

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 40-23-124 are
 12 created to read:

13

14

CHAPTER 23

15

WYOMING RESIDENTIAL MORTGAGE PRACTICES ACT

1 **40-23-101. Short title.** This act may be cited as the
2 "Wyoming Residential Mortgage Practices Act."

3

4 **40-23-102. Definitions.**

5

6 (a) As used in this act:

7

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

12

13 (ii) "Commissioner" means the state banking
14 commissioner;

15

16 (iii) "Control" means owning twenty-five percent
17 (25%) or more of the voting share of the licensee or having
18 the power to direct the licensee's management or policies;

19

20 (iv) "Division" means the division of banking
21 within the department of audit;

22

23 (v) "Licensee" means a person licensed under
24 this act;

1

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

9

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

14

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

22

23 (ix) "Mortgage lender" means any person, other
24 than those exempt under W.S. 40-23-105, who makes

1 residential mortgage loans to borrowers or holds himself
2 out as able to make mortgage loans;

3

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

8

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

12

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

16

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

21

22 (xiv) "Regulation Z" means regulation Z as
23 promulgated by the board of governors of the federal
24 reserve system and codified in 12 CFR part 226 et seq., as

1 amended;

2

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

7

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

10

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

13

14 (xviii) "This act" means W.S. 40-23-101 through
15 40-23-125.

16

17 **40-23-103. Powers and duties of commissioner.**

18

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

22

23 (i) Perform any and all acts necessary to
24 promulgate, administer and enforce the provisions of this

1 act and any rules, regulations, orders, limitations,
2 standards, requirements or licenses issued under this act,
3 and to exercise all incidental powers as necessary to carry
4 out the purposes of this act;

5

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

11

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

15

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

21

22 (v) Issue orders that are necessary to execute,
23 enforce and effectuate the purposes of this act;

24

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

6

7 **40-23-104. License requirements.**

8

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

14

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

20

21 **40-23-105. Exemptions from license requirements.**

22

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

24

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

3

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

7

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

13

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

19

20 (v) Persons employed by licensees on a full-time
21 basis or persons who are employed by no more than one (1)
22 licensee on a part time basis;

23

24 (vi) Any person who funds a residential mortgage

1 loan which has been originated and processed by a licensee
2 or by an exempt person, who does not directly or indirectly
3 solicit borrowers in Wyoming for the purpose of making
4 residential mortgage loans, and who does not participate in
5 the negotiation of residential mortgage loans with the
6 borrower. For the purpose of this paragraph, "negotiation
7 of residential mortgage loans" does not include setting the
8 terms under which a person may buy or fund a residential
9 mortgage loan originated by a licensee or exempt person.

10

11 **40-23-106. Initial licensing and compliance.**

12

13 A person conducting mortgage lending or mortgage brokering
14 activities, as of July 1, 2005 shall, not later than
15 September 30, 2005, apply to the commissioner for a
16 license.

17

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

20

21 (a) The commissioner shall receive and act on all
22 applications for licenses to do business as a mortgage
23 lender or mortgage broker. Applications shall be filed in
24 the manner prescribed by the commissioner, shall contain

1 such information as prescribed by the commissioner, shall
2 be updated as prescribed by the commissioner to keep the
3 information current, and shall be accompanied by an
4 application fee not to exceed one thousand dollars
5 (\$1,000.00), as set by rule of the commissioner. When an
6 application for licensure is denied or withdrawn, the
7 commissioner shall retain all fees paid by the applicant.

8

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

11

12 (i) The financial responsibility and experience,
13 character and fitness of the license applicant, of the
14 owners or persons in charge of the applicant and
15 individuals designated in charge of the applicant's places
16 of business, are such as to warrant belief that the
17 business will be operated honestly and fairly within the
18 purposes of this act;

19

20 (ii) The applicant has not been convicted of any
21 felony or a misdemeanor involving any aspect of the
22 business;

23

24 (iii) The applicant has not had a license, or

1 authority substantially equivalent to a license under this
2 act and issued by any state, denied, revoked or suspended
3 under the law of such state;

4

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

8

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

11

12 (vi) The applicant has not violated any other
13 Wyoming law, or federal laws or regulations pertaining to
14 mortgage lending or mortgage brokering activities; or

15

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

19

20 (c) The commissioner is empowered to conduct
21 investigations as deemed necessary to determine the
22 existence of the requirements in subsection (b) of this
23 section.

24

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

4
5 (i) The commissioner has notified the applicant
6 in writing that his application has been denied, or
7 objections to the application have been filed with the
8 commissioner;

9
10 (ii) The commissioner has not issued a license
11 within sixty (60) days after a complete application for the
12 license was filed. If a hearing is held, the applicant and
13 those filing objections shall reimburse, pro rata, the
14 commissioner for his reasonable and necessary expenses
15 incurred as a result of the hearing. Notwithstanding any
16 provision under the Wyoming Administrative Procedure Act, a
17 request for hearing shall not be made more than fifteen
18 (15) days after the commissioner has sent notification to
19 the applicant notifying him that the application has been
20 denied and stating in substance the commissioner's finding
21 supporting denial of the application or that objections
22 have been filed and the substance thereof.

23
24 (e) Every licensee shall license and maintain a home

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

14

15 (f) No licensee shall change the location of any
16 place of business, consolidate two (2) or more locations,
17 or close any location, without giving the commissioner at
18 least thirty (30) days prior written notice and paying a
19 license modification fee not to exceed one hundred dollars
20 (\$100.00) as set by rule of the commissioner.

21

22 (g) A licensee shall not engage in the business of
23 making or brokering residential mortgage loans at any place
24 of business for which he does not hold a license nor shall

1 he engage in business under any other name than that on the
2 license.

3

4 (h) The commissioner may suspend action upon a
5 license application pending resolution of any criminal
6 charges, before any court of competent jurisdiction,
7 against an applicant which would disqualify that applicant
8 if convicted.

9

10 (j) An applicant shall make complete disclosure
11 of all information required in the application, including
12 information concerning officers, directors, partners,
13 members, managers or employees.

14

15 **40-23-108. Change in control of a licensee.**

16

17 (a) A licensee shall give the commissioner written
18 notice of a proposed change of control within fifteen (15)
19 business days after learning of the proposed change of
20 control.

21

22 (b) The commissioner may require the licensee to
23 provide additional information concerning the proposed
24 persons in control of the licensee. The additional

1 information shall be limited to the same information
2 required of the licensee or persons in control of the
3 licensee as part of its original license or renewal
4 application.

5

6 (c) The licensee shall reapply and submit the
7 required fees established by rule, not to exceed one
8 thousand dollars (\$1,000.00) for a new license upon a
9 change in the control of the licensee as determined by the
10 commissioner. The license is not transferable nor
11 assignable to the new persons in control of the licensee.

12

13 (d) Before filing a request for approval to acquire
14 control, a person may request in writing a determination
15 from the commissioner as to whether the person would be
16 considered a person in control of a licensee upon
17 consummation of a proposed transaction. If the
18 commissioner determines that the person would not be a
19 person in control of a licensee, the commissioner shall
20 enter an order stating the proposed person and transaction
21 is not subject to the requirements of subsections (a)
22 through (c) of this section.

23

24 **40-23-109. License renewal and annual report.**

1

2 (a) Each license issued under this act shall expire
3 on June 30. The license shall be renewed annually not less
4 than thirty (30) days before the stated expiration date.
5 The renewal fee for each license shall not exceed one
6 thousand dollars (\$1,000.00), as set by rule of the
7 commissioner.

8

9 (b) The renewal fee shall be accompanied by a report,
10 in a form approved by the commissioner, which may include:

11

12 (i) A copy of the licensee's most recent audited
13 annual financial statement including balance sheet,
14 statement of income or loss, statement of changes in
15 shareholder's equity and statement of changes in financial
16 position, or in the case of a licensee that is a wholly
17 owned subsidiary of another corporation, the consolidated
18 audited annual financial statement of the parent
19 corporation may be filed in lieu of the licensee's audited
20 annual financial statement;

21

22 (ii) For the most recent quarter for which data
23 is available prior to the date of the filing of the renewal
24 application, but in no event more than one hundred twenty

1 (120) days prior to the renewal date, the licensee shall
2 provide the number of mortgage loans made or assisted by
3 the licensee, including the dollar amount of the mortgage
4 loans;

5

6 (iii) Any material changes to any of the
7 information submitted by the licensee on its original
8 application which have not been reported previously to the
9 commissioner on any other report required to be filed under
10 this act;

11

12 (iv) Any update necessary on the surety bond;

13

14 (v) A list of the locations, if any, within this
15 state at which business regulated by this act is being
16 conducted by the licensee.

17

18 (c) The commissioner is authorized for good cause
19 shown to waive any requirement of this subsection (b) of
20 this section with respect to any license renewal
21 application or to permit a license renewal applicant to
22 submit substituted information in its license renewal
23 application in lieu of the information required by this
24 section.

1

2 (d) A licensee that has not filed a renewal report or
3 paid its renewal fee by the renewal filing deadline and has
4 not been granted an extension of time to do so by the
5 commissioner, shall have its license suspended on the
6 renewal date. The licensee has thirty (30) days after its
7 license is suspended in which to file a renewal report and
8 pay the renewal fee.

9

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

11

12 (a) All licensees shall maintain a surety bond to the
13 state of Wyoming in accordance with this section. The bond
14 to be maintained shall be in the amount of twenty five
15 thousand dollars (\$25,000.00). This amount shall be
16 increased by an additional sum of ten thousand dollars
17 (\$10,000.00) for each licensed office. The bond shall be a
18 continuing obligation of the issuing surety. The surety's
19 liability under the bond for any claims made under the bond
20 either individually or in the aggregate shall in no event
21 exceed the face amount of the bond issued. The bond shall
22 be issued by a surety authorized to do business in the
23 state of Wyoming. The bond, including any and all riders
24 and endorsements executed subsequent to the effective date

1 of the bond, shall be placed on file with the commissioner.

2

3 (b) In the event that a licensee or any employee or
4 agent of a licensee has violated any of the provisions of
5 this act or of a rule or order lawfully made pursuant to
6 this act, or federal law or regulation pertaining to the
7 mortgage lending or mortgage brokering, and has damaged any
8 person by such violation, then the bond shall be forfeited
9 and paid by the surety to the state of Wyoming for the
10 benefit of any person so damaged.

11

12 **40-22-111. Examinations and investigations.**

13

14 (a) The commissioner may conduct examinations of any
15 licensee under this act at intervals he deems necessary to
16 determine compliance with this act and other applicable
17 laws, rules and regulations.

18

19 (b) The commissioner may at any time investigate the
20 loans or business books and records of any licensee for the
21 purpose of determining compliance with this act or securing
22 information required under this act. For these purposes,
23 the commissioner shall have free and reasonable access to
24 the offices, places of business, books and records of the

1 licensee.

2

3 (c) If a licensee's records are located outside this
4 state, the licensee shall have the option to make them
5 available to the commissioner at a convenient location
6 within this state, or pay the reasonable and necessary
7 expenses for the commissioner or his representative to
8 examine them at the place where they are maintained. The
9 commissioner may designate representatives, including
10 comparable officials of the state in which the records are
11 located, to inspect them on his behalf.

12

13 (d) Each licensee or person subject to examination or
14 investigation under this act shall pay to the commissioner
15 an amount assessed by the commissioner to cover the direct
16 and indirect cost of examinations or investigations
17 conducted pursuant to this section.

18

19 **40-23-112. Records; confidentiality of records;**
20 **exception.**

21

22 (a) Every licensee shall maintain records in
23 conformity with generally accepted accounting principles in
24 a manner that will enable the commissioner to determine

1 whether the licensee is complying with the provisions of
2 this act. The recordkeeping system of a licensee shall be
3 sufficient if he makes the required information available.
4 The records need not be kept in the place of business where
5 residential mortgage loans are made, if the commissioner is
6 given free access to the records wherever located. The
7 records pertaining to any loan shall be retained for the
8 periods prescribed by the commissioner.

9

10 (b) Except as provided in subsection (c) of this
11 section, all information or reports obtained by the
12 commissioner from an applicant, or licensee are
13 confidential.

14

15 (c) The commissioner may disclose confidential
16 information to mortgage lending or mortgage brokering
17 supervisory agencies in other states or to federal
18 regulatory authorities or to appropriate prosecuting
19 attorneys.

20

21 (d) The commissioner may enter into cooperative,
22 coordinating or information-sharing agreements with any
23 other supervisory agency or any organization affiliated
24 with or representing one (1) or more mortgage lending or

1 mortgage brokering supervisory agencies with respect to the
2 periodic examination or other supervision of any office in
3 Wyoming of an out-of-state licensee, and the commissioner
4 may accept such parties' reports of examination and reports
5 of investigation in lieu of conducting his own examinations
6 or investigations.

7

8 (e) The commissioner may enter into contracts with
9 any mortgage lending or mortgage brokering supervisory
10 agency having concurrent jurisdiction over a Wyoming
11 licensee pursuant to this act to engage the services of the
12 agency's examiners at a reasonable rate of compensation.
13 Any such contract shall not be subject to the provisions of
14 W.S.9-2-1016(b).

15

16 (f) This section does not prohibit the commissioner
17 from disclosing to the public a list of persons licensed
18 under this act or the aggregated financial data on those
19 licensees.

20

21 **40-23-113. Disclosure of mortgage lender fees.**

22

23 (a) Within three (3) working days of taking a
24 mortgage loan application and prior to receiving any

1 consideration from the borrower, the mortgage lender shall:

2

3 (i) Disclose the terms of the loan to the
4 borrower in compliance with the disclosure requirements of
5 the federal Truth-in-Lending Act and its associated
6 regulations, and the federal Real Estate Settlement
7 Procedures Act and its associated regulations;

8

9 (ii) Disclose the terms of any prepayment
10 penalty on the mortgage loan, including the amount of the
11 prepayment penalty or the formula for calculating the
12 prepayment penalty and the terms of the prepayment penalty.
13 If the initial mortgage loan offer does not include a
14 prepayment penalty, but a prepayment penalty is later
15 included in the mortgage loan offer, then disclosure of the
16 terms of the prepayment penalty shall be made within three
17 (3) working days of the prepayment penalty being added to
18 the mortgage loan offer.

19

20 (b) With the exception of a loan cancellation fee, a
21 licensed mortgage lender shall not require a borrower to
22 pay any fees or charges prior to a residential mortgage
23 loan closing, except:

24

1 (i) Charges actually incurred by the licensee on
2 behalf of the borrower for services which have been
3 rendered by third parties necessary to process the
4 application. These fees may include, but are not limited
5 to, fees for credit reports, flood insurance
6 certifications, property inspections, title insurance
7 commitments, uniform commercial code article 4 lien
8 searches, and appraisals;

9
10 (ii) An application fee;

11
12 (iii) A rate lock in fee; and

13
14 (iv) A commitment fee upon approval of the
15 residential mortgage loan.

16
17 (c) A loan cancellation fee may be charged and
18 collected by a licensee at any time either prior to the
19 scheduled closing of a residential mortgage loan
20 transaction or subsequent thereto.

21
22 (d) Any fees charged under the authority of this
23 section shall be reasonable and customary as to the type
24 and the amount of the fee charged.

1

2

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

3

4 (a) Within three (3) business days of a borrower
5 signing a completed mortgage loan application and before
6 the borrower provides any consideration to the licensee,
7 the licensee shall execute and deliver to the borrower a
8 mortgage brokerage agreement. The mortgage brokerage
9 agreement shall be in writing, signed and dated by both the
10 borrower and the authorized representative of the licensed
11 mortgage broker whose services to the borrower constitute
12 mortgage brokering.

13

14 (b) The mortgage brokerage agreement shall be the
15 only agreement between the borrower and licensee with
16 respect to a single mortgage loan transaction, except that
17 the licensed mortgage broker shall also provide to the
18 borrower disclosure statements necessary to comply with the
19 federal Truth-in-Lending Act and its associated
20 regulations, the federal Real Estate Settlement Procedures
21 Act and its associated regulations, and any other
22 applicable federal and state requirements.

23

24 (c) A licensed mortgage broker shall not require a

1 borrower to pay any fees or charges prior to the mortgage
2 loan closing, except charges actually incurred by the
3 licensed mortgage broker on behalf of the borrower for
4 services from third parties necessary to process the
5 mortgage loan application, such as credit reports and
6 appraisals.

7

8 (d) A mortgage broker shall not charge any fee that
9 inures to the benefit of the mortgage broker if it exceeds
10 the fee disclosed on the most recent good faith estimate
11 unless:

12

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

16

17 (ii) The mortgage broker has provided to the
18 borrower, no less than three (3) business days prior to the
19 signing of the mortgage loan closing documents, a clear
20 written explanation of the increase in the fee and the
21 reason for charging a fee that exceeds that which was
22 previously disclosed.

23

24 (e) If the fee was originally disclosed as a

1 percentage of the mortgage loan amount, and the dollar
2 amount of the fee increases because the mortgage loan
3 amount increases, but the fee as a percentage of the
4 mortgage loan amount does not change, then no redisclosure
5 shall be required unless the fee increased by more than one
6 thousand (\$1,000.00) dollars.

7

8 **40-23-115. Disclosure of loan terms by mortgage**
9 **broker.**

10

11 (a) Prior to entering into a written mortgage
12 brokerage agreement or accepting any consideration from the
13 borrower, a mortgage broker shall disclose in writing to
14 any borrower the following information:

15

16 (i) That the mortgage broker may not make
17 mortgage loans or issue loan commitments in its own name.
18 The mortgage broker may issue a loan commitment and may
19 furnish a lock in of the interest rate and program on
20 behalf of the mortgage lender when the mortgage broker has
21 obtained a written or electronically transmitted loan
22 commitment or lock in for the mortgage loan from the
23 mortgage lender on behalf of the borrower. The loan
24 commitment issued by the mortgage broker to the borrower on

1 behalf of the mortgage lender shall be in the same form and
2 substance as issued by the mortgage lender and must
3 identify the mortgage lender by name;

4

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

8

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

12

13 (iv) The terms and conditions for obtaining a
14 refund of any fees or arranging for the transfer of third-
15 party service work products to another mortgage lender or
16 mortgage broker, if any. The amount of any fees collected
17 in excess of the actual cost shall be returned within sixty
18 (60) days after rejection, withdrawal or closing.

19

20 (b) The fact that certain mortgage loan products
21 impose a pre-payment penalty on the borrower and the amount
22 of, or the formula for calculating the prepayment penalty,
23 if any, and the terms of the prepayment penalty, if any,
24 shall be disclosed to the borrower as soon as they are

1 known, but no later than the issuance of the commitment, if
2 any, for the mortgage loan product chosen by the borrower.

3

4 **40-23-116. Trust accounts.**

5

6 All moneys received from a borrower for payment of third
7 party provider services shall be deemed as held in trust
8 immediately upon receipt. All such trust funds shall be
9 deposited, prior to the end of the third business day
10 following receipt of the funds, in a trust account of a
11 federally insured financial institution. All trust account
12 funds collected under this act shall remain on deposit in a
13 trust account until disbursement. The trust account shall
14 be designated and maintained for the benefit of borrowers.
15 Moneys maintained in the trust account shall be exempt from
16 execution, attachment or garnishment. A mortgage lender or
17 mortgage broker shall not in any way encumber the corpus of
18 the trust account or commingle any other operating funds
19 with trust account funds. Withdrawals from the trust
20 account shall be only for the payment of bona fide services
21 rendered by a third-party provider or for refunds to a
22 borrower.

23

24 **40-23-117. Prohibited practices.**

1

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

4

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

9

10 (ii) Obtain any exclusive dealing or exclusive
11 agency agreement from any borrower;

12

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

16

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

19

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

22

23 (vi) Engage in any misrepresentation in
24 connection with a residential mortgage loan;

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(vii) Make 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;

(viii) Make any false promises likely to influence or persuade, or pursue a course of misrepresentations and false promises through agents, solicitors, advertising or otherwise;

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

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

40-23-118. License suspension or revocation.

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

3

4 (i) Any fact or condition exists that, if it had
5 existed at the time when the licensee applied for its
6 license, would have been grounds for denying the
7 application;

8

9 (ii) The licensee violated any provision of this
10 act or any rule or order validly promulgated by the
11 commissioner;

12

13 (iii) The licensee is conducting its business in
14 an unsafe or unsound manner;

15

16 (iv) The licensee refuses to permit the
17 commissioner to make any examination authorized by this
18 act;

19

20 (v) The licensee willfully fails to make any
21 report required by this act;

22

23 (vi) The competence, experience, character or
24 general fitness of the licensee indicates that it is not in

1 the public interest to permit the licensee to continue to
2 conduct business;

3

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

5

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

10

11 (ix) The licensee or any partner, officer,
12 director, manager or employee of the licensee has had a
13 license substantially equivalent to a license under this
14 act, and issued by another state, denied, revoked or
15 suspended under the laws of that state;

16

17 (x) The licensee has filed an application for a
18 license which as of the date the license was issued, or as
19 of the date of an order denying, suspending or revoking a
20 license, was incomplete in any material respect or
21 contained any statement that was, in light of the
22 circumstances under which it was made, false or misleading
23 with respect to any material fact.

24

1 (b) Notwithstanding any provision of the Wyoming
2 Administrative Procedure Act, if the commissioner finds
3 that probable cause for revocation of a license exists and
4 that enforcement of this act and the public interest
5 require immediate suspension of the license pending
6 investigation, he may, after a hearing upon five (5) days
7 written notice, enter an order suspending the license for
8 not more than thirty (30) days.

9

10 (c) The commissioner may, in his discretion,
11 reinstate a license, terminate a suspension or grant a new
12 license to a person whose license has been revoked or
13 suspended if no fact or condition then exists which clearly
14 would justify the commissioner in refusing to grant a
15 license.

16

17 **40-23-119. Orders to cease and desist.**

18

19 (a) If the commissioner determines that a violation
20 of this act or of a rule adopted or an order issued under
21 this act by a licensee is likely to cause immediate and
22 irreparable harm to the licensee, its customers or the
23 public as a result of the violation or cause insolvency of
24 the licensee, the commissioner may issue an order requiring

1 the licensee to cease and desist from the violation. The
2 order becomes effective upon service upon the licensee.

3

4 (b) 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 **40-23-120. Unlicensed persons.**

10

11 (a) Before issuing a final cease and desist order,
12 the commissioner shall serve notice of intent to issue the
13 order upon the unlicensed mortgage broker or mortgage
14 lender. The notice shall be in writing and shall direct
15 the unlicensed mortgage lender or mortgage broker to
16 discontinue the violations of law and cease and desist
17 mortgage lending or mortgage brokering activities. The
18 notice shall be served by certified mail return receipt
19 requested to the last known address of the unlicensed
20 mortgage lender or mortgage broker or shall be served as
21 provided by the Wyoming Rules of Civil Procedure. Notice
22 of the order shall include:

23

1 (i) A statement of the grounds for issuing the
2 proposed order, including a citation to the statute or rule
3 involved;

4
5 (ii) A statement of the facts in support of the
6 allegations;

7
8 (iii) A statement informing the unlicensed
9 mortgage lender or mortgage broker of the right to a
10 hearing on the order.

11

12 (b) In an emergency, the commissioner may petition
13 the district court for the issuance of a temporary
14 restraining order.

15

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

18

19 (d) An order to cease and desist remains effective
20 and enforceable pending the completion of an administrative
21 proceeding pursuant to W.S. 40-23-121 and 40-23-122.

22

23 (e) A person served with an order to cease and desist
24 for violating this act may petition the district court for

1 a judicial order setting aside, limiting or suspending the
2 enforcement, operation or effectiveness of the order
3 pending the completion of an administrative proceeding
4 pursuant to Wyoming Administrative Procedure Act.

5

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

9

10 **40-23-121. Consent orders.**

11

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

21

22 **40-23-122. Civil penalties.**

23

24 The commissioner may impose a civil penalty upon a person

1 who violates this act or a rule adopted or an order issued
2 under this act in an amount not to exceed five hundred
3 dollars (\$500.00) per day for each day the violation is
4 outstanding, plus the state's costs and expenses for the
5 investigation and prosecution of the matter, including
6 reasonable attorney's fees.

7

8 **40-23-123. Criminal penalties.**

9

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

17

18 (b) An individual who knowingly engages in any
19 activity for which a license is required under this act,
20 without being licensed under this act is guilty of a felony
21 punishable for not less than three (3) years imprisonment
22 or a fine of not less than ten thousand dollars
23 (\$10,000.00), or both.

24

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

6

7 **40-23-124. Hearings.**

8

9 Except as otherwise provided in W.S. 40-23-109 and
10 40-23-108(c), the commissioner shall not suspend or revoke
11 a license, issue an order to cease and desist or assess a
12 civil penalty without notice and an opportunity to be
13 heard.

14

15 **Section 2.** There is appropriated from the general
16 fund to the financial institutions administration account,
17 earmarked revenue fund of the department of audit one
18 hundred fifteen thousand dollars (\$115,000.00) to implement
19 this act.

20

21 **Section 3.** This act is effective immediately upon
22 completion of all acts necessary for a bill to become law
23 as provided by Article 4, Section 8 of the Wyoming
24 Constitution.

1

2

(END)