

ENROLLED ACT NO. 47, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2008 BUDGET SESSION

AN ACT relating to the Wyoming Residential Mortgage Practices Act; providing for restitution orders; requiring background checks as specified; providing for fees for database processing; modifying license expiration and renewal dates; modifying bond requirements; modifying disclosure requirements; limiting collection of fees as specified; modifying conditions under which a license may be suspended or revoked; repealing certain application and disclosure requirements; and providing for an effective date.

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

Section 1. W.S. 40-23-103(a)(vi) and by creating new paragraphs (vii) through (ix), 40-23-105(a)(vi), 40-23-107(b)(ii) through (iv), 40-23-109(a), 40-23-110(b) and by creating new subsection (c), 40-23-113(a)(i), (ii) and by creating new subsections (e) and (f), 40-23-114(a), (d)(intro), (ii) and by creating a new subsection (f), 40-23-115(a)(intro) and (b), 40-23-117(a)(vii), 40-23-118(a)(vii) and (viii) and 40-23-123 are amended to read:

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

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

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

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the financial institutions administration account within the earmarked revenue fund;i-

(vii) Require the mortgage broker to reimburse the borrower for undisclosed or incorrectly disclosed fees pursuant to W.S. 40-23-114(d) and require the mortgage lender to reimburse the borrower for undisclosed or incorrectly disclosed fees pursuant to W.S. 40-23-113(e);

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

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

40-23-105. Exemptions from license requirements.

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

(vi) Any person who ~~funds~~ purchases or otherwise obtains a residential mortgage loan which has been originated, ~~and~~ processed and closed with the borrower by a licensee or by an exempt person, who does not directly or indirectly solicit borrowers in Wyoming for the purpose of making residential mortgage loans, and who does not participate in the negotiation of residential mortgage loans with the borrower. For the purpose of this

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paragraph, "negotiation of residential mortgage loans" does not include setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensee or exempt person after the residential mortgage loan has closed.

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

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

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

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

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

(a) Each license issued under this act shall expire on ~~June 30~~ December 31. The license shall be renewed annually not less than thirty (30) days before the stated expiration date. The renewal fee for each license shall not exceed one thousand dollars (\$1,000.00) for the home office location and an amount not to exceed one hundred

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dollars (\$100.00) for each additional location, as set by rule of the commissioner.

40-23-110. Surety bonds.

(b) In the event that a licensee or person employed by or under contract with a licensee has violated any of the provisions of this act or of a rule or order lawfully made pursuant to this act, or federal law or regulation pertaining to the mortgage lending or mortgage brokering, and has damaged any person by such violation, then the bond shall be forfeited and paid by the surety to the state of Wyoming for the benefit of any person so damaged, in an amount sufficient to satisfy the violation or the bond in its entirety if the violation exceeds the amount of the bond.

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

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

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

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

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(ii) If a prepayment penalty may be a condition of the residential mortgage loan offered to a borrower, that fact shall be separately disclosed in writing to the borrower and the borrower shall agree in writing to accept prepayment penalty provision imposes a charge if the that condition. The disclosure shall state that a borrower refinances or pays off the mortgage loan before the date for repayment stated in the loan agreement. The written disclosure shall be in a form prescribed by the commissioner and shall initially be delivered along with the good faith estimate of settlement costs within three (3) business days after accepting an application from the borrower. The disclosure shall subsequently be provided by the lender and signed by the borrower at the same time the borrower is given the final federal Truth-in-Lending Act disclosure.

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

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

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

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

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

(a) Within three (3) business days of a borrower signing a completed mortgage loan application and before the borrower provides any consideration to the licensee, the licensee shall execute and deliver to the borrower a mortgage brokerage agreement. The mortgage brokerage agreement shall be in writing, signed and dated by both the borrower and the authorized representative of the licensed mortgage broker whose services to the borrower constitute mortgage brokering- and shall contain the following information:

(i) That the mortgage broker cannot make mortgage loans or issue loan commitments in the mortgage broker's name;

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

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

(iv) The terms and conditions for obtaining a refund of any fees or arranging for the transfer of third party service work products to another mortgage lender or

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mortgage broker, if any. The amount of any fees collected in excess of the actual cost shall be returned within sixty (60) days after rejection, withdrawal of an application or closing of the loan.

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

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

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

40-23-115. Loan commitments; prepayment penalty disclosure by mortgage broker.

(a) ~~Prior to entering into a written mortgage brokerage agreement or accepting any consideration from the borrower, A mortgage broker shall disclose in writing to any borrower the following information:~~ may issue a loan commitment and may furnish a lock-in of the interest rate and program on behalf of the mortgage lender when the mortgage broker has obtained a written or electronically transmitted loan commitment or lock-in for the mortgage loan from the mortgage lender on behalf of the borrower. The loan commitment issued by the mortgage broker to the borrower on behalf of the mortgage lender shall be in the

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same form and substance as issued by the mortgage lender and shall identify the mortgage lender by name.

(b) ~~The fact that certain mortgage loan products impose~~ If a prepayment penalty on the borrower and the amount of, or the formula for calculating the prepayment penalty, if any, and the terms of the prepayment penalty, if any, shall be disclosed to the borrower as soon as they are known, but no later than the issuance of the commitment, if any, for the mortgage loan product chosen by the borrower is a condition of the residential mortgage loan offered to a borrower, that fact shall be separately disclosed in writing to the borrower and the borrower shall agree in writing to accept that condition. The disclosure shall state that a prepayment penalty provision imposes a charge if the borrower refinances or pays off the mortgage loan before the date for repayment stated in the loan agreement. The written disclosure shall be in a form prescribed by the commissioner and shall be delivered as soon as the condition is known, but no later than the issuance of a commitment, for the mortgage loan product chosen by the borrower.

40-23-117. Prohibited practices.

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

(vii) Directly or indirectly make any statement regarding value, except that a copy of the sales contract for purchase transactions may be provided, or make or provide payment, ~~whether directly or indirectly,~~ of any kind to any in-house or fee appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any real estate which is to be covered by a residential mortgage loan;

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40-23-118. License suspension or revocation.

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

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

(viii) The licensee or any partner, officer, director, manager or employee of the licensee has been convicted of a felony or ~~a misdemeanor involving any aspect of the financial services business;~~ any aspect of the mortgage lending business, breach of trust, or fraudulent or dishonest dealing.

40-23-123. Hearings.

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

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

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

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk