

WORKING DRAFT

SENATE FILE NO. _____

Residential mortgage practices act.

Sponsored by: (s) Sdraft

A BILL

for

1 AN ACT relating to trade and commerce; creating the Wyoming
2 Residential Mortgage Practices Act to regulate mortgage
3 lenders and brokers; providing definitions; providing
4 requirements and fees; requiring reporting; providing for
5 enforcement; providing for civil and criminal penalties;
6 providing for rulemaking; making an appropriation; and
7 providing for an effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 40-23-101 through 40-23-123 are

12 created to read:

13

14

CHAPTER 23

15

WYOMING RESIDENTIAL MORTGAGE PRACTICES ACT

1 **40-23-101. Short title.**

2

3 This act may be cited as the "Wyoming Residential Mortgage
4 Practices Act."

5

6 **40-23-102. Definitions.**

7

8 (a) As used in this act:

9

10 (i) "Borrower" means a person who has applied to
11 a mortgage lender for a residential mortgage loan or on
12 whose behalf the mortgage lending and mortgage brokering
13 activities are conducted;

14

15 (ii) "Commissioner" means the state banking
16 commissioner;

17

18 (iii) "Control" means owning twenty-five percent
19 (25%) or more of the voting share of the licensee or having
20 the power to direct the licensee's management or policies;

21

22 (iv) "Division" means the division of banking
23 within the department of audit;

24

1 (v) "Licensee" means a person licensed under
2 this act;

3

4 (vi) "Mortgage broker" means any person, other
5 than those exempt under W.S. 40-23-105, who for
6 compensation or gain, or in the expectation of compensation
7 or gain assists a person in obtaining or applying to obtain
8 a residential mortgage loan or holds himself out as being
9 able to assist a person in obtaining or applying to obtain
10 a residential mortgage loan;

11

12 (vii) "Mortgage brokerage agreement" means a
13 written agreement in which a mortgage broker agrees to
14 assist the borrower in obtaining a residential mortgage
15 loan;

16

17 (viii) "Mortgage brokering activities" means for
18 compensation or gain, either directly or indirectly,
19 assisting or offering to assist in the preparation of an
20 application for a residential mortgage loan on behalf of a
21 borrower, or negotiating or offering to negotiate the terms
22 or conditions of a residential mortgage loan with any
23 person making residential mortgage loans;

24

1 (ix) "Mortgage lender" means any person, other
2 than those exempt under W.S. 40-23-105, who makes
3 residential mortgage loans to borrowers or holds himself
4 out as able to make mortgage loans;

5

6 (x) "Mortgage lending activities" means for
7 compensation or gain, either directly or indirectly,
8 accepting or offering to accept applications for making
9 residential mortgage loans;

10

11 (xi) "Person" means an individual, sole
12 proprietorship, partnership, corporation, limited liability
13 company or other entity, public or private;

14

15 (xii) "Real Estate Settlement Procedures Act"
16 means the act set forth in 12 U.S.C. section 2601 et seq.,
17 as amended;

18

19 (xiii) "Regulation X" means regulation X as
20 promulgated by the United States department of housing and
21 urban development and codified in 24 CFR part 3500 et seq.,
22 as amended;

23

24 (xiv) "Regulation Z" means regulation Z as

1 promulgated by the board of governors of the federal
2 reserve system and codified in 12 CFR part 226 et seq., as
3 amended;

4

5 (xv) "Residential mortgage loan" means a first
6 mortgage loan made primarily for personal, family or
7 household use and primarily secured by a security interest
8 on residential real property;

9

10 (xvi) "Residential real property" means real
11 property improved by a one (1) to four (4) family dwelling;

12

13 (xvii) "Truth in Lending Act" means the act set
14 forth in 15 U.S.C. section 1601 et seq., as amended;

15

16 (xviii) "This act" means W.S. 40-23-101 through
17 40-23-123.

18

19 **40-23-103. Powers and duties of commissioner.**

20

21 (a) In addition to any other powers and duties
22 imposed upon the commissioner by law, the commissioner
23 shall:

24

1 (i) Perform any and all acts necessary to
2 promulgate, administer and enforce the provisions of this
3 act and any rules, regulations, orders, limitations,
4 standards, requirements or licenses issued under this act,
5 and to exercise all incidental powers as necessary to carry
6 out the purposes of this act;

7

8 (ii) Order any licensee to cease any activity or
9 practice which the commissioner deems to be deceptive,
10 dishonest, a violation of state or federal laws or
11 regulations or unduly harmful to the interests of the
12 public;

13

14 (iii) Conduct investigations, issue subpoenas,
15 and hold hearings as necessary to determine whether a
16 person has violated any provision of this act;

17

18 (iv) Conduct examinations of the books and
19 records of licensees and conduct investigations as
20 necessary and proper for the enforcement of the provisions
21 of this act and the rules promulgated under the authority
22 of this act;

23

24 (v) Issue orders that are necessary to execute,

1 enforce and effectuate the purposes of this act;

2

3 (vi) Require that all application, renewal,
4 licensing, examination and all other fees included under
5 this act shall be deposited by the commissioner with the
6 state treasurer into the financial institutions
7 administration account within the earmarked revenue fund.

8

9 **40-23-104. License requirements.**

10

11 (a) With the exception of those persons exempt
12 pursuant to W.S. 40-23-105, on and after July 1, 2005, no
13 person shall engage in mortgage lending activities or
14 mortgage brokering activities without first obtaining a
15 license in accordance with this act.

16

17 (b) A person engaged in mortgage lending or mortgage
18 brokering activities who advertises, offers or provides
19 services to Wyoming residents through any medium including,
20 but not limited to, internet or other electronic means
21 shall first obtain a license in accordance with this act.

22

23 **40-23-105. Exemptions from license requirements.**

24

1 (a) The provisions of this act do not apply to:

2

3 (i) Agencies of the United States and agencies
4 of this state and its political subdivisions;

5

6 (ii) An owner of real property who offers credit
7 secured by a contract of sale, mortgage or deed of trust on
8 the property sold;

9

10 (iii) Any person licensed or chartered under the
11 laws of any state or the United States as a bank, savings
12 and loan association, credit union, or trust company or an
13 operating subsidiary of which the person owns or controls
14 eighty percent (80%) or more of the voting stock;

15

16 (iv) An attorney licensed to practice law in
17 Wyoming who is not principally engaged in the business of
18 negotiating residential mortgage loans when the attorney
19 renders services in the course of his practice as an
20 attorney;

21

22 (v) Persons employed by or under contract with
23 licensees on a full time basis or persons who are employed
24 by or under contract with no more than one (1) licensee on

1 a part time basis provided that any fees paid by borrowers
2 are paid to the licensee or exempt entity and not to the
3 employee or person under contract;

4

5 (vi) Any person who funds a residential mortgage
6 loan which has been originated and processed by a licensee
7 or by an exempt person, who does not directly or indirectly
8 solicit borrowers in Wyoming for the purpose of making
9 residential mortgage loans, and who does not participate in
10 the negotiation of residential mortgage loans with the
11 borrower. For the purpose of this paragraph, "negotiation
12 of residential mortgage loans" does not include setting the
13 terms under which a person may buy or fund a residential
14 mortgage loan originated by a licensee or exempt person.

15

16 **40-23-106. Initial licensing and compliance.**

17

18 A person conducting mortgage lending or mortgage brokering
19 activities, as of July 1, 2005 shall, not later than
20 September 30, 2005, apply to the commissioner for a
21 license.

22

23 **40-23-107. Application for license to do business as**
24 **a mortgage lender or mortgage broker.**

1

2 (a) The commissioner shall receive and act on all
3 applications for licenses to do business as a mortgage
4 lender or mortgage broker. Applications shall be filed in
5 the manner prescribed by the commissioner, shall contain
6 such information as prescribed by the commissioner, shall
7 be updated as prescribed by the commissioner to keep the
8 information current, and shall be accompanied by an
9 application fee not to exceed one thousand dollars
10 (\$1,000.00) for the home office location and an amount not
11 to exceed one hundred dollars (\$100.00) for each additional
12 location, as set by rule of the commissioner. When an
13 application for licensure is denied or withdrawn, the
14 commissioner shall retain all fees paid by the applicant.

15

16 (b) An application for license may be granted if the
17 commissioner finds:

18

19 (i) The financial responsibility and experience,
20 character and fitness of the license applicant, of the
21 owners or persons in charge of the applicant and
22 individuals designated in charge of the applicant's places
23 of business, are such as to warrant belief that the
24 business will be operated honestly and fairly within the

1 purposes of this act;

2

3 (ii) The applicant has not been convicted of any
4 felony or a misdemeanor involving any aspect of the
5 business;

6

7 (iii) The applicant has not been the subject of
8 any administrative action or enforcement proceeding by any
9 state or federal government agency involving fines,
10 penalties or the revocation or suspension of any license or
11 authority substantially equivalent to a license under this
12 act;

13

14 (iv) The applicant has not filed an application
15 for a license which is false or misleading with respect to
16 any material fact;

17

18 (v) The applicant has not violated this act or
19 any rule or order lawfully made pursuant to this act; or

20

21 (vi) The applicant has provided information on
22 the application as required by the commissioner pursuant to
23 subsection (a) of this section.

24

1 (c) The commissioner is empowered to conduct
2 investigations as deemed necessary to determine the
3 existence of the requirements in subsection (b) of this
4 section.

5

6 (d) Upon written request, an applicant is entitled to
7 a hearing on the question of his qualifications for a
8 license if:

9

10 (i) The commissioner has notified the applicant
11 in writing that his application has been denied, or
12 objections to the application have been filed with the
13 commissioner;

14

15 (ii) The commissioner has not issued a license
16 within sixty (60) days after a complete application for the
17 license was filed.

18

19 (e) If a hearing is held, the applicant and those
20 filing objections shall reimburse, pro rata, the
21 commissioner for his reasonable and necessary expenses
22 incurred as a result of the hearing. Notwithstanding any
23 provision under the Wyoming Administrative Procedure Act, a
24 request for hearing shall not be made more than fifteen

1 (15) days after the commissioner has sent notification to
2 the applicant notifying him that the application has been
3 denied and stating in substance the commissioner's finding
4 supporting denial of the application or that objections
5 have been filed and the substance thereof.

6

7 (f) Every licensee shall license and maintain a home
8 office as a principal location for the transaction of
9 mortgage business. A separate license shall be required
10 for each place of business from which mortgage brokering
11 activities or mortgage lending activities are directly or
12 indirectly conducted. The commissioner may issue
13 additional licenses to the same applicant upon compliance
14 with all the provisions of this act governing the issuance
15 of a single license. Each license shall remain in full
16 force and effect unless the licensee does not satisfy the
17 renewal requirements of W.S. 40-23-109, or the license is
18 relinquished, suspended or revoked. Licenses shall be
19 terminated upon the relinquishment or revocation of a home
20 office license.

21

22 (g) No licensee shall change the location of any
23 place of business, consolidate two (2) or more locations,
24 open a new location or close any location, without giving

1 the commissioner prior written notice and paying a license
2 modification fee not to exceed one hundred dollars
3 (\$100.00) as set by rule of the commissioner.

4

5 (h) A licensee shall not engage in the business of
6 making or brokering residential mortgage loans at any place
7 of business for which he does not hold a license nor shall
8 he engage in business under any other name than that on the
9 license without the approval of the commissioner.

10

11 (j) The commissioner may suspend action upon a
12 license application pending resolution of any criminal
13 charges, before any court of competent jurisdiction,
14 against an applicant which would disqualify that applicant
15 if convicted.

16

17 (k) An applicant shall make complete disclosure of
18 all information required in the application, including
19 information concerning officers, directors, partners,
20 members, managers or employees.

21

22 **40-23-108. Change in control of a licensee.**

23

1 (a) A licensee shall give the commissioner written
2 notice of a proposed change of control of a licensee within
3 fifteen (15) business days after learning of the proposed
4 change of control.

5
6 (b) The commissioner may require the licensee to
7 provide additional information concerning the proposed
8 persons in control of the licensee. The additional
9 information shall be limited to the same information
10 required of the licensee or persons in control of the
11 licensee as part of its original license or renewal
12 application.

13
14 (c) The licensee shall reapply and submit the
15 required fees established by rule, not to exceed one
16 thousand dollars (\$1,000.00) for a home office location and
17 an amount not to exceed one hundred dollars (\$100.00) for
18 each additional location upon a change in the control of
19 the licensee as determined by the commissioner. The
20 license is not transferable nor assignable to the new
21 persons in control of the licensee.

22
23 (d) Before filing a request for approval to acquire
24 control, a person may request in writing a determination

1 from the commissioner as to whether the person would be
2 considered a person in control of a licensee upon
3 consummation of a proposed transaction. If the
4 commissioner determines that the person would not be a
5 person in control of a licensee, the commissioner shall
6 enter an order stating the proposed person and transaction
7 is not subject to the requirements of subsections (a)
8 through (c) of this section.

9

10 **40-23-109. License renewal and annual report.**

11

12 (a) Each license issued under this act shall expire
13 on June 30. The license shall be renewed annually not less
14 than thirty (30) days before the stated expiration date.
15 The renewal fee for each license shall not exceed one
16 thousand dollars (\$1,000.00) for the home office location
17 and an amount not to exceed one hundred dollars (\$100.00)
18 for each additional location, as set by rule of the
19 commissioner.

20

21 (b) The renewal fee shall be accompanied by a report,
22 in a form prescribed by the commissioner, which shall
23 include:

24

1 (i) Any material changes to any of the
2 information submitted by the licensee on its original
3 application which have not been reported previously to the
4 commissioner on any other report required to be filed under
5 this act;

6

7 (ii) Any update necessary on the surety bond;

8

9 (iii) Any update on civil or criminal
10 proceedings against the licensee or any administrative or
11 enforcement proceedings by any state or federal government
12 agency involving fines, penalties or the revocation or
13 suspension of any business licensee or authority
14 substantially equivalent to a license under this act;

15

16 (iv) Any other information as the commissioner
17 may deem necessary.

18

19 **40-23-110. Surety bonds.**

20

21 (a) All licensees shall maintain a surety bond to the
22 state of Wyoming in accordance with this section. The bond
23 to be maintained shall be in the amount of twenty five
24 thousand dollars (\$25,000.00). This amount shall be

1 increased by an additional sum of ten thousand dollars
2 (\$10,000.00) for each licensed office. The bond shall be a
3 continuing obligation of the issuing surety. The surety's
4 liability under the bond for any claims made under the bond
5 either individually or in the aggregate shall in no event
6 exceed the face amount of the bond issued. The bond shall
7 be issued by a surety authorized to do business in the
8 state of Wyoming. The bond, including any and all riders
9 and endorsements executed subsequent to the effective date
10 of the bond, shall be placed on file with the commissioner.

11

12 (b) In the event that a licensee or person employed
13 by or under contract with a licensee has violated any of
14 the provisions of this act or of a rule or order lawfully
15 made pursuant to this act, or federal law or regulation
16 pertaining to the mortgage lending or mortgage brokering,
17 and has damaged any person by such violation, then the bond
18 shall be forfeited and paid by the surety to the state of
19 Wyoming for the benefit of any person so damaged.

20

21 **40-23-111. Examinations and investigations.**

22

23 (a) The commissioner may conduct examinations of any
24 licensee under this act at intervals he deems necessary to

1 determine compliance with this act and other applicable
2 laws, rules and regulations.

3

4 (b) The commissioner may at any time investigate the
5 loans or business books and records of any licensee or
6 person engaged in mortgage lending or mortgage brokering
7 activities for the purpose of determining compliance with
8 this act or securing information required under this act.
9 For these purposes, the commissioner shall have free and
10 reasonable access to the offices, places of business, books
11 and records of the licensee.

12

13 (c) If a licensee's or person's records are located
14 outside this state, the licensee or person shall have the
15 option to make them available to the commissioner at a
16 convenient location within this state, or pay the
17 reasonable and necessary expenses for the commissioner or
18 his representative to examine them at the place where they
19 are maintained. The commissioner may designate
20 representatives, including comparable officials of the
21 state in which the records are located, to inspect them on
22 his behalf.

23

1 (d) Each licensee or person subject to examination or
2 investigation under this act shall pay to the commissioner
3 an amount assessed by the commissioner to cover the direct
4 and indirect cost of examinations or investigations
5 conducted pursuant to this section not to exceed one
6 hundred dollars (\$100.00) per hour.

7

8 **40-23-112. Records; confidentiality of records;**
9 **exception.**

10

11 (a) Every licensee shall maintain records in
12 conformity with generally accepted accounting principles in
13 a manner that will enable the commissioner to determine
14 whether the licensee is complying with the provisions of
15 this act. The recordkeeping system of a licensee shall be
16 sufficient if he makes the required information available.
17 The records need not be kept in the place of business where
18 residential mortgage loans are made, if the commissioner is
19 given free access to the records wherever located. The
20 records pertaining to any loan shall be retained for the
21 period of thirty-six (36) months from the date of loan
22 closing.

23

1 (b) Except as provided in subsection (c) of this
2 section, all information or reports obtained by the
3 commissioner from an applicant or licensee are
4 confidential.

5

6 (c) The commissioner may disclose confidential
7 information to mortgage lending or mortgage brokering
8 supervisory agencies in other states or to federal
9 regulatory authorities or to appropriate prosecuting
10 attorneys.

11

12 (d) The commissioner may enter into cooperative,
13 coordinating or information-sharing agreements with any
14 other supervisory agency or any organization affiliated
15 with or representing one (1) or more mortgage lending or
16 mortgage brokering supervisory agencies with respect to the
17 periodic examination or other supervision of any office in
18 Wyoming of an out-of-state licensee, and the commissioner
19 may accept such parties' reports of examination and reports
20 of investigation in lieu of conducting his own examinations
21 or investigations.

22

23 (e) The commissioner may enter into contracts with
24 any mortgage lending or mortgage brokering supervisory

1 agency having concurrent jurisdiction over a Wyoming
2 licensee pursuant to this act to engage the services of the
3 agency's examiners at a reasonable rate of compensation.
4 Any such contract shall not be subject to the provisions of
5 W.S. 9-2-1016(b).

6

7 (f) This section does not prohibit the commissioner
8 from disclosing to the public a list of persons licensed
9 under this act or the aggregated financial data on those
10 licensees.

11

12 **40-23-113. Disclosure of mortgage lender fees.**

13

14 (a) Within three (3) working days of taking a
15 mortgage loan application and prior to receiving any
16 consideration, other than third party fees, from the
17 borrower, the mortgage lender shall:

18

19 (i) Disclose the terms of the loan to the
20 borrower in compliance with the disclosure requirements of
21 the federal Truth-in-Lending Act and its associated
22 regulations, and the federal Real Estate Settlement
23 Procedures Act and its associated regulations;

24

1 (ii) If a prepayment penalty may be a condition
2 of the residential mortgage loan offered to a borrower,
3 that fact shall be separately disclosed in writing to the
4 borrower and the borrower shall agree in writing to accept
5 that condition. The disclosure shall state that a
6 prepayment penalty provision imposes a charge if the
7 borrower refinances or pays off the mortgage loan before
8 the date for repayment stated in the loan agreement. The
9 written disclosure shall be in a form prescribed by the
10 commissioner and shall be delivered at the same time the
11 borrower is given the federal Truth in Lending disclosure.

12

13 (b) With the exception of a loan cancellation fee, a
14 licensed mortgage lender shall not require a borrower to
15 pay any fees or charges prior to a residential mortgage
16 loan closing, except:

17

18 (i) Charges actually incurred by the licensee on
19 behalf of the borrower for services which have been
20 rendered by third parties necessary to process the
21 application. These fees may include, but are not limited
22 to, fees for credit reports, flood insurance
23 certifications, property inspections, title insurance
24 commitments, uniform commercial code article 4 lien

1 searches, and appraisals;

2

3 (ii) A rate lock in fee; and

4

5 (iii) A commitment fee upon approval of the
6 residential mortgage loan.

7

8 (c) A loan cancellation fee may be charged and
9 collected by a licensee at any time either prior to the
10 scheduled closing of a residential mortgage loan
11 transaction or subsequent thereto.

12

13 (d) Any fees charged under the authority of this
14 section shall be reasonable and customary as to the type
15 and the amount of the fee charged.

16

17 **40-23-114. Disclosure of mortgage broker fees.**

18

19 (a) Within three (3) business days of a borrower
20 signing a completed mortgage loan application and before
21 the borrower provides any consideration to the licensee,
22 the licensee shall execute and deliver to the borrower a
23 mortgage brokerage agreement. The mortgage brokerage
24 agreement shall be in writing, signed and dated by both the

1 borrower and the authorized representative of the licensed
2 mortgage broker whose services to the borrower constitute
3 mortgage brokering.

4

5 (b) The mortgage brokerage agreement shall be the
6 only agreement between the borrower and licensee with
7 respect to a single mortgage loan transaction, except that
8 the licensed mortgage broker shall also provide to the
9 borrower disclosure statements necessary to comply with the
10 federal Truth in Lending Act and its associated
11 regulations, the federal Real Estate Settlement Procedures
12 Act and its associated regulations, and any other
13 applicable federal and state requirements.

14

15 (c) A licensed mortgage broker shall not require a
16 borrower to pay any fees or charges prior to the mortgage
17 loan closing, except charges actually incurred by the
18 licensed mortgage broker on behalf of the borrower for
19 services from third parties necessary to process the
20 mortgage loan application, such as credit reports and
21 appraisals.

22

23 (d) A mortgage broker shall not charge any fee that
24 inures to the benefit of the mortgage broker if it exceeds

1 the fee disclosed on the most recent good faith estimate
2 unless:

3

4 (i) The need to charge the higher fee was not
5 reasonably foreseeable at the time the good faith estimate
6 was written; and

7

8 (ii) The mortgage broker has provided to the
9 borrower, no less than three (3) business days prior to the
10 signing of the mortgage loan closing documents, a clear
11 written explanation of the increase in the fee and the
12 reason for charging a fee that exceeds that which was
13 previously disclosed.

14

15 (e) If the fee was originally disclosed as a
16 percentage of the mortgage loan amount, and the dollar
17 amount of the fee increases because the mortgage loan
18 amount increases, but the fee as a percentage of the
19 mortgage loan amount does not change, then no redisclosure
20 shall be required unless the fee increased by more than one
21 thousand (\$1,000.00) dollars.

22

23 **40-23-115. Disclosure of loan terms by mortgage**
24 **broker.**

1

2 (a) Prior to entering into a written mortgage
3 brokerage agreement or accepting any consideration from the
4 borrower, a mortgage broker shall disclose in writing to
5 any borrower the following information:

6

7 (i) That the mortgage broker may not make
8 mortgage loans or issue loan commitments in its own name.
9 The mortgage broker may issue a loan commitment and may
10 furnish a lock in of the interest rate and program on
11 behalf of the mortgage lender when the mortgage broker has
12 obtained a written or electronically transmitted loan
13 commitment or lock in for the mortgage loan from the
14 mortgage lender on behalf of the borrower. The loan
15 commitment issued by the mortgage broker to the borrower on
16 behalf of the mortgage lender shall be in the same form and
17 substance as issued by the mortgage lender and shall
18 identify the mortgage lender by name;

19

20 (ii) That the mortgage broker cannot guarantee
21 acceptance into any particular mortgage loan program or
22 promise any specific mortgage loan terms or conditions;

23

24 (iii) A good faith estimate of the fees to be

1 collected, including a credit report fee, property
2 appraisal fee or any other third party fee;

3

4 (iv) The terms and conditions for obtaining a
5 refund of any fees or arranging for the transfer of third
6 party service work products to another mortgage lender or
7 mortgage broker, if any. The amount of any fees collected
8 in excess of the actual cost shall be returned within sixty
9 (60) days after rejection, withdrawal or closing.

10

11 (b) The fact that certain mortgage loan products
12 impose a prepayment penalty on the borrower and the amount
13 of, or the formula for calculating the prepayment penalty,
14 if any, and the terms of the prepayment penalty, if any,
15 shall be disclosed to the borrower as soon as they are
16 known, but no later than the issuance of the commitment, if
17 any, for the mortgage loan product chosen by the borrower.

18

19 **40-23-116. Trust accounts.**

20

21 All moneys received from a borrower for payment of third
22 party provider services shall be deemed as held in trust
23 immediately upon receipt. All such trust funds shall be
24 deposited, prior to the end of the third business day

1 following receipt of the funds, in a trust account of a
2 federally insured financial institution. All trust account
3 funds collected under this act shall remain on deposit in a
4 non interest bearing trust account until disbursement. The
5 trust account shall be designated and maintained for the
6 benefit of borrowers. Moneys maintained in the trust
7 account shall be exempt from execution, attachment or
8 garnishment. A mortgage lender or mortgage broker shall
9 not in any way encumber the corpus of the trust account or
10 commingle any other operating funds with trust account
11 funds. Withdrawals from the trust account shall be only
12 for the payment of bona fide services rendered by a third
13 party provider or for refunds to a borrower.

14

15 **40-23-117. Prohibited practices.**

16

17 (a) No licensee or person required to have a license
18 shall:

19

20 (i) Pay compensation to, contract with or employ
21 in any manner, any person engaged in mortgage lending or
22 brokering activities who is not properly licensed unless
23 such person is exempt under W.S. 40-23-105;

24

1 (ii) Obtain any exclusive dealing or exclusive
2 agency agreement from any borrower;

3

4 (iii) Delay closing of any residential mortgage
5 loan for the purpose of increasing interest, costs, fees or
6 charges payable by the borrower;

7

8 (iv) Accept any fees at closing which were not
9 previously disclosed fully to the borrower;

10

11 (v) Obtain any agreement or instrument in which
12 blanks are left to be filled in after execution;

13

14 (vi) Engage in any misrepresentation in
15 connection with a residential mortgage loan;

16

17 (vii) Make payment, whether directly or
18 indirectly, of any kind to any in-house or fee appraiser
19 for the purpose of influencing the independent judgment of
20 the appraiser with respect to the value of any real estate
21 which is to be covered by a residential mortgage loan;

22

23 (viii) Make any false promises likely to
24 influence or persuade, or pursue a course of

1 misrepresentations and false promises through agents,
2 solicitors, advertising or otherwise;

3

4 (ix) Misrepresent, circumvent or conceal any of
5 the material particulars or the nature thereof, regarding a
6 transaction to which it is a party;

7

8 (x) Enter into any agreement, with or without
9 the payment of a fee, to fix in advance a particular
10 interest rate or other term in a residential mortgage loan
11 unless written confirmation of the agreement is delivered
12 to the borrower.

13

14 **40-23-118. License suspension or revocation.**

15

16 (a) The commissioner may suspend, not to exceed six
17 (6) months, or revoke a license if the commissioner finds:

18

19 (i) Any fact or condition exists that, if it had
20 existed at the time when the licensee applied for its
21 license, would have been grounds for denying the
22 application;

23

1 (ii) The licensee violated any provision of this
2 act or any rule or order validly promulgated by the
3 commissioner;

4
5 (iii) The licensee is conducting its business in
6 an unsafe or unsound manner;

7
8 (iv) The licensee refuses to permit the
9 commissioner to make any examination authorized by this
10 act;

11
12 (v) The licensee willfully fails to make any
13 report required by this act;

14
15 (vi) The competence, experience, character or
16 general fitness of the licensee indicates that it is not in
17 the public interest to permit the licensee to continue to
18 conduct business;

19
20 (vii) The bond of the licensee has been revoked;

21
22 (viii) The licensee or any partner, officer,
23 director, manager or employee of the licensee has been
24 convicted of a felony or a misdemeanor involving any aspect

1 of the financial services business;

2

3 (ix) The licensee or any partner, officer,
4 director, manager or employee of the licensee has had a
5 license substantially equivalent to a license under this
6 act, and issued by another state, denied, revoked or
7 suspended under the laws of that state;

8

9 (x) The licensee has filed an application for a
10 license which as of the date the license was issued, or as
11 of the date of an order denying, suspending or revoking a
12 license, was incomplete in any material respect or
13 contained any statement that was, in light of the
14 circumstances under which it was made, false or misleading
15 with respect to any material fact.

16

17 (b) Notwithstanding any provision of the Wyoming
18 Administrative Procedure Act, if the commissioner finds
19 that probable cause for revocation of a license exists and
20 that enforcement of this act and the public interest
21 require immediate suspension of the license pending
22 investigation, he may, after a hearing upon five (5) days
23 written notice, enter an order suspending the license for
24 not more than thirty (30) days.

1

2 (c) The commissioner may, in his discretion,
3 reinstate a license, terminate a suspension or grant a new
4 license to a person whose license has been revoked or
5 suspended if no fact or condition then exists which clearly
6 would justify the commissioner in refusing to grant a
7 license.

8

9 **40-23-119. Orders to cease and desist.**

10

11 (a) If the commissioner determines that a violation
12 of this act or of a rule adopted or an order issued under
13 this act by a licensee is likely to cause immediate and
14 irreparable harm to the licensee, its customers or the
15 public as a result of the violation or cause insolvency of
16 the licensee, the commissioner may issue an order requiring
17 the licensee to cease and desist from the violation. The
18 order becomes effective upon service upon the licensee.

19

20 (b) If the commissioner determines that a person is
21 conducting mortgage lending or mortgage brokering activities
22 governed under this act without a valid license, the
23 commissioner may issue an order requiring the unlicensed
24 person to cease and desist from mortgage lending or mortgage

1 brokering activities. The order becomes effective upon
2 service upon the unlicensed person.

3

4 (c) An order to cease and desist remains effective
5 and enforceable pending the completion of an administrative
6 proceeding pursuant to Wyoming Administrative Procedure
7 Act.

8

9 (d) Before issuing a final cease and desist order
10 under subsections (a) and (b) of this section, the
11 commissioner shall serve notice of intent to issue the
12 order upon the person being ordered to cease and desist.
13 The notice shall be in writing and shall direct the person
14 to discontinue the violations of law and cease and desist
15 mortgage lending or mortgage brokering activities. The
16 notice shall be served by certified mail return receipt
17 requested to the last known address of the person or shall
18 be served as provided by the Wyoming Rules of Civil
19 Procedure. Notice of the order shall include:

20

21 (i) A statement of the grounds for issuing the
22 proposed order, including a citation to the statute or rule
23 involved;

24

1 (ii) A statement of the facts in support of the
2 allegations;

3

4 (iii) A statement informing the person of the
5 right to a hearing on the order.

6

7 (b) In an emergency, the commissioner may petition
8 the district court for the issuance of a temporary
9 restraining order.

10

11 (c) An order to cease and desist becomes effective
12 upon service upon the person.

13

14 (d) An order to cease and desist remains effective
15 and enforceable pending the completion of an administrative
16 proceeding pursuant to W.S. 40-23-120 and 40-23-121.

17

18 (e) A person served with an order to cease and desist
19 for violating this act may petition the district court for
20 a judicial order setting aside, limiting or suspending the
21 enforcement, operation or effectiveness of the order
22 pending the completion of an administrative proceeding
23 pursuant to Wyoming Administrative Procedure Act.

24

1 (f) The commissioner shall commence a contested case
2 proceeding within twenty (20) days after issuing an order
3 to cease and desist.

4

5 **40-23-120. Consent orders.**

6

7 The commissioner may enter into a consent order at any time
8 with a person to resolve a matter arising under this act.
9 A consent order shall be signed by the person to whom it is
10 issued or by the person's authorized representative and
11 shall indicate agreement with the terms contained in the
12 order. A consent order may provide that it does not
13 constitute an admission by a person that this act or a rule
14 adopted or an order issued under this act has been
15 violated.

16

17 **40-23-121. Civil penalties.**

18

19 The commissioner may impose a civil penalty upon a person
20 who violates this act or a rule adopted or an order issued
21 under this act in an amount not to exceed five hundred
22 dollars (\$500.00) per day for each day the violation is
23 outstanding, plus the state's costs and expenses for the
24 investigation and prosecution of the matter, including

1 reasonable attorney's fees.

2

3 **40-23-122. Criminal penalties.**

4

5 (a) A person who intentionally makes a false
6 statement, misrepresentation or false certification in a
7 record filed or required to be maintained under this act or
8 who intentionally makes a false entry or omits a material
9 entry in the record is guilty of a felony, punishable for
10 not less than three (3) years imprisonment or a fine of not
11 less than ten thousand dollars (\$10,000.00), or both.

12

13 (b) An individual who knowingly engages in any
14 activity for which a license is required under this act,
15 without being licensed under this act is guilty of a felony
16 punishable for not less than three (3) years imprisonment
17 or a fine of not less than ten thousand dollars
18 (\$10,000.00), or both.

19

20 (c) A person, except an individual, who knowingly
21 engages in any activity for which a license is required
22 under this act, without being licensed under this act is
23 guilty of a misdemeanor punishable by a fine of not less
24 than twenty-five thousand dollars (\$25,000.00).

1

2 **40-23-123. Hearings.**

3

4 Except as otherwise provided in W.S. 40-23-109 and
5 40-23-108(c), the commissioner shall not suspend or revoke
6 a license, issue an order to cease and desist or assess a
7 civil penalty without notice and an opportunity to be
8 heard.

9

10 **Section 2.** There is appropriated from the general
11 fund to the financial institutions administration account
12 within the earmarked revenue fund one hundred fifteen
13 thousand dollars (\$115,000.00) to implement this act.

14

15 **Section 3.** This act is effective immediately upon
16 completion of all acts necessary for a bill to become law
17 as provided by Article 4, Section 8 of the Wyoming
18 Constitution.

19

20

(END)