third person, shall only make loans through a person licensed as a mortgage

broker and as a mortgage loan originator under this chapter, unless such third person is exempt from such licensing provisions. Any lender who makes such loans through a third person required to be licensed and not so licensed, in addition to being subject to all applicable penalties under Vermont law, shall be responsible for the acts or omissions of the third person as a principal is responsible for the acts and omissions of its agent. Every licensee making loans secured by a lien against real estate shall comply with sections 10403 and 10404, and subchapter 2 of chapter 200 of this title, and shall also be subject to the following specific limitations:

(1) For loans secured by a first lien, the term shall not exceed 480 months, and the licensees may not exceed the interest rate permitted by ~~section~~ subdivision 41a(b)(8) of Title 9. All such lien documents shall include a power of sale pursuant to section 4531a et seq. of Title 12. The limitations on permitted charges contained in sections 2231 and 2233 of this title and sections 42, 44<sub>2</sub> and 46 of Title 9 shall not apply to any loan within the scope of 12 U.S.C. § 1735f-7a. Permitted charges shall be as specified in sections 42, 44<sub>2</sub> and 46 of Title 9 for any loan secured by a first lien on real estate that is not included within the scope of 12 U.S.C. § 1735f-7a, instead of sections 2231 and 2233 of this title.

(2) For loans secured by a subordinate lien, the term shall not exceed 360 months, and the licensees may not exceed the interest rate permitted by



chapter 4 of Title 9. All such lien documents shall include a power of sale pursuant to section 4531a et seq. of Title 12. Permitted charges for loans secured by a subordinate lien shall be as specified in sections 42, 44, and 46 of Title 9, instead of sections 2231 and 2233 of this title.

(3) No licensee shall take a lien upon real estate as security for any loan made under this chapter, except such lien as is created by law upon the recording of a judgment or such lien as secures a loan in principal amount in excess of \$3,000.00 at the time of making.

(4) Interest shall be computed by the actuarial method in accordance with ~~section~~ subsection 41a(d) of Title 9.

(5) Any loan secured by a lien on real estate, except a commercial loan, which does not contain a fixed rate or substantially equal payments for full amortization within the repayment period shall conform to federal regulations on alternative mortgages where applicable by reason of federal law or action of the commissioner.

(6) This section shall not apply to commercial loans.

#### § 2217. MORTGAGE BROKERS

(a) No licensee or other person shall act as a mortgage broker in any transaction in which the licensee or such other person is acting as a mortgage lender.

(b) Each mortgage broker required to be licensed under this chapter shall retain for a minimum of six years after a contract is executed pursuant to section 2219 of this title, the original contract between the mortgage broker and the prospective borrower, a copy of the settlement statement, an account of fees received in connection with the loan, correspondence, papers or records relating to the loan and such other documents as the commissioner may require.

(c) A mortgage broker and a mortgage loan originator shall only negotiate, place, or assist in placement of Vermont mortgage loans with lenders licensed pursuant to this chapter, or with ~~bank, savings and loan associations, credit unions, or insurance companies~~ depository institutions authorized to do such business in Vermont.

#### § 2218. SEGREGATED ACCOUNTS

(a) All permitted charges paid by loan applicants or borrowers to a lender or a mortgage broker subject to this chapter shall be deposited in one or more accounts maintained at a bank approved by the commissioner, and with respect to such funds the lender or mortgage broker shall act as a fiduciary. Such account or accounts shall be segregated from all other accounts of the lender or broker. No permitted charges shall be used in the conduct of a lender's or a broker's personal affairs, nor in a lender's or a broker's business affairs not specifically related to the applicant or borrower.

(b) Such lender or mortgage broker may withdraw funds from the segregated account for payment directly to third parties for authorized fees.

(c) Such lender or mortgage broker may withdraw funds from the segregated account for commissions to which it is entitled for services actually performed. Services are deemed to have been performed when a loan has closed, the loan applicant has withdrawn the loan application in writing, or such mortgage broker or lender has provided to the loan applicant or borrower written notice that the loan has been denied.

(d) Such lender or mortgage broker may return funds from the segregated account to the borrower if not prohibited by the application or contract.

(e) Such lender or mortgage broker shall maintain complete and accurate account records, including, at a minimum, the source of all deposits, the nature of all disbursements, the date and amount of each transaction and the name of the loan applicant or borrower. All documents pertaining to account activity shall be produced upon request of the commissioner.

#### § 2219. CONTRACT REQUIRED OF MORTGAGE BROKER

In advance of taking any fee or collecting any charges, or at the time the prospective borrower submits a signed application, a written agreement in a form approved by the commissioner shall be prepared by the mortgage broker, and shall be signed by both the mortgage broker and the prospective borrower. The agreement shall set forth the particulars of the service to be performed by

the mortgage broker, including specifics as to what shall constitute reasonable efforts on the part of the mortgage broker to perform the agreed upon services, shall state clearly that the mortgage broker shall represent the interests of the prospective borrower rather than those of any lender, and shall state the fee for the services.

§ 2220. DISCLOSURE REQUIRED BY MORTGAGE LENDER

In advance of taking any fee or collecting any charges for a mortgage loan, or at the time the prospective borrower submits a signed application, a written disclosure shall be provided by the lender to the prospective borrower setting forth all provisions relating to interest rates applicable to the loan, and specific disclosure regarding any possibility that the lender may change its role to that of a mortgage broker. This section shall not apply to commercial loans.

§ 2221. OUT-OF-STATE MORTGAGE LOANS

A mortgage loan made outside of Vermont for use outside of Vermont shall be deemed to be made outside the state of Vermont and shall not be subject to this chapter except upon written agreement of the borrower and the licensee.

§ 2222. EXAMINATIONS ~~BY THE COMMISSIONER~~ AND  
INVESTIGATIONS; EXAMINATION FEES

(a) ~~For the purpose of discovering violations of this chapter, subchapter 2 of chapter 200 and sections 10403 and 10404 of this title, or chapters 4, 59 or 61 of Title 9, or securing information lawfully required thereunder, the~~

~~commissioner may at any time, either personally or by a person or persons duly designated by him or her, investigate the loans and business and examine the books, accounts, records and files used therein, of every licensee and of every person whom the commissioner believes to be engaged in the business described in section 2201 of this title, whether such person shall act or claim to act as principal or agent, or under or without the authority of this chapter.~~

~~(b) For that purpose the commissioner and his or her duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The commissioner and all persons duly designated by him or her shall have authority to issue subpoenas to require the attendance of and to examine under oath all persons whomsoever whose testimony he or she may require relative to such loans or such business.~~

In addition to any authority allowed under this chapter or elsewhere, and for the purpose of examination, or discovering or investigating violations or complaints, of or arising under this chapter, subchapter 2 of chapter 200, and sections 10403 and 10404 of this title, or chapter 4, 59, or 61 of Title 9, or any rule, order, directive, or regulation lawfully made thereunder, or securing any information required or useful thereunder, and for purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or

termination, or general or specific inquiry or investigation, the commissioner or his or her duly designated representative shall have the authority to:

(1) Conduct investigations and examinations:

(2) Access, receive, and use any books, accounts, records, files,

documents, information, or evidence including:

(A) Criminal, civil, and administrative history information, including nonconviction data;

(B) 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; and

(C) Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

(b) The commissioner may review, investigate, or examine any licensee, individual, or person regardless of whether such individual or person has obtained a license under this chapter as often as necessary in order to carry out the purposes of this chapter. The commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person

to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.

(c) Each licensee, individual, or person subject to this chapter shall make available to the commissioner upon request the books and records relating to the operations of such licensee, individual, or person. The commissioner shall have access to such books and records and to interview the officers, principals, control persons, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business.

(d) Each licensee, individual, or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:

(1) Accounting compilations;

(2) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or

(3) Such other information as the commissioner deems necessary to carry out the purposes of this chapter.

(e) In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive

charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(f) In order to carry out the purposes of this chapter, the commissioner may:

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

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



(3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter;

(4) Accept and rely on examination or investigation reports made by other government officials within or without this state; or

(5) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.

(g) The authority of this section shall remain in effect, whether such a licensee, individual, or person acts or claims to act under any licensing or registration law of this state, acts without such authority, or surrenders such licensee's license.

(h) No licensee, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(e)(i) The commissioner shall make an examination of the affairs, business, and records of each licensee at least once every three years. The commissioner may, in the case of those licensees who, ~~under section 2233 of this title,~~ do not

maintain a Vermont office, accept reports of examinations prepared by another state or federal regulatory agency as substitutes if such reports are available to the commissioner and are determined to be adequate in exercising his or her powers and discharging his or her responsibilities under this chapter.

~~(d)~~(j) Each licensee shall pay to the department all fees, costs, and expenses of any examination, review, and investigation fees as prescribed by section 18 of this title, which fees, costs, and expenses shall be billed when they are incurred. In addition to the powers set forth in section 2210 of this title, the commissioner may maintain an action for the recovery of examination, review and investigation fees, costs, and expenses as prescribed in section 18 of this title in any court of competent jurisdiction.

#### § 2223. RECORDS REQUIRED OF LICENSEE

The licensee shall keep, use in the licensee's business, and make available to the commissioner upon request, such books, accounts, records, and data compilations as will enable the commissioner to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the commissioner hereunder. Every licensee shall preserve such books, accounts, records, and data compilations in a secure manner for at least seven years after making the final entry on any loan recorded therein. Thereafter, the licensee shall dispose of such books, accounts, records, and data compilations in accordance with 9 V.S.A. § 2445.

§ 2224. ANNUAL REPORT; MORTGAGE CALL REPORTS

(a) Annually, on or before April 1, each licensee licensed lender, mortgage broker, and sales finance company shall file a report with the commissioner giving such relevant information as the commissioner reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the commissioner, who shall make and publish annually an analysis and recapitulation of such reports.

(b) Annually, within 90 days of the end of its fiscal year, each licensed lender, mortgage broker, and sales finance company shall file financial statements with the commissioner in a form and substance satisfactory to the commissioner, which financial statements must include a balance sheet and income statement.

(c) Each licensed lender, mortgage broker, and mortgage loan originator shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

§ 2225. STATEMENT OF RATES OF CHARGE

Rates of charge shall be stated fully and clearly in such manner as necessary to prevent misunderstanding thereof by prospective borrowers.

§ 2226. DECEPTIVE ADVERTISING

No licensee or other person shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action which is false, misleading, or deceptive. The commissioner may order any person to desist from any conduct which the commissioner finds to be a violation of the foregoing provisions.

§ 2227. CONDUCT OF UNRELATED BUSINESS

No licensee shall conduct the business of making noncommercial loans under this chapter within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner upon his or her finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this chapter or of the rules and regulations lawfully made hereunder.

§ 2228. USE OF OTHER NAMES OR BUSINESS PLACES

No licensee shall transact such business or make any loan provided for by this chapter under any other name or at any other place of business than that named in the license. This section shall not apply to commercial loans made to a borrower located outside of Vermont for use outside of Vermont.

§ 2229. CONFESSIONS OF JUDGMENT; POWERS OF ATTORNEY;

CONTENTS OF NOTES

No licensee shall take any confession of judgment. No licensee shall take any power of attorney excepting such as may be incorporated in a form of note approved by the commissioner for use in the financing of insurance premiums. No licensee shall take any note, promise to pay, or security that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of interest, nor any instrument in which blank spaces are left to be filled in after execution. Notwithstanding the foregoing provisions of this section, the commissioner may by rule exempt from all or part of this section commercial loans.

§ 2230. RATE OF INTEREST

(a) Every licensee may charge, contract for, and receive thereon interest, calculated according to the actuarial method as set forth in ~~section 41a(d)(2)~~ subsection 41a(d) of Title 9, not exceeding the rates permitted by chapter 4 of Title 9, except that the rate of interest on loans secured by motor vehicles,

mobile homes, travel trailers, aircraft, watercraft and farm equipment may not exceed the rate permitted by ~~section~~ subdivision 41a(b)(4) of Title 9.

(b) Interest may be charged, contracted for, and received at the single annual percentage rate that would earn the same interest as the graduated rates when the loan is paid according to its agreed terms and the calculations are made according to the actuarial method. Interest shall not be paid, deducted, received, or added to principal in advance, except that the advance collection of interest for a period not to exceed 30 days shall be permitted upon the origination of a mortgage loan. ~~The~~ Except for loans made pursuant to section 2216 of this title, the maximum interest permitted on loans made under this chapter shall be computed on the basis of the number of days actually elapsed. For the purpose of these computations a year is any period of 365 consecutive days and 366 days during a leap year.

(c) No licensee shall induce or permit any person jointly or severally to become obligated, directly or contingently or both, under more than one contract of loan made under this section at the same time, for the purpose of obtaining a higher rate of interest than would otherwise be permitted by law.

(d) This section shall not apply to commercial loans.

§ 2231. CONTRACTS TO BE REPAYABLE IN MONTHLY  
INSTALLMENTS; MAXIMUM TERM; ADDITIONAL CHARGES  
PROHIBITED; INVALIDITY OF LOAN CONTRACT

(a) Except for loans made pursuant to section 2216 of this title and in compliance with applicable regulations of the commissioner, all loan contracts made under the provisions of this chapter shall require repayment in substantially equal consecutive monthly installments of principal and interest combined.

(b) In addition to the interest and charges herein provided for no further or other charge or amount for any examination, service, brokerage, commission, expense, fee, bonus, or other thing or otherwise shall be directly or indirectly charged, contracted for or received except filing, recording, releasing or termination fees paid or to be paid to a public officer; the premium or identifiable charge for credit life or disability insurance obtained, provided or sold by the licensee subject to the provisions of sections 4101-4115 or sections 3805 and 3806 of this title and any gain or advantage to the licensee from such shall not be deemed in violation of this chapter nor an additional charge in violation of this section or section 2230 of this title. For loans subject to this subsection, if any interest, consideration, or charges in excess of those permitted by this subsection, except as the result of an accidental or bona fide error are charged, contracted for or received, the contract of loan shall be void

and the licensee shall have no right to collect or receive any principal, interest or charges whatsoever.

(c) This section shall not apply to commercial loans.

(d) The provisions of subsection (b) of this section shall not apply to mortgage loans.

#### § 2232a. REQUIREMENTS REGARDING THE BORROWER

(a) Each licensed lender shall deliver to the borrower at the time any loan is made a statement, showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the agreed rate of charge.

(b) Each licensed lender shall, in advance of any loan closing, deliver to each prospective borrower, based on the type of loan applied for, a full and accurate schedule of the charges to be made and the method of computing the same.

(c) Each licensed lender or holder shall give to the borrower a plain and complete statement of all payments made on account of any such loan specifying the amount applied to finance charges and the amount, if any, applied to principal, and stating the unpaid principal balance, if any, of such loan. When payment is made, a licensee shall provide the borrower with a statement therefor within 30 days after the payment is received, or shall



provide, on an annual basis, statements setting forth the information required herein. Each licensed lender or holder shall provide a transaction history of the loan to the borrower upon request.

(d) Each licensed lender or holder shall permit payment to be made in advance without prepayment premium or penalty in any amount on any contract of loan at any time, but the licensee or holder may apply such payment first to all finance charges in full at the agreed rate up to the date of such payment.

(e) Each licensed lender or holder shall upon repayment of the loan in full, promptly mark indelibly every obligation and security signed by the borrower with the word "Paid" or "Canceled," and within 30 days release any mortgage, restore any pledge, cancel and return any note, record or file any necessary release or discharge, cancel and return any assignment given to the licensee by the borrower, and refund to the borrower, in accordance with regulations promulgated by the commissioner any unearned portion of the premium for credit life or disability insurance if a premium for such insurance was disbursed on behalf of the borrower at the time the loan was originally made. The provisions of this subsection shall not affect the right of action created by section 464 of Title 27.

(f) This section shall not apply to commercial loans.

§ 2233. ~~EFFECT~~ CHARGES; LOAN SOLICITATION; SPECIALIZED  
FINANCING

(a) ~~No~~ Other than a mortgage broker fee pursuant to section 2219 of this title, no person who is required to be licensed under this chapter, shall directly or indirectly charge, contract for, or receive any interest, discount, consideration or charge greater than is authorized by section 41a or 46 of Title 9. No such loan for which a greater rate of interest, finance charge, consideration or charges than is authorized by section 41a or 46 of Title 9 has been charged, contracted for, or received shall be enforced in this state, and every person in any way participating therein in this state shall be subject to the provisions of this chapter. However, any loan legally made in any state which then had in effect a regulatory loan law similar in principle to this chapter may be enforced in this state only to the extent of collecting the principal amount owed and interest thereon at a rate not greater than that authorized by section 41a or 46 of Title 9.

(b) A loan solicited ~~and~~ or made by mail, telephone, or electronic means to a Vermont resident shall be subject to the provisions of this chapter notwithstanding where the loan was legally made. No person shall engage in the business of soliciting ~~and~~ or making loans by mail, telephone, or electronic means to residents of this state unless duly licensed. Such licensee shall be subject to the applicable provisions of this title and chapters 4, 59, and 61 of

Title 9, but shall not be required to have or maintain a place of business in the state.

(c) No person other than a ~~bank, savings and loan association, credit union~~ depository institution, pawnbroker, insurance company, or seller of merchandise or services shall engage in specialized financing, including ~~but not limited to~~ tuition plans or other such financing, but not including insurance premium financing, for residents of this state unless duly licensed. Such licensee shall be subject to the applicable provisions of this title and chapters 4, 59, and 61 of Title 9, but shall not be required to maintain a place of business in this state. Such financing may include more than one loan per borrower. A license granted to such lenders shall be explicit in its authority with respect to the types of business permitted.

#### § 2234. ASSIGNMENT OF WAGES

The payment in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, for the purpose of regulation under this chapter, shall be deemed a loan secured by such assignment. The amount by which such assigned compensation exceeds the amount of such consideration actually paid, for the purposes of regulation under this chapter, shall be deemed finance charges or charges upon such loan from the date of such payment to the date such

compensation is payable. Such transactions shall be governed by and subject to applicable provisions of this title and chapters 4, 59, and 61 of Title 9.

§ 2235. REQUIREMENTS FOR ASSIGNMENT OF WAGES

No assignment of or order for payment of any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any loan made by any licensee under this chapter, shall be valid unless the amount of such loan is paid to the borrower simultaneously with its execution. Such assignment or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower, shall not be valid unless it is in writing, signed in person by the borrower, nor shall it be valid if the borrower is married unless it is signed in person by both husband and wife. However, written assent of a spouse shall not be required if the borrower has title as a result of a court order.

§ 2236a. EXTENT OF ASSIGNMENT; SERVICE UPON EMPLOYER

Under any such assignment or order for the payment of future salary, wages, commissions, or other compensation for services given as security for a loan made by any licensee under this chapter, a sum not to exceed ten percent of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of such salary, wages, commissions, or other compensation for services, from the time that a copy of

such assignment, verified by the oath of the licensee or ~~his~~ the licensee's agent, together with a similarly verified statement of the amount unpaid upon such loan, is served upon the employer.

§ 2237. LICENSES MODIFIED, AMENDED, OR REPEALED BY  
AMENDMENT TO CHAPTER

This chapter or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided that such cancellation or alteration shall not impair or affect the obligation of any pre-existing lawful contract between any licensee and any borrower.

§ 2238. OUT-OF-STATE COMMERCIAL LOANS

A commercial loan made to a borrower located outside of Vermont for use outside of Vermont shall be deemed to be made outside the state of Vermont and shall not be subject to this chapter except upon written agreement of the licensee and borrower.

§ 2239. COMMERCIAL LEASES

This chapter shall not apply to commercial leases as defined in chapters 59 and 61 of Title 9.

§ 2240. NATIONAL LICENSING SYSTEM

(a) In furtherance of the commissioner's duties under this chapter, the commissioner may participate in ~~a national licensing system~~ the Nationwide

Mortgage Licensing System and Registry and may take such action regarding participation in the licensing system as the commissioner deems necessary to carry out the purposes of this section, including:

(1) Issue rules or orders, and may establish procedures, to further participation in the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry;

(2) Facilitate and participate in the establishment and implementation of the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry;

(3) ~~Contract with the administrator of the national licensing system to collect, process, and maintain information for the department~~ Establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry;

(4) Authorize the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry to collect and maintain records and to collect and process any fees associated with licensure on behalf of the commissioner;

(5) Require persons engaged in activities that require a license under this chapter to utilize the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry for license applications, renewals, amendments, surrenders, and such other activities as the commissioner may require, and to

pay through the national licensing system all fees provided for under this chapter;

(6) Authorize the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry to collect fingerprints on behalf of the commissioner in order to receive or conduct criminal history background checks, and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of this subsection the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(7) In order to reduce the points of contact which the commissioner may have to maintain for purposes of subsection 2202(c) of this chapter the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(b) The commissioner may require persons engaged in activities that require a license under this chapter to submit fingerprints, and the commissioner may utilize the services of a ~~national licensing system~~ national licensing system Nationwide Mortgage Licensing System and Registry to process the fingerprints and to submit the fingerprints to the Federal Bureau of Investigation, the Vermont state police, or any equivalent state or federal law

enforcement agency for the purpose of conducting a criminal history background check. The licensee or applicant shall pay the cost of such criminal history background check, including any charges imposed by the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry.

(c) Persons engaged in activities that require licensure pursuant to this chapter shall pay all applicable charges to utilize the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry, including such processing charges as the administrator of the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry shall establish, in addition to the fees required under this chapter.

(d) The ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry is not intended to and does not replace or affect the commissioner's authority to grant, deny, suspend, revoke, or refuse to renew licenses.

#### § 2241. PROHIBITED ACTS AND PRACTICES

It is a violation of this chapter for a person or individual to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Engage in any unfair or deceptive practice toward any person;
- (3) Obtain property by fraud or misrepresentation;



(4) Solicit or enter into a contract with a borrower that provides in substance that the person or individual may earn a fee or commission through “best efforts” to obtain a loan even though no loan is actually obtained for the borrower;

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

(6) Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter;

(7) Fail to make disclosures as required by this chapter and any other applicable state or federal law, including regulations thereunder;

(8) Fail to comply with this chapter or rules adopted under this chapter, or fail to comply with any orders or directives from the commissioner, or fail to comply with any other state or federal law, including the rules thereunder, applicable to any business authorized or conducted under this chapter;

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

(10) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the commissioner or another governmental agency;

(11) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(12) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter;

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

(14) Fail to account truthfully for monies belonging to a party to a mortgage loan transaction.

§ 2242. REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM  
AND REGISTRY

(a) Subject to state privacy and confidentiality law, the commissioner is required to report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 2243 of this title.

(b) A licensee may challenge information the commissioner enters into the Nationwide Mortgage Licensing System and Registry in accordance with the administrative procedure act (chapter 25 of Title 3) and any rules adopted by the department on hearing procedures.

§ 2243. CONFIDENTIALITY

In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing:

(1) 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 any federal or state court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all state and federal regulatory

officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) For these purposes, the commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies.

(3) Information or material that is subject to privilege or confidentiality under subdivision (1) of this section shall not be subject to:

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

(B) Subpoena or 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 with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(4) This section shall not apply with respect to information or material relating to the employment history of, and publicly adjudicated disciplinary

and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

§ 2244. UNIQUE IDENTIFIER SHOWN

The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents as established by rule or order of the commissioner.

Sec. 2. 12 V.S.A. § 4532a is added to read:

§ 4532a. NOTICE TO COMMISSIONER OF BANKING, INSURANCE,  
SECURITIES, AND HEALTH CARE ADMINISTRATION

(a) At the same time the mortgage holder files an action to foreclose owner occupied, one-to-four-family residential property, the mortgage holder shall file a notice of foreclosure with the commissioner of the department of banking, insurance, securities, and health care administration. The commissioner may require that the notice of foreclosure be sent in an electronic format. The notice of foreclosure shall include:

- (1) the name and current mailing address of the mortgagor;
- (2) the address of the property being foreclosed;

(3) the name of the current mortgage holder, along with the address and telephone number of the person or entity responsible for workout negotiations concerning the mortgage.

(4) the name of the original lender, if different;

(5) the name, address, and telephone number of the mortgage servicer, if applicable; and

(6) any other information the commissioner may require.

(b) The court clerk shall not accept a foreclosure complaint for filing without a certification by the plaintiff that the notice of foreclosure has been sent to the commissioner of banking, insurance, securities, and health care administration in accordance with subsection (a) of this section.

(c) Acceptance of a foreclosure complaint by the court clerk that, due to a good faith error or omission by the plaintiff or the clerk, does not contain the certification required in subsection (a) of this section, shall not invalidate the foreclosure proceeding, provided that the plaintiff files the required notice with the commissioner within 10 days of obtaining knowledge of the error or omission.

### Sec. 3. TRANSITIONAL PROVISIONS

(a) Any mortgage broker or licensed lender holding a Vermont license as of the effective date of this act shall have until December 1, 2009 to comply with the bond and liquid asset requirements of 8 V.S.A. § 2203.

(b) All individuals who, on or before December 31, 2009, are employed by a mortgage broker holding a valid Vermont license and who are authorized to act as a mortgage broker under such license, or are employed by a lender holding a valid Vermont license and are acting as a lender or loan officer under such license, shall complete the prelicensing education and testing requirements and shall obtain a mortgage loan originator license required by this act no later than July 1, 2010. All other individuals must obtain a mortgage loan originator license as required by this act prior to acting as a mortgage loan originator in this state. The commissioner may extend the date for compliance with any provision of this act provided the extension is permitted or approved by the federal Department of Housing and Urban Development.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except that Sec. 2 (notice of foreclosure) shall take effect 30 days after passage of this act.

Approved: May 21, 2009