

SENATE FILE NO. SF0044

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

14 **Section 1.** W.S. 40-23-103(a)(vi) and by creating new  
15 paragraphs (vii) through (ix), 40-23-105(a)(vi),  
16 40-23-107(b)(ii), by creating a new paragraph (iii), by

1 amending and renumbering (iii) as (iv) and (iv) as (vi) and  
2 by renumbering (vi) as (vii), 40-23-109(a), 40-23-110(b)  
3 and by creating new subsection (c), 40-23-113(a)(i), (ii)  
4 and by creating new subsections (e) and (f), 40-23-114(a),  
5 (d)(intro), (ii) and by creating a new subsection (f),  
6 40-23-115(a)(intro) and (b), 40-23-117(a)(vii),  
7 40-23-118(a)(vii), (viii) and by creating new paragraph  
8 (xi) and 40-23-123 are amended to read:

9  
10 **40-23-103. Powers and duties of commissioner.**

11  
12 (a) In addition to any other powers and duties  
13 imposed upon the commissioner by law, the commissioner  
14 shall:

15  
16 (vi) Require that all application, renewal,  
17 licensing, examination and all other fees included under  
18 this act, except the amount paid for data processing by a  
19 nationwide mortgage licensing system and database, shall be  
20 deposited by the commissioner with the state treasurer into  
21 the financial institutions administration account within  
22 the earmarked revenue fund; 

1           (vii) Require the licensee to reimburse the  
2 borrower for actual damages for any amount in excess of  
3 amounts actually disclosed to the borrower;

4  
5           (viii) Require a background investigation  
6 including fingerprint checks for state and national criminal  
7 history record checks as necessary. The commissioner may  
8 utilize background checks completed by the division of  
9 criminal investigation, other government agencies in this  
10 state or in other states, the federal bureau of  
11 investigation or a nationwide mortgage licensing system;

12  
13           (ix) Determine the content of application forms  
14 and the means by which an applicant applies for, renews or  
15 makes changes to a license under this act. The commissioner  
16 may require applicants to utilize a nationwide mortgage  
17 licensing system and database for the processing of  
18 applications and fees.

19  
20           **40-23-105. Exemptions from license requirements.**

21  
22           (a) The provisions of this act do not apply to:

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

14

15           **40-23-107. Application for license to do business as**  
16 **a mortgage lender or mortgage broker.**

17

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

20

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

24

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

5  
6            ~~(iii)~~ (iv) The applicant has not been the subject  
7 of any administrative action or enforcement proceeding by  
8 any state or federal government agency involving ~~finer,~~  
9 ~~penalties or~~ the revocation ~~or suspension~~ of any license or  
10 authority substantially equivalent to a license under this  
11 act;

12  
13            ~~(iv)~~ (vi) The applicant has not filed an  
14 application for a license which is false or misleading with  
15 respect to any material fact; and

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

20  
21            **40-23-109. License renewal and annual report.**

22  
23            (a) Each license issued under this act shall expire  
24 on ~~June 30~~ December 31. The license shall be renewed

1 annually not less than thirty (30) days before the stated  
2 expiration date. The renewal fee for each license shall  
3 not exceed one thousand dollars (\$1,000.00) for the home  
4 office location and an amount not to exceed one hundred  
5 dollars (\$100.00) for each additional location, as set by  
6 rule of the commissioner.

7  
8 **40-23-110. Surety bonds.**

9  
10 (b) In the event that a licensee or person employed  
11 by or under contract with a licensee has violated any of  
12 the provisions of this act or of a rule or order lawfully  
13 made pursuant to this act, or federal law or regulation  
14 pertaining to the mortgage lending or mortgage brokering,  
15 and has damaged any person by such violation, then the bond  
16 shall be forfeited and paid by the surety to the state of  
17 Wyoming for the benefit of any person so damaged, in an  
18 amount sufficient to satisfy the violation or the bond in  
19 its entirety if the violation exceeds the amount of the  
20 bond.

21  
22 (c) Surety bonds shall remain effective continuously  
23 until released in writing by the commissioner. If a bond  
24 has not been previously released by the commissioner, the

1 bond shall expire two (2) years after the date of the  
2 surrender, revocation or expiration of the license.

3  
4 **40-23-113. Disclosure of mortgage lender fees.**

5  
6 (a) Within three (3) working days of taking a  
7 mortgage loan application and prior to receiving any  
8 consideration, other than third party fees, from the  
9 borrower, the mortgage lender shall:

10  
11 (i) Disclose the terms of the loan to the  
12 borrower in compliance with the disclosure requirements of  
13 the federal Truth-in-Lending Act, ~~and~~ its associated  
14 regulations, and the federal Real Estate Settlement  
15 Procedures Act and its associated regulations and any other  
16 applicable federal and state requirements;

17  
18 (ii) If a prepayment penalty may be a condition  
19 of the residential mortgage loan offered to a borrower,  
20 that fact shall be separately disclosed in writing to the  
21 borrower and the borrower shall agree in writing to accept  
22 that condition. The disclosure shall state that a  
23 prepayment penalty provision imposes a charge if the  
24 borrower refinances or pays off the mortgage loan before

1 the date for repayment stated in the loan agreement. The  
2 written disclosure shall be in a form prescribed by the  
3 commissioner and shall initially be delivered along with  
4 the good faith estimate of settlement costs within three  
5 (3) business days after accepting an application from the  
6 borrower. The disclosure shall subsequently be provided by  
7 the lender and signed by the borrower at the same time the  
8 borrower is given the final federal Truth-in-Lending Act  
9 disclosure.

10  
11 (e) A mortgage lender shall not receive any fee that  
12 inures to the benefit of the mortgage lender, either  
13 directly or indirectly, if the fee exceeds the fee  
14 disclosed on the most recent good faith estimate unless:

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

19  
20 (ii) The mortgage lender has provided to the  
21 borrower, no less than three (3) business days prior to the  
22 signing of the mortgage loan closing documents, a new good  
23 faith estimate of settlement costs, a clear written  
24 explanation of the increase in the fee and the reason for



1 charging a fee that exceeds the fee which was previously  
2 disclosed.

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

11  
12 **40-23-114. Disclosure of mortgage broker fees.**

13  
14 (a) Within three (3) business days of a borrower  
15 signing a completed mortgage loan application and before  
16 the borrower provides any consideration to the licensee,  
17 the licensee shall execute and deliver to the borrower a  
18 mortgage brokerage agreement. The mortgage brokerage  
19 agreement shall be in writing, signed and dated by both the  
20 borrower and the authorized representative of the licensed  
21 mortgage broker whose services to the borrower constitute  
22 mortgage brokering- and shall contain the following  
23 information:

1           (i) That the mortgage broker shall not make  
2 mortgage loans or issue loan commitments in the mortgage  
3 broker's name;

4  
5           (ii) That the mortgage broker shall not  
6 guarantee acceptance into any particular mortgage loan  
7 program or promise any specific mortgage loan terms or  
8 conditions;

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

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

21  
22          (d) A mortgage broker shall not ~~charge~~receive any  
23 fee that inures to the benefit of the mortgage broker,

1 either directly or indirectly if it exceeds the fee  
2 disclosed on the most recent good faith estimate unless:

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

11  
12 (f) Any fees charged under the authority of this  
13 section shall be reasonable and customary as to the type  
14 and the amount of the fee charged.

15  
16 **40-23-115. Loan commitments; prepayment penalty**  
17 **disclosure by mortgage broker.**

18  
19 (a) ~~Prior to entering into a written mortgage~~  
20 ~~brokerage agreement or accepting any consideration from the~~  
21 ~~borrower, A mortgage broker shall disclose in writing to~~  
22 ~~any borrower the following information:~~ may issue a loan  
23 commitment and may furnish a lock-in of the interest rate  
24 and program on behalf of the mortgage lender when the

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

8  
9 (b) ~~The fact that certain mortgage loan products~~  
10 ~~impose~~ If a prepayment penalty ~~on the borrower and the~~  
11 ~~amount of, or the formula for calculating the prepayment~~  
12 ~~penalty, if any, and the terms of the prepayment penalty,~~  
13 ~~if any, shall be disclosed to the borrower as soon as they~~  
14 ~~are known, but no later than the issuance of the~~  
15 ~~commitment, if any, for the mortgage loan product chosen by~~  
16 ~~the borrower~~ is a condition of the residential mortgage  
17 loan offered to a borrower, that fact shall be separately  
18 disclosed in writing to the borrower and the borrower shall  
19 agree in writing to accept that condition. The disclosure  
20 shall state that a prepayment penalty provision imposes a  
21 charge if the borrower refinances or pays off the mortgage  
22 loan before the date for repayment stated in the loan  
23 agreement. The written disclosure shall be in a form  
24 prescribed by the commissioner and shall be delivered as

1 soon as the condition is known, but no later than the  
2 issuance of a commitment, for the mortgage loan product  
3 chosen by the borrower.

4  
5 **40-23-117. Prohibited practices.**

6  
7 (a) No licensee or person required to have a license  
8 shall:

9  
10 (vii) Make any statement or provide payment,  
11 whether directly or indirectly, of any kind to any in-house  
12 or fee appraiser for the purpose of influencing the  
13 independent judgment of the appraiser with respect to the  
14 value of any real estate which is to be covered by a  
15 residential mortgage loan;

16  
17 **40-23-118. License suspension or revocation.**

18  
19 (a) The commissioner may suspend, not to exceed six  
20 (6) months, or revoke a license if the commissioner finds:

21  
22 (vii) The bond of the licensee has been revoked,  
23 cancelled, expired or otherwise is not effective;

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

5  
6 (xi) The licensee or any partner, officer,  
7 director, manager or employee of the licensee has been  
8 convicted of a misdemeanor involving mortgage lending, any  
9 aspect of the mortgage lending business or any offense  
10 involving breach of trust, or fraudulent or dishonest  
11 dealing.

12  
13 **40-23-123. Hearings.**

14  
15 Except as otherwise provided in W.S. 40-23-103(a)(vii),  
16 40-23-108(c) and 40-23-109, the commissioner shall not  
17 suspend or revoke a license, issue an order to cease and  
18 desist or assess a civil penalty without notice and an  
19 opportunity to be heard.

20  
21 **Section 2.** W.S. 40-23-107(b)(v) and 40-23-115(a)(i)  
22 through (iv) are repealed.

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

5

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

7

8 (END)