Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

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CHAPTER 163

HOUSE BILL 2143

AN ACT

AMENDING SECTIONS 6-123, 6-123.01, 6-991, 6-991.01, 6-991.02, 6-991.03, 6-991.04, 6-991.05 AND 6-991.07, ARIZONA REVISED STATUTES; RENUMBERING SECTION 6-991.08, ARIZONA REVISED STATUTES, AS SECTION 6-991.22; AMENDING TITLE 6, CHAPTER 9, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 6-991.08; AMENDING TITLE 6, CHAPTER 9, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 6-991.09, 6-991.10, 6-991.11, 6-991.12, 6-991.13, 6-991.14, 6-991.15, 6-991.16, 6-991.17, 6-991.18, 6-991.19, 6-991.20 AND 6-991.21; RELATING TO THE DEPARTMENT OF FINANCIAL INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 6-123, Arizona Revised Statutes, is amended to read:

6-123. Superintendent; powers

In addition to the other powers, express or implied, the superintendent may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.

2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.

3. Require appropriate records, documents, information and reports from any financial institution or enterprise.

4. Submit to the department of public safety, OR THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS SUCCESSOR, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:

(a) A banking permit.

(b) Permission to organize a savings and loan association or credit union.

(c) Any license.

(d) Any certificate.

(e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days of receipt of the request of the superintendent.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.

6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.

7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the

formulation of interstate examination policies and procedures and the drafting of model rules and agreements.

8. PARTICIPATE IN THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS SUCCESSOR. THE SUPERINTENDENT MAY ALLOW THE SYSTEM TO COLLECT LICENSING FEES ON BEHALF OF THE SUPERINTENDENT, TO COLLECT A PROCESSING FEE FOR THE SERVICES OF THE SYSTEM DIRECTLY FROM EACH APPLICANT FOR A LICENSE OR LICENSEE AND TO PROCESS AND MAINTAIN RECORDS ON BEHALF OF THE SUPERINTENDENT, INCLUDING INFORMATION COLLECTED PURSUANT TO THIS SECTION AND SECTION 6-123.01. THIS PARAGRAPH DOES NOT AFFECT THE RECORDS DISCLOSURE REQUIREMENTS AND LIMITATIONS PRESCRIBED IN SECTION 6-129.01.

Sec. 2. Section 6-123.01, Arizona Revised Statutes, is amended to read:

6-123.01. Fingerprint requirements; fees

A. Before receiving and holding a license, permit, certificate or permission to organize a bank, savings and loan ASSOCIATION or credit union, the superintendent may require an applicant, licensee, active manager or responsible individual or an organizer, director or officer of any corporate applicant or licensee to submit a full set of fingerprints and fees to the department. The department of financial institutions shall submit the fingerprints and fees to the department of public safety, OR THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS SUCCESSOR, for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

B. The fees that the department collects under subsection A of this section shall be credited pursuant to section 35-148.

C. The applicant is responsible for providing the department with readable fingerprints. The applicant shall pay any costs that are attributable to refingerprinting due to the unreadability of any fingerprints and any fees that are required for the resubmission of fingerprints.

D. The department may issue a TEMPORARY license or certificate or grant TEMPORARY permission to organize to an original applicant before the department receives the results of a criminal records check if there is not evidence or reasonable suspicion that the applicant has a criminal history background that would be cause for denial of a license, certificate or permission to organize. The department may ~~suspend~~ TERMINATE the TEMPORARY license or certificate or permission to organize if a fingerprint card is returned as unreadable and the applicant fails to submit new fingerprints within ten days after being notified by the department that the original card was unreadable OR IF THE RESULTS OF THE CRIMINAL RECORDS CHECK REVEAL GROUNDS

FOR THE DENIAL OF THE LICENSE OR CERTIFICATE OR PERMISSION TO ORGANIZE. THE TEMPORARY LICENSE OR CERTIFICATE OR PERMISSION TO ORGANIZE SHALL NOT BE EFFECTIVE LONGER THAN ONE HUNDRED EIGHTY DAYS.

E. The superintendent may require a current licensee, organizer, director, active manager, responsible individual or officer of any corporate licensee to submit a full set of fingerprints to the department. The department of financial institutions shall submit the fingerprints and fees to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

F. This section does not affect the department's authority to otherwise issue, deny, cancel, terminate, suspend or revoke a license.

Sec. 3. Section 6-991, Arizona Revised Statutes, is amended to read:

6-991. Definitions

In this article, unless the context otherwise requires:

~~1. "Administrative or clerical tasks" means the receipt, collection and distribution of information common for the processing of a loan in the mortgage industry or communication with a borrower to obtain information necessary for the processing of a loan. Administrative or clerical tasks do not include holding oneself out to the public as able to obtain a loan.~~

~~2.~~ 1. "Affiliate" means an entity that directly or indirectly, through intermediaries, controls, is controlled by or is under common control with the entity specified.

2. "CLERICAL OR SUPPORT DUTIES" MEANS DUTIES SUBSEQUENT TO THE RECEIPT OF A RESIDENTIAL MORTGAGE LOAN APPLICATION, INCLUDING BOTH OF THE FOLLOWING:

(a) THE RECEIPT, COLLECTION, DISTRIBUTION AND ANALYSIS OF INFORMATION COMMON FOR THE PROCESSING OR UNDERWRITING OF A RESIDENTIAL MORTGAGE LOAN.

(b) THE COMMUNICATION WITH A CONSUMER TO OBTAIN THE INFORMATION NECESSARY FOR THE PROCESSING OR UNDERWRITING OF A LOAN IF THE COMMUNICATION DOES NOT INCLUDE OFFERING OR NEGOTIATING LOAN RATES OR TERMS OR COUNSELING CONSUMERS ABOUT RESIDENTIAL MORTGAGE LOAN RATES OR TERMS.

3. "CONSUMER LENDER" MEANS A PERSON WHO IS LICENSED PURSUANT TO CHAPTER 5 OF THIS TITLE.

~~3.~~ 4. "Continuing education unit" means a fifty minute period of time in a continuing education course that relates to the mortgage industry or to mortgage transactions, including courses taken to maintain recognized industry designations.

5. "DEPOSITORY INSTITUTION" HAS THE SAME MEANING PRESCRIBED IN THE FEDERAL DEPOSIT INSURANCE ACT (12 UNITED STATES CODE SECTION 1813) AND INCLUDES CREDIT UNIONS.

6. "FEDERAL BANKING AGENCY" MEANS THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THE COMPTROLLER OF THE CURRENCY, THE DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION, THE NATIONAL CREDIT UNION ADMINISTRATION OR THE FEDERAL DEPOSIT INSURANCE CORPORATION.

7. "IMMEDIATE FAMILY MEMBER" MEANS A SPOUSE, CHILD, SIBLING, PARENT, GRANDPARENT, GRANDCHILD, STEPPARENT, STEPCHILD OR STEPSIBLING WHETHER RELATED BY ADOPTION OR BLOOD.

8. "JUDGMENT" MEANS EITHER:

(a) A FINAL JUDGMENT IN A COURT OF COMPETENT JURISDICTION.

(b) A CRIMINAL RESTITUTION ORDER ISSUED PURSUANT TO SECTION 13-603 OR 18 UNITED STATES CODE SECTION 3663.

(c) AN ARBITRATION AWARD THAT INCLUDES FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT HAS BEEN CONFIRMED AND REDUCED TO JUDGMENT PURSUANT TO SECTION 12-133 AND THAT WAS RENDERED ACCORDING TO TITLE 12 AND THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION OR ANOTHER RECOGNIZED ARBITRATION BODY.

9. "JUDGMENT DEBTOR" MEANS ANY DEFENDANT UNDER THIS ARTICLE WHO IS THE SUBJECT OF A JUDGMENT.

~~4.~~ 10. "License" means a license issued under this article.

~~5.~~ 11. "Licensee" means a person licensed under this article.

~~6.~~ 12. "Loan originator":

~~(a) Means a natural person employed by a mortgage broker or mortgage banker who either takes a residential mortgage loan application for a mortgage broker or mortgage banker to obtain a third party lender or offers or negotiates terms of a mortgage loan for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain.~~

~~(b) Includes a person who holds himself out to the public as able to perform any of these activities.~~

~~(c) Does not mean a person who performs purely administrative or clerical tasks and who is employed by a mortgage broker or mortgage banker.~~

(a) MEANS A NATURAL PERSON WHO FOR COMPENSATION OR GAIN OR IN THE EXPECTATION OF COMPENSATION OR GAIN DOES ANY OF THE FOLLOWING:

(i) TAKES A RESIDENTIAL MORTGAGE LOAN APPLICATION.

(ii) OFFERS OR NEGOTIATES TERMS OF A RESIDENTIAL MORTGAGE LOAN.

(iii) ON BEHALF OF A BORROWER, NEGOTIATES WITH A LENDER OR NOTEHOLDER TO OBTAIN A TEMPORARY OR PERMANENT MODIFICATION IN AN EXISTING RESIDENTIAL MORTGAGE LOAN AGREEMENT.

(b) DOES NOT INCLUDE:

(i) AN INDIVIDUAL ENGAGED SOLELY AS A LOAN PROCESSOR OR UNDERWRITER EXCEPT AS PROVIDED IN SECTION 6-991.02.

(ii) A PERSON WHO ONLY PERFORMS REAL ESTATE BROKERAGE ACTIVITIES AND WHO IS LICENSED IN ACCORDANCE WITH TITLE 32, CHAPTER 20, UNLESS THE PERSON IS COMPENSATED BY A LENDER, A MORTGAGE BROKER OR ANY OTHER LOAN ORIGINATOR OR BY AN AGENT OF THE LENDER, MORTGAGE BROKER OR OTHER LOAN ORIGINATOR.

(iii) A PERSON SOLELY INVOLVED IN EXTENSIONS OF CREDIT RELATING TO A TIMESHARE PLAN AS DEFINED IN 11 UNITED STATES CODE SECTION 101(53D).

(iv) A PERSON WHO MAKES FIVE OR FEWER MORTGAGE LOANS PER CALENDAR YEAR.

(v) A PERSON WHO TAKES BACK A PURCHASE MONEY MORTGAGE IN CONNECTION WITH THE SALE OF RESIDENTIAL REAL ESTATE.

(vi) AN EMPLOYER MAKING A MORTGAGE LOAN TO AN EMPLOYEE.

13. "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 WHO IS LICENSED OR WHO IS EXEMPT FROM LICENSURE UNDER ARTICLE 1 OR 2 OF THIS CHAPTER.

~~7.~~ 14. "Mortgage banker" means a person who is licensed pursuant to article 2 of this chapter.

~~8.~~ 15. "Mortgage broker" means a person who is licensed pursuant to article 1 of this chapter.

~~9.~~ 16. "Mortgage loan" OR "RESIDENTIAL MORTGAGE LOAN" means a loan ~~secured by a mortgage or deed of trust or any lien interest on real estate located in this state established with the consent of the owner of the real estate.~~ 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 THE TRUTH IN LENDING ACT (15 UNITED STATES CODE SECTION 1602(v)), OR RESIDENTIAL REAL ESTATE ON WHICH A DWELLING IS CONSTRUCTED OR INTENDED TO BE CONSTRUCTED.

17. "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 SALESPERSON OR REAL ESTATE BROKER FOR A BUYER, SELLER, LESSOR OR LESSEE OF REAL PROPERTY.

(b) BRINGING TOGETHER PARTIES INTERESTED IN THE SALE, PURCHASE, LEASE, RENTAL OR EXCHANGE OF REAL PROPERTY.

(c) NEGOTIATING ON BEHALF OF ANY PARTY ANY PORTION OF A CONTRACT RELATING TO THE SALE, PURCHASE, LEASE, RENTAL OR EXCHANGE OF REAL PROPERTY OTHER THAN IN CONNECTION WITH PROVIDING FINANCING WITH RESPECT TO ANY TRANSACTION.

(d) ENGAGING IN ANY ACTIVITY FOR WHICH A PERSON IS REQUIRED TO BE LICENSED AS A REAL ESTATE SALESPERSON OR REAL ESTATE BROKER UNDER TITLE 32, CHAPTER 20.

(e) OFFERING TO ENGAGE IN ANY ACTIVITY OR ACT IN ANY CAPACITY DESCRIBED IN SUBDIVISION (a), (b), (c) OR (d) OF THIS PARAGRAPH.

18. "REGISTERED LOAN ORIGINATOR" MEANS ANY INDIVIDUAL WHO IS BOTH OF THE FOLLOWING:

(a) A LOAN ORIGINATOR WHO IS REGISTERED WITH AND MAINTAINS A UNIQUE IDENTIFIER THROUGH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS SUCCESSOR.

(b) AN EMPLOYEE OF ONE OF THE FOLLOWING:

(i) A DEPOSITORY INSTITUTION.

(ii) A SUBSIDIARY THAT IS OWNED AND CONTROLLED BY A DEPOSITORY INSTITUTION AND REGULATED BY A FEDERAL BANKING AGENCY.

(iii) AN INSTITUTION REGULATED BY THE FARM CREDIT ADMINISTRATION.

19. "RESIDENTIAL MORTGAGE LOAN SERVICER" MEANS ANY PERSON WHO DOES EITHER OF THE FOLLOWING:

(a) ON BEHALF OF THE NOTEHOLDER, COLLECTS OR RECEIVES PAYMENTS, INCLUDING PAYMENTS OF PRINCIPAL, INTEREST, ESCROW MONIES AND OTHER MONIES DUE, ON OBLIGATIONS DUE AND OWING TO THE NOTEHOLDER PURSUANT TO A RESIDENTIAL MORTGAGE LOAN.

(b) WHEN THE BORROWER IS IN DEFAULT OR IN FORESEEABLE LIKELIHOOD OF DEFAULT, WORKS ON BEHALF OF THE NOTEHOLDER WITH THE BORROWER TO MODIFY THE OBLIGATIONS EITHER TEMPORARILY OR PERMANENTLY IN ORDER TO AVOID FORECLOSURE OR OTHERWISE TO FINALIZE COLLECTION THROUGH THE FORECLOSURE PROCESS.

20. "RESIDENTIAL REAL ESTATE" MEANS ANY PROPERTY THAT IS LOCATED IN THIS STATE AND ON WHICH A DWELLING IS CONSTRUCTED OR INTENDED TO BE CONSTRUCTED.

21. "UNIQUE IDENTIFIER" MEANS THE NUMBER ASSIGNED TO THE LOAN ORIGINATOR BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY OR ITS SUCCESSOR OR AS THE TERM IS USED UNDER THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116).

Sec. 4. Section 6-991.01, Arizona Revised Statutes, is amended to read:

6-991.01. Exemptions

This article does not apply to:

~~1. A natural person employed by a person who does business under any other law of this state, or law of another state while regulated by an agency of the other state or the United States, relating to banks, savings banks, trust companies, savings and loan associations, profit sharing and pension trusts, credit unions, insurance companies or consumer lenders, or receiverships, including directly or indirectly making, negotiating or offering to make or negotiate a mortgage loan, if the mortgage transactions are regulated by the other law or are under the jurisdiction of a court. Employees of subsidiaries and service corporations of these institutions are exempt and are not subject to this article if preempted by federal law.~~

~~2. A person who is licensed pursuant to article 1, 2 or 3 of this chapter.~~

1. REGISTERED LOAN ORIGINATORS.

2. AN INDIVIDUAL WHO OFFERS OR NEGOTIATES TERMS OF A RESIDENTIAL MORTGAGE LOAN SECURED BY A DWELLING THAT SERVED AS THE INDIVIDUAL'S RESIDENCE.

3. A person who is a responsible individual as described in section 6-903, 6-943 OR 6-973 and who does not act as a loan originator pursuant to article 1, 2 or 3 of this chapter.

4. An employee of a commercial mortgage banker licensed pursuant to article 3 of this chapter.

5. An employee of a person licensed pursuant to this chapter if the licensee affirms in writing to the superintendent that the licensee will not ~~make~~ ORIGINATE or negotiate a mortgage loan that has security in the form of a residential dwelling of one to four units.

6. A person who, as seller of real property, receives one or more mortgages or deeds of trust as security for a purchase money obligation.

~~7. Any entity subject to regulation and supervision by a federal banking agency, and any operating subsidiary or affiliate of the foregoing, including any employee or exclusive agent of any such entity.~~

7. 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 ANY OTHER LOAN ORIGINATOR OR BY ANY AGENT OF THE LENDER, MORTGAGE BROKER OR OTHER LOAN ORIGINATOR.

8. AN INDIVIDUAL WHO OFFERS TO NEGOTIATE TERMS OF A RESIDENTIAL MORTGAGE LOAN WITH OR ON BEHALF OF THE INDIVIDUAL'S IMMEDIATE FAMILY MEMBER AND WHO DOES NOT OTHERWISE ENGAGE IN THE BUSINESS OF A LOAN ORIGINATOR.

9. A MANUFACTURED HOME RETAILER AND ITS EMPLOYEES IF PERFORMING ONLY CLERICAL OR SUPPORT DUTIES IN CONNECTION WITH THE SALE OR LEASE OF A MANUFACTURED HOME AND THE MANUFACTURED HOME RETAILER AND ITS EMPLOYEES RECEIVE NO COMPENSATION OR OTHER GAIN FROM A MORTGAGE BANKER OR A MORTGAGE BROKER FOR THE PERFORMANCE OF THE CLERICAL OR SUPPORT DUTIES.

10. AN INDIVIDUAL WHO IS EMPLOYED BY A RESIDENTIAL MORTGAGE LOAN SERVICER IF THE INDIVIDUAL IS INVOLVED SOLELY IN LOSS MITIGATION EFFORTS, UNLESS THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT DETERMINES THAT THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) REQUIRES THE INDIVIDUAL TO BE LICENSED AS A MORTGAGE LOAN ORIGINATOR. FOR THE PURPOSES OF THIS PARAGRAPH, "LOSS MITIGATION EFFORTS" MEANS A RESIDENTIAL MORTGAGE LOAN BORROWER IS IN DEFAULT OR DEFAULT IS REASONABLY FORESEEABLE AND AN INDIVIDUAL WORKS WITH THE BORROWER ON BEHALF OF THE RESIDENTIAL MORTGAGE LOAN SERVICER TO MODIFY EITHER TEMPORARILY OR PERMANENTLY THE OBLIGATION OR TO OTHERWISE MITIGATE LOSS ON AN EXISTING RESIDENTIAL MORTGAGE LOAN.

Sec. 5. Section 6-991.02, Arizona Revised Statutes, is amended to read:

6-991.02. <u>Prohibited acts</u>

Beginning ~~January~~ JULY 1, 2010:

1. A loan originator acting on the loan originator's own behalf shall not accept any monies or documents in connection with an application for a mortgage loan.

~~2. A person is not entitled to receive compensation in connection with arranging for or negotiating a mortgage loan if the person is not licensed~~

~~pursuant to this chapter. Notwithstanding section 6-984, subsection B, a loan originator shall not pay compensation to, contract with or employ as an independent contractor a person who is acting as a loan originator, mortgage broker, mortgage banker or commercial mortgage banker but who is not licensed under this chapter.~~

2. AN INDIVIDUAL IS NOT ENTITLED TO RECEIVE COMPENSATION IN CONNECTION WITH ARRANGING FOR OR NEGOTIATING A MORTGAGE LOAN IF THE INDIVIDUAL IS NOT LICENSED PURSUANT TO THIS CHAPTER. AN INDIVIDUAL WHO IS NOT SPECIFICALLY EXEMPTED FROM LICENSURE PURSUANT TO THIS ARTICLE SHALL NOT ENGAGE IN THE BUSINESS OF A LOAN ORIGINATOR WITH RESPECT TO ANY DWELLING IN THIS STATE WITHOUT FIRST OBTAINING AND MAINTAINING ANNUALLY A LICENSE PURSUANT TO THIS ARTICLE. EACH LICENSED LOAN ORIGINATOR MUST REGISTER WITH AND MAINTAIN A VALID UNIQUE IDENTIFIER ISSUED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS SUCCESSOR.

3. A loan originator acting on the loan originator's own behalf shall not advertise, display, distribute, broadcast or televise, or cause or permit to be advertised, displayed, distributed, broadcast or televised, in any manner, any solicitation of mortgage business.

4. A loan originator shall not make, negotiate or offer to make or negotiate for compensation, either directly or indirectly, a loan that is either:

(a) Less than ~~five thousand dollars~~ THE MINIMUM AMOUNT THAT THE LOAN ORIGINATOR'S EMPLOYER IS ALLOWED TO MAKE.

(b) Not secured by a mortgage or deed of trust or other lien interest in real property UNLESS EMPLOYED BY A CONSUMER LENDER.

5. A loan originator who is employed by a mortgage broker or mortgage banker to act in the capacity of the mortgage broker or mortgage banker shall not be employed concurrently by any other mortgage broker or mortgage banker.

6. A loan originator shall not collect compensation for rendering services as a real estate broker or real estate salesperson licensed pursuant to title 32, chapter 20 unless both of the following apply:

(a) The loan originator is licensed pursuant to title 32, chapter 20.

(b) The employing mortgage broker or mortgage banker has disclosed to the person from whom the compensation is collected at the time a mortgage loan application is received that the loan originator is receiving compensation both for mortgage broker or mortgage banker services, if applicable, and for real estate broker or real estate salesperson services.

7. A loan originator shall not accept any assignment of the borrower's wages or salary in connection with activities governed by this article.

8. A loan originator shall not receive or disburse monies in servicing or arranging a mortgage loan.

9. A loan originator shall not make a false promise or misrepresentation or conceal an essential or material fact in the course of the mortgage broker or mortgage banker business.

10. A loan originator shall not fail to truthfully account for the monies belonging to a party to a mortgage loan transaction or fail to disburse monies in accordance with the employing mortgage broker or mortgage banker agreements.

11. A loan originator shall not engage in illegal or improper business practices.

12. A loan originator shall not require a person seeking a loan secured by real property to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.

13. A loan originator shall not originate a mortgage loan unless employed by a mortgage broker, ~~or~~ mortgage banker OR CONSUMER LENDER.

14. A LOAN ORIGINATOR SHALL NOT ADVERTISE FOR OR SOLICIT MORTGAGE BUSINESS IN ANY MANNER WITHOUT ALL OF THE FOLLOWING:

(a) THE NAME AND LICENSE NUMBER AS ISSUED ON THE EMPLOYING MORTGAGE BROKER'S, MORTGAGE BANKER'S OR CONSUMER LENDER'S PRINCIPAL PLACE OF BUSINESS LICENSE.

(b) APPROVAL OF THE EMPLOYING MORTGAGE BROKER, MORTGAGE BANKER OR CONSUMER LENDER.

(c) THE UNIQUE IDENTIFIER THE LOAN ORIGINATOR MAINTAINS WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS SUCCESSOR.

15. ON REQUEST, A LOAN ORIGINATOR SHALL MAKE AVAILABLE TO THE SUPERINTENDENT THE BOOKS AND RECORDS RELATING TO THE LOAN ORIGINATOR'S OPERATIONS. THE SUPERINTENDENT MAY HAVE ACCESS TO THE BOOKS AND RECORDS AND INTERVIEW THE OFFICERS, PRINCIPALS, EMPLOYEES, INDEPENDENT CONTRACTORS, AGENTS AND CUSTOMERS OF THE LOAN ORIGINATOR CONCERNING THEIR BUSINESS. IN CONNECTION WITH A REQUEST PURSUANT TO THIS PARAGRAPH, A PERSON MAY NOT KNOWINGLY WITHHOLD, ABSTRACT, REMOVE, MUTILATE, DESTROY OR SECRETE ANY BOOKS, RECORDS OR OTHER INFORMATION.

16. A LOAN PROCESSOR OR UNDERWRITER WHO IS AN INDEPENDENT CONTRACTOR MAY NOT ENGAGE IN THE ACTIVITIES OF A LOAN PROCESSOR OR UNDERWRITER UNLESS THE LOAN PROCESSOR OR UNDERWRITER OBTAINS AND MAINTAINS A LICENSE PURSUANT TO SECTION 6-991.03. EACH INDEPENDENT CONTRACTOR LOAN PROCESSOR OR UNDERWRITER LICENSED AS A LOAN ORIGINATOR MUST HAVE AND MAINTAIN A VALID UNIQUE IDENTIFIER.

17. AN INDIVIDUAL ENGAGING SOLELY IN LOAN PROCESSOR OR UNDERWRITER ACTIVITIES SHALL NOT REPRESENT TO THE PUBLIC THROUGH ADVERTISING OR OTHER MEANS OF COMMUNICATING THAT THE INDIVIDUAL CAN OR WILL PERFORM ANY OF THE ACTIVITIES OF A LOAN ORIGINATOR.

Sec. 6. Section 6-991.03, Arizona Revised Statutes, is amended to read:

6-991.03. Licensing; renewal; qualifications; application; fees

A. Beginning ~~January~~ JULY 1, 2010, a natural person shall not act as a loan originator unless licensed under this article.

B. Beginning ~~January~~ JULY 1, 2010, the superintendent shall not grant a loan originator license to a person, other than a natural person. An applicant for an original loan originator's license shall have done ~~both~~ ALL of the following:

1. Satisfactorily completed a course of study, INCLUDING AT LEAST TWENTY HOURS OF EDUCATION, for loan originators approved by the superintendent during the TWO year PERIOD immediately preceding the time of application. ~~This paragraph does not apply if a person proves satisfactorily to the department that the person has at least three years of loan originator experience that is immediately preceding the time of application.~~ THE TWENTY HOURS OF EDUCATION MUST INCLUDE AT LEAST ALL OF THE FOLLOWING:

(a) THREE HOURS OF FEDERAL LAW.

(b) THREE HOURS OF ETHICS, WHICH SHALL INCLUDE INSTRUCTION ON FRAUD, CONSUMER PROTECTION AND FAIR LENDING ISSUES.

(c) TWO HOURS OF TRAINING RELATED TO LENDING STANDARDS OF THE NONTRADITIONAL MORTGAGE PRODUCT MARKETPLACE.

2. Passed a loan originator's examination pursuant to section 6-991.07 not more than one year before the granting of the license DEMONSTRATING KNOWLEDGE AND UNDERSTANDING OF THE FOLLOWING:

(a) FEDERAL LAWS.

(b) LAWS OF THIS STATE.

(c) SUBJECTS DESCRIBED IN SECTION 6-991.07, SUBSECTION A.

3. OBTAINED A UNIQUE IDENTIFIER THROUGH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS SUCCESSOR.

4. DEPOSITED WITH THE SUPERINTENDENT A BOND EXECUTED BY THE APPLICANT'S EMPLOYER AS PRINCIPAL AND A SURETY COMPANY LICENSED TO DO BUSINESS IN THIS STATE AS A SURETY PURSUANT TO SECTION 6-903 OR 6-943.

5. SUBMITTED FINGERPRINTS TO THE DEPARTMENT FOR THE PURPOSE OF A BACKGROUND INVESTIGATION.

6. PAID AN AMOUNT TO BE DETERMINED BY THE SUPERINTENDENT FOR DEPOSIT IN THE MORTGAGE RECOVERY FUND ESTABLISHED PURSUANT TO SECTION 6-991.09 OR DEPOSITED WITH THE SUPERINTENDENT A BOND EXECUTED BY THE APPLICANT'S EMPLOYER AS PRINCIPAL AND A SURETY COMPANY LICENSED TO DO BUSINESS IN THIS STATE FOR THE BENEFIT OF ANY PERSON AGGRIEVED BY ANY ACT, REPRESENTATION, TRANSACTION OR CONDUCT OF A LICENSED LOAN ORIGINATOR THAT VIOLATES THIS TITLE OR THE RULES ADOPTED PURSUANT TO THIS TITLE. NOTWITHSTANDING SECTION 6-903 OR 6-943, THE AMOUNT OF THE BOND SHALL BE IN AN AMOUNT OF NOT LESS THAN TWO HUNDRED THOUSAND DOLLARS. LOAN ORIGINATORS WORKING UNDER THE EMPLOYER BOND

DESCRIBED IN THIS PARAGRAPH DO NOT HAVE TO CONTRIBUTE TO THE MORTGAGE RECOVERY FUND.

C. A person shall make an application for a license or renewal of a license in writing in the manner prescribed by the superintendent and accompanied by the information prescribed by the superintendent.

~~D. Beginning January 1, 2010, an applicant for renewal of a loan originator license shall have satisfactorily completed six continuing education units before submitting the renewal application.~~

D. BEFORE SUBMITTING A RENEWAL APPLICATION, AN APPLICANT FOR RENEWAL OF A LOAN ORIGINATOR LICENSE SHALL HAVE SATISFACTORILY COMPLETED EIGHT APPROVED CONTINUING EDUCATION UNITS THAT INCLUDE AT LEAST:

1. THREE HOURS OF FEDERAL LAW.

2. TWO HOURS OF ETHICS, INCLUDING INSTRUCTION ON FRAUD, CONSUMER PROTECTION AND FAIR LENDING ISSUES.

3. TWO HOURS OF TRAINING RELATED TO LENDING STANDARDS FOR THE NONTRADITIONAL MORTGAGE PRODUCT MARKETPLACE.

E. EDUCATION COURSES TAKEN BEFORE LICENSURE SHALL BE REVIEWED AND APPROVED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS SUCCESSOR.

F. CONTINUING EDUCATION COURSES SHALL BE REVIEWED AND APPROVED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS SUCCESSOR. A LICENSED LOAN ORIGINATOR:

1. MAY ONLY RECEIVE CREDIT FOR A CONTINUING EDUCATION COURSE IN THE YEAR IN WHICH THE COURSE IS TAKEN.

2. MAY NOT TAKE THE SAME APPROVED COURSE IN THE SAME YEAR OR SUCCESSIVE YEARS TO MEET THE ANNUAL REQUIREMENTS FOR CONTINUING EDUCATION.

~~E.~~ G. The nonrefundable application fee shall accompany each application for an original loan originator license ~~only~~.

~~F. A loan originator shall not advertise for or solicit mortgage business in any manner without using the name and license number as issued on the employing mortgage broker's or mortgage banker's principal place of business license and without the approval of the employing mortgage broker or mortgage banker.~~

~~G.~~ H. A license issued pursuant to this article is not transferable or assignable.

I. AT THE SUPERINTENDENT'S DISCRETION, APPLICATION FEES MAY BE WAIVED IF THE APPLICANT IS A HOUSING COUNSELOR CERTIFIED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND EMPLOYED BY A NONPROFIT AGENCY.

J. EACH MORTGAGE BROKER OR MORTGAGE BANKER SHALL SUBMIT TO THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE

AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 1501 THROUGH 5116) OR ITS SUCCESSOR REPORTS OF CONDITION THAT ARE IN A FORM AND THAT CONTAIN INFORMATION REQUIRED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM.

K. THE SUPERINTENDENT SHALL ESTABLISH A PROCESS FOR LOAN ORIGINATORS TO CHALLENGE INFORMATION THAT THE SUPERINTENDENT ENTERS INTO THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

Sec. 7. Section 6-991.04, Arizona Revised Statutes, is amended to read:

6-991.04. Issuance of license; notice from employing mortgage broker, mortgage banker or consumer lender; renewal; inactive status; address change; fee

A. The superintendent, on determining that an applicant is qualified and has paid the required fees, shall issue a loan originator's license to the applicant evidenced by a continuous certificate. The superintendent shall grant or deny a license within one hundred twenty days after receiving the completed application and fees. An applicant who has been denied a license may not reapply for a license before one year from the date of the previous application.

B. On issuance of the license, the superintendent shall keep the loan originator's license until a mortgage broker or mortgage banker licensed pursuant to this chapter OR A CONSUMER LENDER employs the loan originator and the employer provides a written notice that the employer has hired the loan originator. The employer shall provide the notice before the loan originator begins working for the employer. The notice shall be from an officer or other person authorized by the employer. The notice shall contain a request for the loan originator's license and shall be dated, signed and notarized. On receipt of the request, the superintendent shall forward the loan originator's license to the employing mortgage broker, ~~or~~ mortgage banker OR CONSUMER LENDER.

C. Licenses shall be issued for a one year period.

D. A loan originator shall make application for renewal on forms prescribed by the superintendent. The application shall include original certificates evidencing the loan originator's successful completion of ~~six~~ EIGHT continuing education units during the preceding one year period by a continuing education provider approved by the superintendent.

E. A loan originator shall pay the renewal fee every year on or before December 31. Licenses not renewed by December 31 are suspended and the licensee shall not act as a loan originator until the license is renewed or a new license is issued pursuant to this article. A person may renew a suspended license by paying the renewal fee plus a dollar amount to be determined by the superintendent for each day after December 31 that a license renewal fee is not received by the superintendent.

F. Licenses that are not renewed by January 31 of each year expire. A license shall not be granted to the holder of an expired license except as provided in this article for the issuance of an original license.

G. From December 1 through December 31 of each renewal period, a licensee may request inactive status for the following license period. The license shall be placed on inactive status after the licensee pays to the superintendent the inactive status renewal fee and surrenders the license to the superintendent. During inactive status, an inactive licensee shall not act as a loan originator. A licensee may not be on inactive status for more than two consecutive renewal periods in any ten year period. The license expires if the licensee violates this subsection.

H. At renewal an inactive licensee may return to active status by doing all of the following:

1. Providing the superintendent with evidence that the licensee has met the requirements of section 6-991.03, subsection B.

2. Making a written request to the superintendent for reactivation.

3. Paying the annual licensing fee.

4. Providing the superintendent with proof that the licensee meets all other requirements for acting as a loan originator.

I. The employing mortgage broker, ~~or~~ mortgage banker OR CONSUMER LENDER shall keep and maintain at the principal place of business in this state the loan originator's license during the loan originator's employment. A copy of the loan originator's license shall be available for public inspection during regular business hours.

J. A loan originator shall immediately notify the superintendent of a change in the loan originator's residence address. The superintendent shall endorse the change of address on the license for a fee to be determined by the superintendent.

K. Within five business days after any licensee's employment termination, the employing mortgage broker, ~~or~~ mortgage banker OR CONSUMER LENDER shall do both of the following:

1. Notify the superintendent of the licensee's termination.

2. Return the license to the superintendent.

L. AN APPLICANT FOR A LOAN ORIGINATOR LICENSE WHO IS CURRENTLY REGISTERED WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS SUCCESSOR MAY BE GRANTED A TEMPORARY LICENSE FOR A PERIOD NOT TO EXCEED ONE HUNDRED EIGHTY DAYS.

M. THE SUPERINTENDENT SHALL ESTABLISH A PROCESS FOR LOAN ORIGINATORS TO CHALLENGE INFORMATION THAT THE SUPERINTENDENT ENTERS INTO THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

Sec. 8. Section 6-991.05, Arizona Revised Statutes, is amended to read:

6-991.05. Denial, suspension or revocation of licenses

A. The superintendent may deny a license to a person or suspend or revoke a license if the superintendent finds that an applicant or licensee:

1. Is not a person of honesty, truthfulness or good character.

2. DOES NOT HAVE THE FINANCIAL RESPONSIBILITY, EXPERIENCE OR COMPETENCE TO ADEQUATELY SERVE THE PUBLIC OR TO WARRANT THE BELIEF THAT THE APPLICANT OR LICENSEE WILL ACT LAWFULLY, HONESTLY AND FAIRLY PURSUANT TO THIS ARTICLE.

~~2.~~ 3. Has violated any law, rule or order.

~~3.~~ 4. Has been convicted ~~in any state~~ of a felony DURING THE SEVEN YEAR PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION or any crime of breach of trust or dishonesty, FRAUD OR MONEY LAUNDERING AT ANY TIME PRECEDING THE DATE OF APPLICATION.

~~4.~~ 5. Has had a final judgment entered against the applicant or licensee in a civil action on grounds of fraud, deceit or misrepresentation, and the conduct on which the judgment is based indicates that it would be contrary to the interest of the public to permit the person to be licensed.

~~5.~~ 6. Has had an administrative agency of this state, the federal government or any other state or territory of the United States enter an order against the applicant or licensee involving fraud, deceit or misrepresentation, and the facts relating to the order indicate that it would be contrary to the interest of the public to permit the person to be licensed.

~~6.~~ 7. Has made a material misstatement or suppressed or withheld information on the application for a license or any document required to be filed with the superintendent.

8. HAS HAD A LOAN ORIGINATOR LICENSE, CONSUMER LENDER LICENSE, MORTGAGE BROKER LICENSE OR MORTGAGE BANKER LICENSE REVOKED OR DENIED IN THIS STATE OR ANY OTHER STATE.

B. If a licensee or applicant under this article is indicted or informed against for forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or a similar offense, and a certified copy of the indictment or information or other proper evidence of the indictment or information is filed with the superintendent, the superintendent may suspend the license or refuse to grant a license to an applicant pending trial on the indictment.

Sec. 9. Section 6-991.07, Arizona Revised Statutes, is amended to read:

6-991.07. Examination; fee; definition

A. Each applicant for an original loan originator license, before issuance of the license, shall take and pass an examination given under the supervision of the department OR ITS DESIGNEE. The examination must reasonably examine the applicant's knowledge of all of the following:

1. The obligations between principal and agent.
2. The applicable canons of business ethics.
3. This article and the rules adopted under this article.
4. The arithmetical computations common to mortgage brokerage.
5. The principles of real estate lending.
6. The general purposes and legal effect of mortgages, deeds of trust and security agreements.
7. The terms and conditions of conforming and nonconforming residential mortgage products.
8. The principles of appraisal independence.

B. The examination is subject to the superintendent's approval.

~~C. The department shall supervise the administration of the examination to applicants for licenses at least once every six months. The department shall reasonably prescribe the time, place and conduct of examinations and collect a fee in an amount to be determined by the superintendent for administration of the examination to be assessed to all persons taking the examination. The test may be given in either written or electronic format.~~

~~D.~~ C. An applicant may ~~not~~ take the examination ~~more than two times within a twelve month period~~ THREE CONSECUTIVE TIMES WITH EACH CONSECUTIVE TAKING OCCURRING AT LEAST THIRTY DAYS AFTER THE PRECEDING EXAMINATION. AN APPLICANT WHO FAILS THE EXAMINATION ON THREE CONSECUTIVE OCCASIONS MUST WAIT AT LEAST SIX MONTHS BEFORE TAKING THE EXAMINATION AGAIN.

~~E.~~ D. All examinations shall be given, conducted and graded in a fair and impartial manner and without unfair discrimination between individuals examined. The committee OR THE DEPARTMENT'S DESIGNEE shall inform the applicant of the result of the examination within thirty days of the examination.

~~F.~~ E. The superintendent ~~shall~~ MAY determine the fee for each examination. THE SUPERINTENDENT MAY CONTRACT FOR THE EXAMINATION FOR THE LICENSING OF APPLICANTS. IF THE SUPERINTENDENT CONTRACTS FOR THE EXAMINATION, THE FEE FOR EXAMINATION FOR LICENSES PURSUANT TO THIS SECTION IS PAYABLE DIRECTLY TO THE CONTRACTOR BY THE APPLICANT FOR EXAMINATION.

~~G.~~ F. For the purposes of this section, "applicant" means a person who has submitted a completed application in the form prescribed by the superintendent.

Sec. 10. Renumber

Section 6-991.08, Arizona Revised Statutes, is renumbered as section 6-991.22.

Sec. 11. Title 6, chapter 9, article 4, Arizona Revised Statutes, is amended by adding a new section 6-991.08, to read:

6-991.08. Reasonable efforts to secure advantageous loan for borrower

A LOAN ORIGINATOR SHALL MAKE REASONABLE EFFORTS TO SECURE A LOAN THAT IS REASONABLY ADVANTAGEOUS TO THE BORROWER CONSIDERING ALL OF THE

CIRCUMSTANCES, INCLUDING THE INTEREST RATES, CHARGES AND REPAYMENT TERMS OF THE LOAN.

Sec. 12. Title 6, chapter 9, article 4, Arizona Revised Statutes, is amended by adding sections 6-991.09, 6-991.10, 6-991.11, 6-991.12, 6-991.13, 6-991.14, 6-991.15, 6-991.16, 6-991.17, 6-991.18, 6-991.19, 6-991.20 and 6-991.21, to read:

6-991.09. Mortgage recovery fund; liability limits

A. THE SUPERINTENDENT SHALL ESTABLISH AND MAINTAIN A MORTGAGE RECOVERY FUND CONSISTING OF THE MONIES RECEIVED BY THE SUPERINTENDENT PURSUANT TO THIS ARTICLE FOR THE BENEFIT OF ANY PERSON AGGRIEVED BY ANY ACT, REPRESENTATION, TRANSACTION OR CONDUCT OF A LICENSED LOAN ORIGINATOR THAT VIOLATES THIS TITLE OR THE RULES ADOPTED PURSUANT TO THIS TITLE.

B. ON NOTICE FROM THE SUPERINTENDENT, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

C. NOTWITHSTANDING ANY OTHER LAW, THE SUPERINTENDENT MAY SPEND INTEREST MONIES FROM THE FUND THAT ARE NECESSARY TO INCREASE PUBLIC AWARENESS OF THE FUND, BUT THAT DO NOT TO EXCEED FIFTY THOUSAND DOLLARS IN ANY FISCAL YEAR.

D. THE FUND SHALL ONLY PAY FOR A LOSS THAT IS AN ACTUAL AND DIRECT OUT-OF-POCKET LOSS TO AN AGGRIEVED PERSON DIRECTLY ARISING OUT OF A MORTGAGE TRANSACTION, INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS.

E. THE MORTGAGE RECOVERY FUND'S LIABILITY SHALL NOT EXCEED:

1. TWO HUNDRED THOUSAND DOLLARS FOR EACH TRANSACTION, REGARDLESS OF THE NUMBER OF PERSONS AGGRIEVED OR THE NUMBER OF LICENSEES OR PARCELS OF REAL ESTATE INVOLVED.

2. FIVE HUNDRED THOUSAND DOLLARS FOR EACH LICENSEE.

F. THE LIABILITY OF THE FUND FOR THE ACTS OF A LICENSED LOAN ORIGINATOR IS TERMINATED ON THE ISSUANCE OF ORDERS AUTHORIZING PAYMENTS FROM THE FUND IN AN AGGREGATE AMOUNT AS PRESCRIBED BY SUBSECTION E OF THIS SECTION.

G. THE FUND IS LIABLE TO PAY ONLY AGAINST THE LICENSE OF A NATURAL PERSON, NOT ON THAT OF A CORPORATION, A PARTNERSHIP OR ANY OTHER FICTITIOUS ENTITY.

H. THE FUND IS LIABLE TO PAY ONLY FOR DAMAGES ARISING OUT OF A TRANSACTION IN WHICH THE DEFENDANT LICENSEE PERFORMED ACTS FOR WHICH A LOAN ORIGINATOR LICENSE WAS REQUIRED OR WHEN THE DEFENDANT LICENSEE ENGAGED IN FRAUD OR MISREPRESENTATION AND THE AGGRIEVED PERSON WAS HARMED DUE TO RELIANCE ON THE DEFENDANT'S LICENSED STATUS.

I. THE FUND SHALL NOT PAY ANY CLAIM UNTIL THE PENAL SUMS OF THE BONDS REQUIRED UNDER SECTION 6-903 OR 6-943 HAVE BEEN EXHAUSTED.

6-991.10. Payments to the mortgage recovery fund

A. IN ADDITION TO ANY OTHER FEES, APPLICANTS SHALL PAY AN AMOUNT TO BE DETERMINED BY THE SUPERINTENDENT TO THE MORTGAGE RECOVERY FUND ON APPLICATION FOR AN ORIGINAL LOAN ORIGINATOR LICENSE.

B. IF, ON JUNE 30 OF ANY YEAR, THE BALANCE REMAINING IN THE MORTGAGE RECOVERY FUND IS LESS THAN TWO MILLION DOLLARS, EVERY LICENSEE WHEN RENEWING A LOAN ORIGINATOR LICENSE DURING THE FOLLOWING LICENSE YEAR SHALL PAY, IN ADDITION TO THE LICENSE RENEWAL FEE, A FEE TO BE DETERMINED BY THE SUPERINTENDENT FOR DEPOSIT IN THE MORTGAGE RECOVERY FUND.

6-991.11. Statute of limitations; service of summons; application for payment; insufficient monies; definition

A. AN ACTION FOR A JUDGMENT THAT SUBSEQUENTLY RESULTS IN AN ORDER FOR PAYMENT FROM THE MORTGAGE RECOVERY FUND SHALL BE STARTED NO LATER THAN FIVE YEARS AFTER THE ACCRUAL OF THE CAUSE OF ACTION.

B. IF AN AGGRIEVED PERSON COMMENCES AN ACTION FOR A JUDGMENT THAT MAY RESULT IN AN ORDER FOR PAYMENT FROM THE MORTGAGE RECOVERY FUND AND THE DEFENDANT LICENSEE CANNOT BE SERVED PROCESS PERSONALLY IN THIS STATE, THE SUMMONS MAY BE SERVED BY THE ALTERNATIVE METHODS OF SERVICE PROVIDED FOR BY THE ARIZONA RULES OF CIVIL PROCEDURE, INCLUDING SERVICE BY PUBLICATION. A JUDGMENT THAT COMPLIES WITH THIS SECTION AND THAT WAS OBTAINED AFTER SERVICE BY PUBLICATION ONLY APPLIES TO AND IS ENFORCEABLE AGAINST THE MORTGAGE RECOVERY FUND. THE DEPARTMENT MAY INTERVENE IN AND DEFEND ANY SUCH ACTION.

C. AN AGGRIEVED PERSON MAY APPLY TO THE DEPARTMENT FOR PAYMENT FROM THE MORTGAGE RECOVERY FUND AFTER THE AGGRIEVED PERSON OBTAINS A JUDGMENT AGAINST A LOAN ORIGINATOR BASED ON THE LICENSEE'S ACT, REPRESENTATION, TRANSACTION OR CONDUCT IN VIOLATION OF THIS TITLE OR THE RULES ADOPTED PURSUANT TO THIS TITLE. THE CLAIMANT MUST FILE THE ORIGINAL APPLICATION, INCLUDING APPENDICES, WITHIN TWO YEARS AFTER THE TERMINATION OF ALL PROCEEDINGS, REVIEWS AND APPEALS CONNECTED WITH THE JUDGMENT. THE SUPERINTENDENT, IN THE SUPERINTENDENT'S SOLE DISCRETION, MAY WAIVE THE TWO YEAR APPLICATION DEADLINE IF THE SUPERINTENDENT DETERMINES THAT THE WAIVER BEST SERVES THE PUBLIC INTEREST. DELIVERY OF THE APPLICATION MUST BE BY PERSONAL SERVICE OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

D. THE APPLICATION MUST BE WITHIN THE LIMITATIONS PRESCRIBED IN SECTION 6-991.09 AND FOR THE AMOUNT THAT IS UNPAID ON THE JUDGMENT AND THAT REPRESENTS THE CLAIMANT'S ACTUAL AND DIRECT LOSS ON THE TRANSACTION.

E. THE DEPARTMENT SHALL PRESCRIBE AND SUPPLY AN APPLICATION FORM THAT INCLUDES DETAILED INSTRUCTIONS WITH RESPECT TO DOCUMENTARY EVIDENCE, PLEADINGS, COURT RULINGS, THE PRODUCTS OF DISCOVERY IN THE UNDERLYING LITIGATION AND NOTICE REQUIREMENTS TO THE JUDGMENT DEBTOR UNDER SECTION 6-991.12. THE CLAIMANT MUST SUBMIT THE CLAIM ON AN APPLICATION FORM SUPPLIED BY THE DEPARTMENT. THE APPLICATION MUST INCLUDE:

1. THE CLAIMANT'S NAME AND ADDRESS.

2. IF THE CLAIMANT IS REPRESENTED BY AN ATTORNEY, THE ATTORNEY'S NAME, BUSINESS ADDRESS AND TELEPHONE NUMBER.

3. THE JUDGMENT DEBTOR'S NAME AND ADDRESS OR, IF UNKNOWN, THE NAMES AND ADDRESSES OF PERSONS WHO MAY KNOW THE JUDGMENT DEBTOR'S PRESENT LOCATION.

4. A DETAILED NARRATIVE STATEMENT OF THE FACTS EXPLAINING THE ALLEGATIONS OF THE COMPLAINT ON WHICH THE UNDERLYING JUDGMENT IS BASED, WITH A COPY OF THE CONTRACTS, RECEIPTS AND OTHER DOCUMENTS FROM THE TRANSACTION, THE LAST AMENDED COMPLAINT, ALL EXISTING RECORDED JUDGMENTS, DOCUMENTATION OF ACTUAL AND DIRECT OUT-OF-POCKET LOSSES AND ANY OFFSETTING PAYMENT RECEIVED AND ALL COLLECTION EFFORTS ATTEMPTED.

5. THE IDENTIFICATION OF THE JUDGMENT, THE AMOUNT OF THE CLAIM AND AN EXPLANATION OF ITS COMPUTATION, INCLUDING AN ITEMIZED LIST OF ACTUAL AND COMPENSATORY DAMAGES AWARDED AND CLAIMED.

6. FOR THE PURPOSE OF AN APPLICATION THAT IS NOT BASED ON A CRIMINAL RESTITUTION ORDER, A STATEMENT BY THE CLAIMANT, SIGNED UNDER PENALTY OF PERJURY, THAT THE COMPLAINT ON WHICH THE UNDERLYING JUDGMENT IS BASED WAS PROSECUTED CONSCIENTIOUSLY AND IN GOOD FAITH. FOR THE PURPOSES OF THIS PARAGRAPH, "CONSCIENTIOUSLY AND IN GOOD FAITH" MEANS THAT ALL OF THE FOLLOWING APPLY:

(a) NO PARTY WHO WAS POTENTIALLY LIABLE TO THE CLAIMANT IN THE UNDERLYING TRANSACTION WAS INTENTIONALLY AND WITHOUT GOOD CAUSE OMITTED FROM THE COMPLAINT.

(b) NO PARTY NAMED IN THE COMPLAINT WHO OTHERWISE REASONABLY APPEARED CAPABLE OF RESPONDING IN DAMAGES WAS INTENTIONALLY AND WITHOUT GOOD CAUSE DISMISSED FROM THE COMPLAINT.

(c) THE CLAIMANT EMPLOYED NO OTHER PROCEDURAL MEANS CONTRARY TO THE DILIGENT PROSECUTION OF THE COMPLAINT IN ORDER TO SEEK TO QUALIFY FOR THE RECOVERY FUND.

7. FOR THE PURPOSE OF AN APPLICATION THAT IS BASED ON A CRIMINAL RESTITUTION ORDER, ALL OF THE FOLLOWING STATEMENTS BY THE CLAIMANT, SIGNED UNDER PENALTY OF PERJURY:

(a) THE CLAIMANT HAS NOT INTENTIONALLY AND WITHOUT GOOD CAUSE FAILED TO PURSUE ANY PERSON POTENTIALLY LIABLE TO THE CLAIMANT IN THE UNDERLYING TRANSACTION OTHER THAN A DEFENDANT WHO IS THE SUBJECT OF A CRIMINAL RESTITUTION ORDER.

(b) THE CLAIMANT HAS NOT INTENTIONALLY AND WITHOUT GOOD CAUSE FAILED TO PURSUE IN A CIVIL ACTION FOR DAMAGES ALL PERSONS WHO ARE POTENTIALLY LIABLE TO THE CLAIMANT IN THE UNDERLYING TRANSACTION AND WHO OTHERWISE REASONABLY APPEARED CAPABLE OF RESPONDING IN DAMAGES OTHER THAN A DEFENDANT WHO IS THE SUBJECT OF A CRIMINAL RESTITUTION ORDER.

(c) THE CLAIMANT EMPLOYED NO OTHER PROCEDURAL MEANS CONTRARY TO THE DILIGENT PROSECUTION OF THE COMPLAINT IN ORDER TO SEEK TO QUALIFY FOR THE MORTGAGE RECOVERY FUND.

8. THE FOLLOWING STATEMENTS, SIGNED UNDER PENALTY OF PERJURY, AND INFORMATION FROM THE CLAIMANT:

(a) THE CLAIMANT IS NOT A SPOUSE OF THE JUDGMENT DEBTOR OR A PERSONAL REPRESENTATIVE OF THE SPOUSE.

(b) THE CLAIMANT HAS COMPLIED WITH ALL OF THE REQUIREMENTS OF THIS ARTICLE.

(c) THE JUDGMENT UNDERLYING THE CLAIM MEETS THE REQUIREMENTS OF THIS ARTICLE.

(d) THE CLAIMANT HAS RECORDED A CERTIFIED COPY OF THE SUPERIOR COURT JUDGMENT OR TRANSCRIPT OF JUDGMENT PURSUANT TO SECTIONS 33-961 AND 33-962 IN THE COUNTY IN WHICH THE JUDGMENT WAS OBTAINED AND IN THE COUNTY IN WHICH ALL JUDGMENT DEBTORS RESIDE AND HAS PROVIDED A COPY OF THE RECORDED JUDGMENT TO THE SUPERINTENDENT.

(e) THE CLAIMANT HAS CAUSED THE JUDGMENT DEBTOR TO MAKE DISCOVERY UNDER OATH, PURSUANT TO SECTION 12-1631, CONCERNING THE DEBTOR'S PROPERTY.

(f) THE CLAIMANT HAS CAUSED A WRIT OF EXECUTION TO BE ISSUED ON THE JUDGMENT AND THE OFFICER EXECUTING THE WRIT HAS MADE A RETURN SHOWING THAT EITHER:

(i) NO PERSONAL OR REAL PROPERTY OF THE JUDGMENT DEBTOR LIABLE TO BE LEVIED ON IN SATISFACTION OF THE JUDGMENT COULD BE FOUND, SOLD OR APPLIED.

(ii) THE AMOUNT REALIZED ON THE SALE OF THE PROPERTY, OR AS MUCH OF THE PROPERTY THAT WAS FOUND, UNDER THE EXECUTION WAS INSUFFICIENT TO SATISFY THE JUDGMENT.

(g) THE CLAIMANT HAS CAUSED A WRIT OF GARNISHMENT TO BE ISSUED TO EACH KNOWN EMPLOYER OF THE JUDGMENT DEBTOR ASCERTAINED BY THE CLAIMANT, THAT EACH GARNISHEE DEFENDANT HAS COMPLIED WITH THE RESPECTIVE WRIT AND ANY JUDGMENT OR ORDER RESULTING FROM THE WRIT AND THAT THE AMOUNT REALIZED FROM ALL JUDGMENTS AGAINST THE GARNISHEE DEFENDANTS WAS INSUFFICIENT TO SATISFY THE BALANCE DUE ON THE JUDGMENT.

(h) THE CLAIMANT HAS DEDUCTED THE FOLLOWING AMOUNTS FROM THE ACTUAL OR COMPENSATORY DAMAGES AWARDED BY THE COURT:

(i) ANY AMOUNT RECOVERED OR ANTICIPATED FROM THE JUDGMENT DEBTOR OR DEBTORS.

(ii) ANY AMOUNT RECOVERED THROUGH COLLECTION EFFORTS UNDERTAKEN PURSUANT TO SUBDIVISIONS (d) THROUGH (g) OF THIS PARAGRAPH AND INCLUDING AN ITEMIZED VALUATION OF THE ASSETS DISCOVERED AND AMOUNTS APPLIED.

(iii) ANY AMOUNT RECOVERED OR ANTICIPATED FROM BONDING, INSURANCE OR TITLE COMPANIES, INCLUDING RECOVERY OF PUNITIVE DAMAGES.

(iv) ANY AMOUNT RECOVERED OR ANTICIPATED FROM IN COURT OR OUT OF COURT SETTLEMENTS.

(v) ANY AMOUNT OF TAX BENEFITS ACCRUED OR TAKEN AS DEDUCTIONS ON FEDERAL, STATE OR LOCAL INCOME TAX RETURNS.

F. IF THE CLAIM IS BASED ON A JUDGMENT AGAINST A LOAN ORIGINATOR AND THE CLAIMANT HAS NOT OBTAINED A JUDGMENT AGAINST THE LOAN ORIGINATOR'S EMPLOYING MORTGAGE BROKER, MORTGAGE BANKER OR CONSUMER LENDER IF ANY, OR HAS NOT DILIGENTLY PURSUED THE ASSETS OF THE EMPLOYING MORTGAGE BROKER, MORTGAGE BANKER OR CONSUMER LENDER THE DEPARTMENT SHALL DENY THE CLAIM FOR FAILURE TO DILIGENTLY PURSUE THE ASSETS OF ALL OTHER PERSONS LIABLE TO THE CLAIMANT IN THE TRANSACTION UNLESS THE CLAIMANT DEMONSTRATES, BY CLEAR AND CONVINCING EVIDENCE, THAT EITHER:

1. THE LOAN ORIGINATOR WAS NOT EMPLOYED BY A MORTGAGE BROKER, MORTGAGE BANKER OR CONSUMER LENDER AT THE TIME OF THE TRANSACTION.

2. THE LOAN ORIGINATOR'S EMPLOYING MORTGAGE BROKER, MORTGAGE BANKER OR CONSUMER LENDER WOULD NOT HAVE BEEN LIABLE TO THE CLAIMANT BECAUSE THE LOAN ORIGINATOR ACTED OUTSIDE THE SCOPE OF EMPLOYMENT IN THE TRANSACTION.

G. THE SUPERINTENDENT, AT THE SUPERINTENDENT'S SOLE DISCRETION, MAY WAIVE COMPLIANCE WITH ONE OR MORE OF THE REQUIREMENTS PRESCRIBED BY SUBSECTION E, PARAGRAPH 8 OR SUBSECTION F OF THIS SECTION IF THE CLAIM IS BASED ON AN AWARD PURSUANT TO A CRIMINAL RESTITUTION ORDER OR IF THE SUPERINTENDENT IS SATISFIED THAT THE CLAIMANT HAS TAKEN ALL REASONABLE STEPS TO COLLECT THE AMOUNT OF THE JUDGMENT OR THE UNSATISFIED PART OF THE JUDGMENT FROM ALL JUDGMENT DEBTORS BUT HAS BEEN UNABLE TO COLLECT.

H. IF THE SUPERINTENDENT FINDS IT IS LIKELY THAT THE TOTAL REMAINING LIABILITY OF THE RECOVERY FUND IS INSUFFICIENT TO PAY IN FULL THE VALID CLAIMS OF ALL AGGRIEVED PERSONS WHO MAY HAVE CLAIMS AGAINST ANY ONE LICENSEE, THE SUPERINTENDENT MAY PETITION THE COURT TO INITIATE A PRORATION PROCEEDING. THE COURT SHALL GRANT THE PETITION AND ORDER A HEARING TO DISTRIBUTE THE TOTAL REMAINING LIABILITY OF THE FUND AMONG THE APPLICANTS IN THE RATIO THAT THEIR RESPECTIVE CLAIMS BEAR TO THE AGGREGATE OF THE VALID CLAIMS OR IN ANOTHER MANNER THAT THE COURT DEEMS EQUITABLE. THE SUPERINTENDENT OR ANY PARTY MAY FILE A PROPOSED PLAN FOR EQUITABLE DISTRIBUTION OF THE AVAILABLE MONIES. THE DISTRIBUTION OF MONIES SHALL BE AMONG THE PERSONS ENTITLED TO SHARE THEM, WITHOUT REGARD TO THE ORDER OF PRIORITY IN WHICH THEIR RESPECTIVE JUDGMENTS MAY HAVE BEEN OBTAINED OR THEIR RESPECTIVE APPLICATIONS MAY HAVE BEEN FILED. THE COURT MAY REQUIRE ALL APPLICANTS AND PROSPECTIVE APPLICANTS AGAINST ONE LICENSEE TO BE JOINED IN ONE ACTION IF THE RESPECTIVE RIGHTS OF ALL THE APPLICANTS TO THE RECOVERY FUND MAY BE EQUITABLY ADJUDICATED AND SETTLED. THE COURT SHALL NOT INCLUDE IN THE CLAIMS FOR PRORATION THE CLAIM OF ANY PERSON WHO HAS NOT, WITHIN NINETY DAYS AFTER THE COURT HAS ENTERED THE ORDER FOR PRORATION, FILED A COMPLAINT WITH THE COURT, SERVED THE LICENSEE AND PROVIDED WRITTEN NOTICE OF THE CLAIM TO THE SUPERINTENDENT. THE LIABILITY OF THE FUND ON ANY APPLICATION AFFECTED BY A PRORATION PROCEEDING IS BASED ON THE LIMITS IN EFFECT ON THE DATE WHEN THE LAST APPLICATION FOR PAYMENT IS FILED. THE COURT MAY REFUSE TO CONSIDER OR AWARD PRORATED RECOVERY TO ANY PERSON WHO FAILS TO EXPEDITIOUSLY PROSECUTE A CLAIM AGAINST THE LICENSEE OR PROMPTLY FILE AN APPLICATION FOR PAYMENT AND SUBMIT SUPPORTING DOCUMENTATION AS REQUIRED BY THIS ARTICLE.

I. IF, AT ANY TIME, THE MONEY DEPOSITED IN THE MORTGAGE RECOVERY FUND IS INSUFFICIENT TO SATISFY ANY DULY AUTHORIZED CLAIM OR PORTION OF A CLAIM, THE SUPERINTENDENT, WHEN SUFFICIENT MONEY HAS BEEN DEPOSITED IN THE MORTGAGE RECOVERY FUND, SHALL SATISFY THE UNPAID CLAIMS OR PORTIONS OF CLAIMS, IN THE ORDER THAT THE CLAIMS OR PORTIONS OF CLAIMS WERE ORIGINALLY FILED, PLUS ACCUMULATED INTEREST AT THE RATE OF FOUR PER CENT A YEAR.

J. FOR THE PURPOSES OF THIS SECTION, "COMPLAINT" MEANS THE FACTS OF THE TRANSACTION ON WHICH THE JUDGMENT IS BASED.

6-991.12. Notice of claim to judgment debtor; response

A. WITHIN THE SAME TIME PRESCRIBED BY SECTION 6-991.11, SUBSECTION C FOR APPLYING FOR PAYMENT FROM THE MORTGAGE RECOVERY FUND, AN AGGRIEVED PARTY WHO APPLIES FOR PAYMENT SHALL SERVE NOTICE OF THE CLAIM ON THE JUDGMENT DEBTOR, TOGETHER WITH A COPY OF THE APPLICATION. THE NOTICE SHALL BE IN THE FOLLOWING FORM:

NOTICE

BASED ON A JUDGMENT AGAINST YOU IN FAVOR OF (ENTER NAME OF CLAIMANT), APPLICATION IS BEING MADE TO THE ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS FOR PAYMENT FROM THE MORTGAGE RECOVERY FUND.

IF YOU WISH TO CONTEST PAYMENT FROM THE MORTGAGE RECOVERY FUND, YOU MUST FILE A WRITTEN RESPONSE TO THE APPLICATION. THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS MUST RECEIVE YOUR RESPONSE AT (ADDRESS) WITHIN THIRTY-FIVE CALENDAR DAYS AFTER THE DATE THIS NOTICE IS (MAILED, DELIVERED, FIRST PUBLISHED). YOU MUST ALSO SEND A COPY OF THE RESPONSE TO THE CLAIMANT. IF YOU FAIL TO RESPOND AS REQUIRED, YOU WAIVE YOUR RIGHT TO PRESENT YOUR OBJECTIONS TO PAYMENT.

B. IF THE JUDGMENT DEBTOR HOLDS A CURRENT LICENSE ISSUED BY THE DEPARTMENT, THE NOTICE AND COPY OF THE APPLICATION MAY BE SERVED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO THE JUDGMENT DEBTOR'S LATEST BUSINESS OR RESIDENCE ADDRESS ON FILE WITH THE DEPARTMENT. IF THE JUDGMENT DEBTOR DOES NOT HOLD A CURRENT LICENSE AND IF PERSONAL DELIVERY CANNOT BE EFFECTED BY EXERCISING REASONABLE DILIGENCE, THE CLAIMANT MUST PUBLISH THE NOTICE ONCE A WEEK FOR TWO CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE JUDGMENT DEBTOR WAS LAST KNOWN TO RESIDE.

C. IF THE JUDGMENT DEBTOR FAILS TO FILE A WRITTEN RESPONSE TO THE APPLICATION WITH THE DEPARTMENT WITHIN THIRTY-FIVE CALENDAR DAYS AFTER SERVICE UNDER SUBSECTION B OF THIS SECTION OR AFTER THE FIRST PUBLICATION OF THE NOTICE, THE JUDGMENT DEBTOR IS NOT ENTITLED TO NOTICE OF ANY ACTION TAKEN OR PROPOSED TO BE TAKEN BY THE SUPERINTENDENT WITH RESPECT TO THE CLAIM.

6-991.13. Correction of deficiencies in the application

A. IF THE SUPERINTENDENT DETERMINES THAT A CLAIMANT'S APPLICATION FAILS TO COMPLY SUBSTANTIALLY WITH THE REQUIREMENTS OF SECTION 6-991.11 OR RULES ADOPTED PURSUANT TO THIS ARTICLE, THE SUPERINTENDENT, WITHIN THIRTY CALENDAR DAYS AFTER RECEIVING THE APPLICATION, SHALL MAIL AN ITEMIZED LIST OF DEFICIENCIES TO THE CLAIMANT. FOR THE PURPOSES OF THIS SUBSECTION, "COMPLY SUBSTANTIALLY" MEANS FILING WITH THE DEPARTMENT THE DOCUMENTS THAT ARE MINIMALLY NECESSARY TO PROCESS A CLAIM, INCLUDING AT LEAST A CERTIFIED COPY OF THE JUDGMENT, LEGIBLE COPIES OF DOCUMENTS ESTABLISHING THE UNDERLYING TRANSACTION AND AMOUNTS OF LOSSES SUFFERED AND A STATEMENT CONCERNING AMOUNTS RECOVERED FROM OR ON BEHALF OF THE JUDGMENT DEBTOR.

B. THE CLAIMANT MUST RESPOND WITHIN SIXTY CALENDAR DAYS AFTER RECEIVING THE LIST OF DEFICIENCIES BY PROVIDING THE INFORMATION IDENTIFIED BY THE SUPERINTENDENT. IF THE CLAIMANT FAILS TO CORRECT THE DEFICIENCIES WITHIN SIXTY CALENDAR DAYS, THE DEPARTMENT SHALL CLOSE THE FILE UNLESS THE CLAIMANT REQUESTS AN EXTENSION IN WRITING. A CLAIMANT WHOSE FILE HAS BEEN CLOSED MAY SUBMIT A NEW APPLICATION AS PROVIDED BY SECTION 6-991.11.

C. THE DEADLINE PRESCRIBED BY SECTION 6-991.15 FOR THE SUPERINTENDENT TO MAKE A DECISION ON THE APPLICATION IS SUSPENDED FROM THE DATE THE SUPERINTENDENT MAILS THE LIST OF DEFICIENCIES TO THE APPLICANT UNTIL THE DATE THE DEPARTMENT RECEIVES THE REQUESTED INFORMATION.

6-991.14. Investigation and discovery

IN CONSIDERING AND INVESTIGATING AN APPLICATION, THE DEPARTMENT MAY USE ALL APPROPRIATE MEANS OF INVESTIGATION AND DISCOVERY THAT ARE AVAILABLE PURSUANT TO THIS ARTICLE.

6-991.15. Final decision and order on claim; notice

A. THE SUPERINTENDENT SHALL MAKE A FINAL WRITTEN DECISION AND ORDER ON A CLAIM WITHIN NINETY CALENDAR DAYS AFTER RECEIVING A COMPLETED APPLICATION EXCEPT IN THE FOLLOWING CASES:

1. A PRORATION HEARING IS PENDING UNDER SECTION 6-991.11.

2. AN APPLICATION IS DEFICIENT OR FAILS TO COMPLY SUBSTANTIALLY WITH THE REQUIREMENTS OF SECTION 6-991.11 OR RULES ADOPTED PURSUANT TO THIS ARTICLE AS DETERMINED PURSUANT TO SECTION 6-991.13.

3. THE CLAIMANT AGREES IN WRITING TO EXTEND THE TIME FOR MAKING A DECISION.

B. IF THE SUPERINTENDENT FAILS TO RENDER A WRITTEN DECISION AND ORDER ON A CLAIM WITHIN NINETY CALENDAR DAYS AFTER RECEIVING A COMPLETED APPLICATION, OR WITHIN AN EXTENDED PERIOD OF TIME PROVIDED UNDER SUBSECTION A OF THIS SECTION, THE CLAIM IS CONSIDERED TO BE APPROVED ON THE DAY FOLLOWING THE FINAL DAY FOR RENDERING THE DECISION.

C. THE SUPERINTENDENT MAY APPROVE OR DENY AN APPLICATION OR MAY ENTER INTO A COMPROMISE WITH THE CLAIMANT TO PAY LESS IN SETTLEMENT THAN THE FULL AMOUNT OF THE CLAIM. IF THE CLAIMANT REFUSES TO ACCEPT A SETTLEMENT OFFERED BY THE SUPERINTENDENT, THE SUPERINTENDENT SHALL DENY THE CLAIM.

D. THE SUPERINTENDENT SHALL GIVE NOTICE OF A DECISION AND ORDER WITH RESPECT TO THE CLAIM TO THE CLAIMANT AND TO ANY JUDGMENT DEBTOR WHO HAS FILED A TIMELY RESPONSE TO THE CLAIM PURSUANT TO SECTION 6-991.12 AS FOLLOWS:

1. IF THE SUPERINTENDENT DENIES THE APPLICATION, THE NOTICE SHALL INCLUDE THE FOLLOWING:

> THE CLAIMANT'S APPLICATION HAS BEEN DENIED. IF THE CLAIMANT WISHES TO PURSUE THE APPLICATION IN COURT, THE CLAIMANT MUST FILE THE APPLICATION IN THE COURT IN WHICH THE UNDERLYING JUDGMENT WAS ENTERED WITHIN SIX MONTHS AFTER RECEIVING THIS NOTICE, PURSUANT TO SECTION 6-991.16, ARIZONA REVISED STATUTES.

2. IF THE SUPERINTENDENT'S DECISION IS TO MAKE A PAYMENT TO THE CLAIMANT OUT OF THE MORTGAGE RECOVERY FUND, THE FOLLOWING NOTICE SHALL BE GIVEN TO THE JUDGMENT DEBTOR WITH A COPY OF THE DECISION AND ORDER OF THE SUPERINTENDENT:

> THE DECISION OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS ON THE CLAIM OF (NAME OF CLAIMANT) IS TO PAY $_____ FROM THE MORTGAGE RECOVERY FUND. A COPY OF THAT DECISION AND ORDER IS ENCLOSED. IF YOU DESIRE A JUDICIAL REVIEW OF THE SUPERINTENDENT'S DECISION AND ORDER OR THE TERMINATION OF YOUR LICENSES AND LICENSE RIGHTS, YOU MAY PETITION THE SUPERIOR COURT, IN THE COUNTY IN WHICH THE JUDGMENT THAT IS THE BASIS OF THIS CLAIM WAS RENDERED, FOR A JUDICIAL REVIEW. TO BE TIMELY, YOU MUST FILE THE PETITION WITH THE COURT WITHIN THIRTY CALENDAR DAYS AFTER RECEIVING THIS NOTICE.

6-991.16. Claimant's right to appeal denial of claim; service of notice of appeal; response; failure to file response

A. A CLAIMANT WHOSE APPLICATION IS DENIED PURSUANT TO SECTION 6-991.15 MAY FILE WITHIN SIX MONTHS AFTER RECEIVING NOTICE OF A DENIAL OF THE CLAIM A VERIFIED APPLICATION IN THE COURT IN WHICH JUDGMENT WAS ENTERED IN THE CLAIMANT'S FAVOR FOR AN ORDER DIRECTING PAYMENT OUT OF THE MORTGAGE RECOVERY FUND BASED ON THE GROUNDS SET FORTH IN THE CLAIMANT'S APPLICATION TO THE SUPERINTENDENT.

B. THE CLAIMANT MUST SERVE A COPY OF THE VERIFIED APPLICATION ON THE SUPERINTENDENT AND ON THE JUDGMENT DEBTOR AND FILE A CERTIFICATE OR AFFIDAVIT OF SERVICE WITH THE COURT. SERVICE ON THE SUPERINTENDENT SHALL BE MADE BY CERTIFIED MAIL ADDRESSED TO THE SUPERINTENDENT. SERVICE ON A JUDGMENT DEBTOR SHALL BE MADE PURSUANT TO SECTION 6-991.12 AND SHALL INCLUDE THE FOLLOWING NOTICE:

NOTICE

> AN APPLICATION HAS BEEN FILED WITH THE COURT FOR A PAYMENT FROM THE MORTGAGE RECOVERY FUND THAT WAS PREVIOUSLY DENIED BY THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS. IF YOU WISH TO DEFEND IN COURT AGAINST THIS CLAIM, YOU MUST FILE A WRITTEN RESPONSE WITH THE COURT WITHIN THIRTY CALENDAR DAYS AFTER YOU ARE SERVED WITH A COPY OF THE APPLICATION. IF YOU FAIL TO FILE A WRITTEN RESPONSE, YOU WAIVE YOUR RIGHT TO DEFEND AGAINST THE CLAIM.

C. THE SUPERINTENDENT AND THE JUDGMENT DEBTOR EACH MUST FILE A WRITTEN RESPONSE WITHIN THIRTY CALENDAR DAYS AFTER BEING SERVED WITH THE APPLICATION UNDER SUBSECTION B OF THIS SECTION. THE COURT SHALL SET THE MATTER FOR HEARING ON THE PETITION OF THE CLAIMANT. THE COURT SHALL GRANT A REQUEST OF THE SUPERINTENDENT FOR A CONTINUANCE OF AS MUCH AS THIRTY CALENDAR DAYS AND, ON A SHOWING OF GOOD CAUSE BY ANY PARTY, MAY CONTINUE THE HEARING FOR A TIME THAT THE COURT CONSIDERS TO BE APPROPRIATE.

D. AT THE HEARING, THE CLAIMANT MUST ESTABLISH COMPLIANCE WITH THE REQUIREMENTS OF SECTION 6-991.11.

E. IF THE JUDGMENT DEBTOR FAILS TO FILE A WRITTEN RESPONSE TO THE APPLICATION, THE SUPERINTENDENT MAY COMPROMISE OR SETTLE THE CLAIM AT ANY TIME DURING THE COURT PROCEEDINGS AND, ON JOINT PETITION OF THE APPLICANT AND THE SUPERINTENDENT, THE COURT SHALL ISSUE AN ORDER DIRECTING PAYMENT OUT OF THE MORTGAGE RECOVERY FUND.

6-991.17. Superintendent's standing in court

THE SUPERINTENDENT MAY ENTER AN APPEARANCE, FILE AN ANSWER, APPEAR AT THE COURT HEARING, DEFEND THE ACTION OR TAKE WHATEVER OTHER ACTION THE SUPERINTENDENT CONSIDERS APPROPRIATE ON BEHALF AND IN THE NAME OF THE MORTGAGE RECOVERY FUND AND TAKE RECOURSE THROUGH ANY APPROPRIATE METHOD OF REVIEW ON BEHALF OF, AND IN THE NAME OF, THE MORTGAGE RECOVERY FUND.

6-991.18. Subrogation of rights; collection

A. BEFORE RECEIVING PAYMENT FROM THE FUND, A CLAIMANT MUST COMPLETE AND EXECUTE, AS JUDGMENT CREDITOR, AN ASSIGNMENT OF JUDGMENT LIEN AND NOTICE OF SUBROGATION AND ASSIGNMENT OF RIGHTS TO THE CLAIMANT'S JUDGMENT ON A FORM PROVIDED BY THE DEPARTMENT.

B. IF THE SUPERINTENDENT HAS PAID FROM THE MORTGAGE RECOVERY FUND ANY SUM TO THE JUDGMENT CREDITOR, THE SUPERINTENDENT SHALL BE SUBROGATED TO ALL OF THE RIGHTS OF THE JUDGMENT CREDITOR AND THE JUDGMENT CREDITOR SHALL ASSIGN ALL THE RIGHTS, TITLE AND INTEREST IN THE JUDGMENT TO THE SUPERINTENDENT. THE SUPERINTENDENT MAY RECORD THE ASSIGNMENT OF JUDGMENT LIEN AND NOTICE OF SUBROGATION AND ASSIGNMENT OF RIGHTS. ANY AMOUNT AND INTEREST RECOVERED BY THE SUPERINTENDENT ON THE JUDGMENT SHALL BE DEPOSITED IN THE FUND.

C. IF THE SUPERINTENDENT IS SUBROGATED TO A CLAIMANT'S RIGHTS AS JUDGMENT CREDITOR, THE CLAIMANT SHALL NOT FILE A FULL OR PARTIAL SATISFACTION OF JUDGMENT WITHOUT THE SUPERINTENDENT'S PRIOR WRITTEN CONSENT.

D. THE ATTORNEY GENERAL SHALL BRING ANY ACTIONS TO RECOVER AMOUNTS PAID FROM THE FUND, INCLUDING INTEREST, ATTORNEY FEES AND COSTS OF COLLECTION, PURSUANT TO THIS ARTICLE IN THE NAME OF THIS STATE IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE VIOLATION OCCURRED OR IN A COUNTY IN WHICH THE SUPERINTENDENT MAINTAINS AN OFFICE. A CERTIFIED COPY OF A SUPERINTENDENT'S ORDER REQUIRING PAYMENT FROM THE FUND MAY BE FILED IN THE OFFICE OF THE CLERK OF THE SUPERIOR COURT. THE CLERK SHALL TREAT THE SUPERINTENDENT'S ORDER IN THE SAME MANNER AS A JUDGMENT OF THE SUPERIOR COURT. A SUPERINTENDENT'S ORDER SO FILED HAS THE SAME EFFECT AND MAY BE RECORDED, ENFORCED OR SATISFIED IN A SIMILAR MANNER, AS A JUDGMENT OF THE SUPERIOR COURT. NO FILING FEE IS REQUIRED UNDER THIS SUBSECTION.

6-991.19. Waiver of rights

THE FAILURE OF AN AGGRIEVED PERSON TO COMPLY WITH ALL OF THE PROVISIONS OF THIS ARTICLE CONSTITUTES A WAIVER OF ANY RIGHTS.

6-991.20. Effect of article on disciplinary action

THIS ARTICLE DOES NOT LIMIT THE AUTHORITY OF THE SUPERINTENDENT TO TAKE DISCIPLINARY ACTION AGAINST ANY LICENSEE FOR A VIOLATION OF THIS CHAPTER OR OF THE RULES ADOPTED PURSUANT TO THIS CHAPTER. THE REPAYMENT IN FULL OF ALL OBLIGATIONS TO THE FUND BY ANY LICENSEE DOES NOT NULLIFY OR MODIFY THE EFFECT OF ANY OTHER DISCIPLINARY PROCEEDING BROUGHT PURSUANT TO THIS CHAPTER OR THE RULES ADOPTED PURSUANT TO THIS CHAPTER.

6-991.21. Financial services fund; use of fund

A. THE FINANCIAL SERVICES FUND IS ESTABLISHED CONSISTING OF LOAN ORIGINATOR FEES COLLECTED PURSUANT TO THIS ARTICLE. THE SUPERINTENDENT SHALL ADMINISTER THE FUND FOR THE SUPERVISION AND REGULATION OF LOAN ORIGINATORS.

B. MONIES DEPOSITED IN THE FINANCIAL SERVICES FUND ARE SUBJECT TO SECTION 35-143.01.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.