

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Residential Mortgages Practices Act.

Sponsored by: Joint Minerals, Business and Economic
Development Interim Committee

A BILL

for

1 AN ACT relating to the Wyoming residential Mortgage
2 Practices Act; providing for restitution orders; requiring
3 background checks as specified; providing for fees for
4 database processing; modifying license expiration and
5 renewal dates; modifying bond requirements; modifying
6 disclosure requirements; limiting collection of fees as
7 specified; expanding conditions under which a license may
8 be suspended or revoked; repealing certain application and
9 disclosure requirements; and providing for an effective
10 date.

11

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

13

1 **Section 1.** W.S. 40-23-103(a)(vi) and by creating new
2 paragraphs (vii) through (ix), 40-23-105(a)(vi),
3 40-23-107(b)(ii) and by amending and renumbering (iii) as
4 (iv) and (iv) as (vi) and by renumbering (vi) as (vii),
5 40-23-109(a), 40-23-110(b) and by creating new subsection
6 (c), 40-23-113(a)(i) and (ii) and by creating new
7 subsections (e) and (f), 40-23-114(a), (d)(intro) and (ii)
8 and by creating new subsection (f), 40-23-115(a)(intro) and
9 (i) and (b), 40-23-117(a)(vii), 40-23-118(a)(vii), (viii)
10 and by creating new paragraph (xi) and 40-23-123 are amended
11 to read:

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13 **40-23-103. Powers and duties of commissioner.**

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15 (a) In addition to any other powers and duties
16 imposed upon the commissioner by law, the commissioner
17 shall:

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19 (vi) Require that all application, renewal,
20 licensing, examination and all other fees included under
21 this act, except the amount paid for data processing by a
22 nationwide mortgage licensing system and database, shall be
23 deposited by the commissioner with the state treasurer into

1 the financial institutions administration account within
2 the earmarked revenue fund;-

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4 (vii) Require the licensee to reimburse the
5 borrower for actual damages for any amount in excess of
6 amounts actually disclosed to the borrower;

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8 (viii) Require a background investigation
9 including fingerprint checks for state and national criminal
10 history record checks as necessary. The commissioner may
11 utilize background checks completed by the division of
12 criminal investigation, other government agencies in this
13 state or in other states, the federal bureau of
14 investigation or a nationwide mortgage licensing system;

15

16 (ix) Determine the content of application forms
17 and the means by which an applicant applies for, renews or
18 makes changes to a license under this act. The commissioner
19 may require applicants to utilize a nationwide mortgage
20 licensing system and database for the processing of
21 applications and fees.

22

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

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

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

16

17 **40-23-107. Application for license to do business as**
18 **a mortgage lender or mortgage broker.**

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20 (b) An application for license may be granted if the
21 commissioner finds:

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23 (ii) The applicant has not been convicted of any
24 felony; ~~or~~

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(iii) The applicant has not been convicted of a
misdemeanor involving mortgage lending or any aspect of the
mortgage lending business or any offense involving breach
of trust or fraudulent or dishonest dealing;

~~(iii)~~ (iv) The applicant has not been the subject
of any administrative action or enforcement proceeding by
any state or federal government agency involving ~~finer,~~
~~penalties or~~ the revocation ~~or suspension~~ of any license or
authority substantially equivalent to a license under this
act;

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

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

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

1 (a) Each license issued under this act shall expire
2 on ~~June 30~~ December 31. The license shall be renewed
3 annually not less than thirty (30) days before the stated
4 expiration date. The renewal fee for each license shall
5 not exceed one thousand dollars (\$1,000.00) for the home
6 office location and an amount not to exceed one hundred
7 dollars (\$100.00) for each additional location, as set by
8 rule of the commissioner.

9

10 **40-23-110. Surety bonds.**

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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, in an
20 amount sufficient to satisfy the violation or the bond in
21 its entirety if the violation exceeds the amount of the
22 bond.

23

1 (c) Surety bonds shall remain effective continuously
2 until released in writing by the commissioner. If a bond
3 has not been previously released by the commissioner, the
4 bond shall expire two (2) years after the date of the
5 surrender, revocation or expiration of the license.

6
7 **40-23-113. Disclosure of mortgage lender fees.**

8
9 (a) Within three (3) working days of taking a
10 mortgage loan application and prior to receiving any
11 consideration, other than third party fees, from the
12 borrower, the mortgage lender shall:

13
14 (i) Disclose the terms of the loan to the
15 borrower in compliance with the disclosure requirements of
16 the federal Truth-in-Lending Act, ~~and~~ its associated
17 regulations, and the federal Real Estate Settlement
18 Procedures Act and its associated regulations and any other
19 applicable federal and state requirements;

20
21 (ii) If a prepayment penalty may be a condition
22 of the residential mortgage loan offered to a borrower,
23 that fact shall be separately disclosed in writing to the
24 borrower and the borrower shall agree in writing to accept

1 that condition. The disclosure shall state that a
2 prepayment penalty provision imposes a charge if the
3 borrower refinances or pays off the mortgage loan before
4 the date for repayment stated in the loan agreement. The
5 written disclosure shall be in a form prescribed by the
6 commissioner and shall initially be delivered along with
7 the good faith estimate of settlement costs within three
8 (3) business days after accepting an application from the
9 borrower. The disclosure shall subsequently be provided by
10 the lender and signed by the borrower at the same time the
11 borrower is given the final federal Truth-in-Lending Act
12 disclosure.

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14 (e) A mortgage lender shall not receive any fee that
15 inures to the benefit of the mortgage lender, either
16 directly or indirectly, if the fee exceeds the fee
17 disclosed on the most recent good faith estimate unless:

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19 (i) The need to charge the higher fee was not
20 reasonably foreseeable at the time the good faith estimate
21 was written; and

22

23 (ii) The mortgage lender has provided to the
24 borrower, no less than three (3) business days prior to the

1 signing of the mortgage loan closing documents, a new good
2 faith estimate of settlement costs, a clear written
3 explanation of the increase in the fee and the reason for
4 charging a fee that exceeds the fee which was previously
5 disclosed.

6
7 (f) If the fee was originally disclosed as a
8 percentage of the mortgage loan amount and the dollar
9 amount of the fee increases because the mortgage loan
10 amount increases, but the fee as a percentage of the
11 mortgage loan amount does not change, then no redisclosure
12 shall be required unless the fee increased by more than one
13 thousand dollars (\$1,000.00).

14
15 **40-23-114. Disclosure of mortgage broker fees.**

16
17 (a) Within three (3) business days of a borrower
18 signing a completed mortgage loan application and before
19 the borrower provides any consideration to the licensee,
20 the licensee shall execute and deliver to the borrower a
21 mortgage brokerage agreement. The mortgage brokerage
22 agreement shall be in writing, signed and dated by both the
23 borrower and the authorized representative of the licensed
24 mortgage broker whose services to the borrower constitute

1 mortgage brokering and shall contain the following
2 information:

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4 (i) That the mortgage broker shall not make
5 mortgage loans or issue loan commitments in the mortgage
6 broker's name;

7

8 (ii) That the mortgage broker shall not
9 guarantee acceptance into any particular mortgage loan
10 program or promise any specific mortgage loan terms or
11 conditions;

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13 (iii) A good faith estimate of the fees to be
14 collected, including a credit report fee, property
15 appraisal fee or any other third party fee;

16

17 (iv) The terms and conditions for obtaining a
18 refund of any fees or arranging for the transfer of third
19 party service work products to another mortgage lender or
20 mortgage broker, if any. The amount of any fees collected
21 in excess of the actual cost shall be returned within sixty
22 (60) days after rejection, withdrawal of an application or
23 closing of the loan.

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1 (d) A mortgage broker shall not ~~charge~~receive any
2 fee that inures to the benefit of the mortgage broker,
3 either directly or indirectly if it exceeds the fee
4 disclosed on the most recent good faith estimate unless:

5
6 (ii) The mortgage broker has provided to the
7 borrower, no less than three (3) business days prior to the
8 signing of the mortgage loan closing documents, a new good
9 faith estimate of settlement costs, a clear written
10 explanation of the increase in the fee and the reason for
11 charging a fee that exceeds that which was previously
12 disclosed.

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

17
18 **40-23-115. Loan commitments; prepayment penalty**
19 **disclosure by mortgage broker.**

20
21 (a) ~~Prior to entering into a written mortgage~~
22 ~~brokerage agreement or accepting any consideration from the~~
23 ~~borrower, A mortgage broker shall disclose in writing to~~
24 ~~any borrower the following information:~~ may issue a loan

1 commitment and may furnish a lock-in of the interest rate
2 and program on behalf of the mortgage lender when the
3 mortgage broker has obtained a written or electronically
4 transmitted loan commitment or lock-in for the mortgage
5 loan from the mortgage lender on behalf of the borrower.
6 The loan commitment issued by the mortgage broker to the
7 borrower on behalf of the mortgage lender shall be in the
8 same form and substance as issued by the mortgage lender
9 and shall identify the mortgage lender by name.

10
11 (b) ~~The fact that certain mortgage loan products~~
12 ~~impose~~ If a prepayment penalty ~~on the borrower and the~~
13 ~~amount of, or the formula for calculating the prepayment~~
14 ~~penalty, if any, and the terms of the prepayment penalty,~~
15 ~~if any, shall be disclosed to the borrower as soon as they~~
16 ~~are known, but no later than the issuance of the~~
17 ~~commitment, if any, for the mortgage loan product chosen by~~
18 ~~the borrower~~ is a condition of the residential mortgage
19 loan offered to a borrower, that fact shall be separately
20 disclosed in writing to the borrower and the borrower shall
21 agree in writing to accept that condition. The disclosure
22 shall state that a prepayment penalty provision imposes a
23 charge if the borrower refinances or pays off the mortgage
24 loan before the date for repayment stated in the loan

1 agreement. The written disclosure shall be in a form
2 prescribed by the commissioner and shall be delivered as
3 soon as the condition is known, but no later than the
4 issuance of a commitment, for the mortgage loan product
5 chosen by the borrower.

6
7 **40-23-117. Prohibited practices.**

8
9 (a) No licensee or person required to have a license
10 shall:

11
12 (vii) Make any statement or provide payment,
13 whether directly or indirectly, of any kind to any in-house
14 or fee appraiser for the purpose of influencing the
15 independent judgment of the appraiser with respect to the
16 value of any real estate which is to be covered by a
17 residential mortgage loan;

18
19 **40-23-118. License suspension or revocation.**

20
21 (a) The commissioner may suspend, not to exceed six
22 (6) months, or revoke a license if the commissioner finds:

1 (vii) The bond of the licensee has been revoked,
2 cancelled, expired or otherwise is not effective;

3

4 (viii) The licensee or any partner, officer,
5 director, manager or employee of the licensee has been
6 convicted of ~~a any felony; or a misdemeanor involving any~~
7 ~~aspect of the financial services business;~~

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9 (xi) The licensee or any partner, officer,
10 director, manager or employee of the licensee has been
11 convicted of a misdemeanor involving mortgage lending, any
12 aspect of the mortgage lending business or any offense
13 involving breach of trust, or fraudulent or dishonest
14 dealing.

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16 **40-23-123. Hearings.**

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18 Except as otherwise provided in W.S. 40-23-103(a)(vii),
19 40-23-108(c) and 40-23-109, the commissioner shall not
20 suspend or revoke a license, issue an order to cease and
21 desist or assess a civil penalty without notice and an
22 opportunity to be heard.

23

1 **Section 2.** W.S. 40-23-107(b)(v) and 40-23-115(a)(ii)
2 through (iv) are repealed.

3

4 **Section 3.** The first license period under this act
5 shall be from July 1, 2008 to December 31, 2009.
6 Thereafter each renewal period shall end on the date
7 specified in W.S. 40-23-109(a).

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9 **Section 4.** This act is effective July 1, 2008.

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(END)