

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HOUSE BILL 2143

AN ACT

AMENDING SECTIONS 6-123, 6-123.01, 6-991, 6-991.01, 6-991.02, 6-991.03, 6-991.04, 6-991.05 AND 6-991.07, ARIZONA REVISED STATUTES; RENUMBERING SECTION 6-991.08, ARIZONA REVISED STATUTES, AS SECTION 6-991.21; AMENDING TITLE 6, CHAPTER 9, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 6-991.08; AMENDING TITLE 6, CHAPTER 9, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 6-991.09, 6-991.10, 6-991.11, 6-991.12, 6-991.13, 6-991.14, 6-991.15, 6-991.16, 6-991.17, 6-991.18, 6-991.19 AND 6-991.20; RELATING TO THE DEPARTMENT OF FINANCIAL INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 6-123, Arizona Revised Statutes, is amended to
3 read:
4 6-123. Superintendent; powers
5 In addition to the other powers, express or implied, the superintendent
6 may:
7 1. Exercise all powers that are necessary for the administration and
8 enforcement of the laws and rules relating to financial institutions and
9 enterprises.
10 2. In accordance with title 41, chapter 6, adopt rules that are
11 necessary or appropriate to administer, enforce and accomplish the purposes
12 of this title and adopt rules and issue orders that limit transactions
13 between financial institutions or enterprises and the directors, officers or
14 employees of the financial institutions or enterprises.
15 3. Require appropriate records, documents, information and reports
16 from any financial institution or enterprise.
17 4. Submit to the department of public safety, OR THE NATIONWIDE
18 MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE AND FAIR
19 ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810;
20 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS SUCCESSOR, the name
21 and fingerprints of any applicant, licensee, active manager or responsible
22 individual or the name and fingerprints of any organizer, director or officer
23 of any corporate applicant or licensee for:
24 (a) A banking permit.
25 (b) Permission to organize a savings and loan association or credit
26 union.
27 (c) Any license.
28 (d) Any certificate.
29 (e) Authority to engage in interstate banking and branching in this
30 state.
31 The department of public safety shall report the criminal record, if any, of
32 such applicant, licensee or organizer, director or officer of such corporate
33 applicant or licensee within ninety days of receipt of the request of the
34 superintendent.
35 5. Employ appraisers to appraise any property that is owned or held as
36 security by any financial institution or enterprise. The reasonable expenses
37 and compensation of such appraisers shall be paid by the financial
38 institution or enterprise.
39 6. Hold membership in, pay dues to and attend the convention of the
40 national and regional organizations of state officials occupying like offices
41 or performing similar functions.
42 7. Cooperate with other regulatory agencies and professional
43 associations to promote the efficient, safe and sound operation and
44 regulation of interstate banking and branching activities, including the

1 formulation of interstate examination policies and procedures and the
2 drafting of model rules and agreements.

3 8. PARTICIPATE IN THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND
4 REGISTRY ESTABLISHED BY THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE
5 LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE
6 SECTIONS 5101 THROUGH 5116) OR ITS SUCCESSOR. THE SUPERINTENDENT MAY ALLOW
7 THE SYSTEM TO COLLECT LICENSING FEES ON BEHALF OF THE SUPERINTENDENT, TO
8 COLLECT A PROCESSING FEE FOR THE SERVICES OF THE SYSTEM DIRECTLY FROM EACH
9 APPLICANT FOR A LICENSE OR LICENSEE AND TO PROCESS AND MAINTAIN RECORDS ON
10 BEHALF OF THE SUPERINTENDENT, INCLUDING INFORMATION COLLECTED PURSUANT TO
11 THIS SECTION AND SECTION 6-123.01. THIS PARAGRAPH DOES NOT AFFECT THE
12 RECORDS DISCLOSURE REQUIREMENTS AND LIMITATIONS PRESCRIBED IN SECTION
13 6-129.01.

14 Sec. 2. Section 6-123.01, Arizona Revised Statutes, is amended to
15 read:

16 6-123.01. Fingerprint requirements; fees

17 A. Before receiving and holding a license, permit, certificate or
18 permission to organize a bank, savings and loan ASSOCIATION or credit union,
19 the superintendent may require an applicant, licensee, active manager or
20 responsible individual or an organizer, director or officer of any corporate
21 applicant or licensee to submit a full set of fingerprints and fees to the
22 department. The department of financial institutions shall submit the
23 fingerprints and fees to the department of public safety, OR THE NATIONWIDE
24 MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE AND FAIR
25 ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810;
26 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS SUCCESSOR, for the
27 purpose of obtaining a state and federal criminal records check pursuant to
28 section 41-1750 and Public Law 92-544. The department of public safety may
29 exchange this fingerprint data with the federal bureau of investigation.

30 B. The fees that the department collects under subsection A of this
31 section shall be credited pursuant to section 35-148.

32 C. The applicant is responsible for providing the department with
33 readable fingerprints. The applicant shall pay any costs that are
34 attributable to refingerprinting due to the unreadability of any fingerprints
35 and any fees that are required for the resubmission of fingerprints.

36 D. The department may issue a TEMPORARY license or certificate or
37 grant TEMPORARY permission to organize to an original applicant before the
38 department receives the results of a criminal records check if there is not
39 evidence or reasonable suspicion that the applicant has a criminal history
40 background that would be cause for denial of a license, certificate or
41 permission to organize. The department may ~~suspend~~ TERMINATE the TEMPORARY
42 license or certificate or permission to organize if a fingerprint card is
43 returned as unreadable and the applicant fails to submit new fingerprints
44 within ten days after being notified by the department that the original card
45 was unreadable OR IF THE RESULTS OF THE CRIMINAL RECORDS CHECK REVEAL GROUNDS

1 FOR THE DENIAL OF THE LICENSE OR CERTIFICATE OR PERMISSION TO ORGANIZE. THE
2 TEMPORARY LICENSE OR CERTIFICATE OR PERMISSION TO ORGANIZE SHALL NOT BE
3 EFFECTIVE LONGER THAN ONE HUNDRED EIGHTY DAYS.

4 E. The superintendent may require a current licensee, organizer,
5 director, active manager, responsible individual or officer of any corporate
6 licensee to submit a full set of fingerprints to the department. The
7 department of financial institutions shall submit the fingerprints and fees
8 to the department of public safety for the purpose of obtaining a state and
9 federal criminal records check pursuant to section 41-1750 and Public Law
10 92-544. The department of public safety may exchange this fingerprint data
11 with the federal bureau of investigation.

12 F. This section does not affect the department's authority to
13 otherwise issue, deny, cancel, terminate, suspend or revoke a license.

14 Sec. 3. Section 6-991, Arizona Revised Statutes, is amended to read:
15 6-991. Definitions

16 In this article, unless the context otherwise requires:

17 1. "Administrative or clerical tasks" means the receipt, collection
18 and distribution of information common for the processing OR UNDERWRITING of
19 a loan in the mortgage industry or communication with a borrower to obtain
20 information necessary for the processing OR UNDERWRITING of a MORTGAGE loan.
21 Administrative or clerical tasks do not include holding oneself out to the
22 public as able to obtain a loan.

23 2. "Affiliate" means an entity that directly or indirectly, through
24 intermediaries, controls, is controlled by or is under common control with
25 the entity specified.

26 3. "CONSUMER LENDER" MEANS A PERSON WHO IS LICENSED PURSUANT TO
27 CHAPTER 5 OF THIS TITLE.

28 ~~3-~~ 4. "Continuing education unit" means a fifty minute period of time
29 in a continuing education course that relates to the mortgage industry or to
30 mortgage transactions, including courses taken to maintain recognized
31 industry designations.

32 5. "IMMEDIATE FAMILY MEMBER" MEANS A SPOUSE, CHILD, SIBLING, PARENT,
33 GRANDPARENT, GRANDCHILD, STEPPARENT, STEPCHILD OR STEPSIBLING WHETHER RELATED
34 BY ADOPTION OR BLOOD.

35 6. "JUDGMENT" MEANS EITHER:

36 (a) A FINAL JUDGMENT IN A COURT OF COMPETENT JURISDICTION.

37 (b) A CRIMINAL RESTITUTION ORDER ISSUED PURSUANT TO SECTION 13-603 OR
38 18 UNITED STATES CODE SECTION 3663.

39 (c) AN ARBITRATION AWARD THAT INCLUDES FINDINGS OF FACT AND
40 CONCLUSIONS OF LAW, THAT HAS BEEN CONFIRMED AND REDUCED TO JUDGMENT PURSUANT
41 TO SECTION 12-133 AND THAT WAS RENDERED ACCORDING TO TITLE 12 AND THE RULES
42 OF THE AMERICAN ARBITRATION ASSOCIATION OR ANOTHER RECOGNIZED ARBITRATION
43 BODY.

44 7. "JUDGMENT DEBTOR" MEANS ANY DEFENDANT UNDER THIS ARTICLE WHO IS THE
45 SUBJECT OF A JUDGMENT.

1 ~~4.~~ 8. "License" means a license issued under this article.

2 ~~5.~~ 9. "Licensee" means a person licensed under this article.

3 ~~6.~~ 10. "Loan originator":

4 (a) Means a natural person, ~~employed by~~ a mortgage broker, ~~or~~ A
5 mortgage banker ~~OR A CONSUMER LENDER~~ who either takes a residential mortgage
6 loan application for a mortgage broker, ~~or~~ A mortgage banker ~~to obtain a~~
7 ~~third party lender~~ ~~OR A CONSUMER LENDER~~ or offers or negotiates terms of a
8 RESIDENTIAL mortgage loan for direct or indirect compensation or gain or in
9 the expectation of direct or indirect compensation or gain.

10 (b) Includes a person who holds himself out to the public as able to
11 perform any of these activities.

12 (c) Does not mean a person who performs purely administrative or
13 clerical tasks and who is employed by a mortgage broker, ~~or~~ mortgage banker
14 ~~OR CONSUMER LENDER~~.

15 ~~7.~~ 11. "Mortgage banker" means a person who is licensed pursuant to
16 article 2 of this chapter.

17 ~~8.~~ 12. "Mortgage broker" means a person who is licensed pursuant to
18 article 1 of this chapter.

19 ~~9.~~ 13. "Mortgage loan" ~~OR "RESIDENTIAL MORTGAGE LOAN"~~ means a loan
20 secured by a mortgage or deed of trust or any lien interest on RESIDENTIAL
21 real estate located in this state established with the consent of the owner
22 of the real estate.

23 14. "UNIQUE IDENTIFIER" MEANS THE NUMBER ASSIGNED TO THE LOAN
24 ORIGINATOR BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY OR ITS
25 SUCCESSOR OR AS THE TERM IS USED UNDER THE SECURE AND FAIR ENFORCEMENT FOR
26 MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED
27 STATES CODE SECTIONS 5101 THROUGH 5116).

28 Sec. 4. Section 6-991.01, Arizona Revised Statutes, is amended to
29 read:

30 6-991.01. Exemptions

31 This article does not apply to:

32 1. A natural person employed by a person who does business under any
33 other law of this state, or law of another state while regulated by an
34 agency of the other state or the United States, relating to banks, savings
35 banks, trust companies, savings and loan associations, profit sharing and
36 pension trusts, credit unions, insurance companies or consumer lenders, or
37 receiverships, including directly or indirectly making, negotiating or
38 offering to make or negotiate a mortgage loan, if the mortgage transactions
39 are regulated by the other law or are under the jurisdiction of a court.
40 Employees of subsidiaries and service corporations of these institutions are
41 exempt and are not subject to this article if preempted by federal law.

42 2. A person who is licensed pursuant to article 1, 2 or 3 of this
43 chapter ~~AND WHO DOES NOT ACT AS A LOAN ORIGINATOR~~.

1 3. A person who is a responsible individual as described in section
2 6-903, ~~6-943 OR 6-973~~ and who does not act as a loan originator pursuant to
3 article 1, 2 or 3 of this chapter.

4 4. An employee of a commercial mortgage banker licensed pursuant to
5 article 3 of this chapter.

6 5. An employee of a person licensed pursuant to this chapter if the
7 licensee affirms in writing to the superintendent that the licensee will not
8 make or negotiate a mortgage loan that has security in the form of a
9 residential dwelling of one to four units.

10 6. A person who, as seller of real property, receives one or more
11 mortgages or deeds of trust as security for a purchase money obligation.

12 7. Any entity subject to regulation and supervision by a federal
13 banking agency, and any operating subsidiary or affiliate of the foregoing,
14 including any employee or exclusive agent of any such entity.

15 8. A LICENSED ATTORNEY WHO NEGOTIATES THE TERMS OF A RESIDENTIAL
16 MORTGAGE LOAN ON BEHALF OF A CLIENT AS AN ANCILLARY MATTER TO THE ATTORNEY'S
17 REPRESENTATION OF THE CLIENT, UNLESS THE ATTORNEY IS COMPENSATED BY A LENDER,
18 A MORTGAGE BROKER OR ANY OTHER MORTGAGE LOAN ORIGINATOR OR BY ANY AGENT OF
19 THE LENDER, MORTGAGE BROKER OR OTHER MORTGAGE LOAN ORIGINATOR.

20 9. A PERSON WHO OFFERS TO NEGOTIATE TERMS OF A RESIDENTIAL MORTGAGE
21 LOAN WITH OR ON BEHALF OF THE PERSON'S IMMEDIATE FAMILY MEMBER AND WHO DOES
22 NOT OTHERWISE ENGAGE IN THE BUSINESS OF A LOAN ORIGINATOR.

23 Sec. 5. Section 6-991.02, Arizona Revised Statutes, is amended to
24 read:

25 6-991.02. Prohibited acts

26 Beginning ~~January~~ JULY 1, 2010:

27 1. A loan originator acting on the loan originator's own behalf shall
28 not accept any monies or documents in connection with an application for a
29 mortgage loan.

30 2. A person is not entitled to receive compensation in connection with
31 arranging for or negotiating a mortgage loan if the person is not licensed
32 pursuant to this chapter. Notwithstanding section 6-984, subsection B, a
33 loan originator shall not pay compensation to, contract with or employ as an
34 independent contractor a person who is acting as a loan originator, mortgage
35 broker, mortgage banker or commercial mortgage banker but who is not licensed
36 under this chapter.

37 3. A loan originator acting on the loan originator's own behalf shall
38 not advertise, display, distribute, broadcast or televise, or cause or permit
39 to be advertised, displayed, distributed, broadcast or televised, in any
40 manner, any solicitation of mortgage business.

41 4. A loan originator shall not make, negotiate or offer to make or
42 negotiate for compensation, either directly or indirectly, a loan that is
43 either:

44 (a) Less than ~~five thousand dollars~~ THE MINIMUM AMOUNT THAT THE LOAN
45 ORIGINATOR'S EMPLOYER IS ALLOWED TO MAKE.

1 (b) Not secured by a mortgage or deed of trust or other lien interest
2 in real property **UNLESS EMPLOYED BY A CONSUMER LENDER AS DEFINED IN SECTION**
3 **6-601.**

4 5. A loan originator who is employed by a mortgage broker or mortgage
5 banker to act in the capacity of the mortgage broker or mortgage banker shall
6 not be employed concurrently by any other mortgage broker or mortgage banker.

7 6. A loan originator shall not collect compensation for rendering
8 services as a real estate broker or real estate salesperson licensed pursuant
9 to title 32, chapter 20 unless both of the following apply:

10 (a) The loan originator is licensed pursuant to title 32, chapter 20.

11 (b) The employing mortgage broker or mortgage banker has disclosed to
12 the person from whom the compensation is collected at the time a mortgage
13 loan application is received that the loan originator is receiving
14 compensation both for mortgage broker or mortgage banker services, if
15 applicable, and for real estate broker or real estate salesperson services.

16 7. A loan originator shall not accept any assignment of the borrower's
17 wages or salary in connection with activities governed by this article.

18 8. A loan originator shall not receive or disburse monies in servicing
19 or arranging a mortgage loan.

20 9. A loan originator shall not make a false promise or
21 misrepresentation or conceal an essential or material fact in the course of
22 the mortgage broker or mortgage banker business.

23 10. A loan originator shall not fail to truthfully account for the
24 monies belonging to a party to a mortgage loan transaction or fail to
25 disburse monies in accordance with the employing mortgage broker or mortgage
26 banker agreements.

27 11. A loan originator shall not engage in illegal or improper business
28 practices.

29 12. A loan originator shall not require a person seeking a loan secured
30 by real property to obtain property insurance coverage in an amount that
31 exceeds the replacement cost of the improvements as established by the
32 property insurer.

33 13. A loan originator shall not originate a mortgage loan unless
34 employed by a mortgage broker, ~~or~~ mortgage banker **OR CONSUMER LENDER.**

35 **14. A LOAN ORIGINATOR SHALL NOT ADVERTISE FOR OR SOLICIT MORTGAGE**
36 **BUSINESS IN ANY MANNER WITHOUT ALL OF THE FOLLOWING:**

37 (a) **THE NAME AND LICENSE NUMBER AS ISSUED ON THE EMPLOYING MORTGAGE**
38 **BROKER'S, MORTGAGE BANKER'S OR CONSUMER LENDER'S PRINCIPAL PLACE OF BUSINESS**
39 **LICENSE.**

40 (b) **APPROVAL OF THE EMPLOYING MORTGAGE BROKER, MORTGAGE BANKER OR**
41 **CONSUMER LENDER.**

42 (c) **THE UNIQUE IDENTIFIER THE LOAN ORIGINATOR MAINTAINS WITH THE**
43 **NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE**
44 **AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122**

1 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS
2 SUCCESSOR.

3 15. ON REQUEST, A LOAN ORIGINATOR SHALL MAKE AVAILABLE TO THE
4 SUPERINTENDENT THE BOOKS AND RECORDS RELATING TO THE LOAN ORIGINATOR'S
5 OPERATIONS. THE SUPERINTENDENT MAY HAVE ACCESS TO THE BOOKS AND RECORDS AND
6 INTERVIEW THE OFFICERS, PRINCIPALS, EMPLOYEES, INDEPENDENT CONTRACTORS,
7 AGENTS AND CUSTOMERS OF THE LOAN ORIGINATOR CONCERNING THEIR BUSINESS. IN
8 CONNECTION WITH A REQUEST PURSUANT TO THIS PARAGRAPH, A PERSON MAY NOT
9 KNOWINGLY WITHHOLD, ABSTRACT, REMOVE, MUTILATE, DESTROY OR SECRETE ANY BOOKS,
10 RECORDS OR OTHER INFORMATION.

11 Sec. 6. Section 6-991.03, Arizona Revised Statutes, is amended to
12 read:

13 6-991.03. Licensing; renewal; qualifications; application; fees

14 A. Beginning ~~January~~ JULY 1, 2010, a natural person shall not act as a
15 loan originator unless licensed under this article.

16 B. Beginning ~~January~~ JULY 1, 2010, the superintendent shall not grant
17 a loan originator license to a person, other than a natural person. An
18 applicant for an original loan originator's license shall have done ~~both~~ ALL
19 of the following:

20 1. Satisfactorily completed a course of study, INCLUDING AT LEAST
21 TWENTY HOURS OF EDUCATION, for loan originators approved by the
22 superintendent during the TWO year PERIOD immediately preceding the time of
23 application. ~~This paragraph does not apply if a person proves satisfactorily~~
24 ~~to the department that the person has at least three years of loan originator~~
25 ~~experience that is immediately preceding the time of application.~~ THE TWENTY
26 HOURS OF EDUCATION MUST INCLUDE AT LEAST ALL OF THE FOLLOWING:

27 (a) THREE HOURS OF FEDERAL LAW.

28 (b) THREE HOURS OF ETHICS, WHICH SHALL INCLUDE INSTRUCTION ON FRAUD,
29 CONSUMER PROTECTION AND FAIR LENDING ISSUES.

30 (c) TWO HOURS OF TRAINING RELATED TO LENDING STANDARDS OF THE
31 NONTRADITIONAL MORTGAGE PRODUCT MARKETPLACE.

32 2. Passed a loan originator's examination pursuant to section 6-991.07
33 not more than one year before the granting of the license DEMONSTRATING
34 KNOWLEDGE AND UNDERSTANDING OF THE FOLLOWING:

35 (a) FEDERAL LAWS.

36 (b) LAWS OF THIS STATE.

37 (c) SUBJECTS DESCRIBED IN SECTION 6-991.07, SUBSECTION A.

38 3. OBTAINED A UNIQUE IDENTIFIER THROUGH THE NATIONWIDE MORTGAGE
39 LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE AND FAIR ENFORCEMENT
40 FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED
41 STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS SUCCESSOR.

42 4. DEPOSITED WITH THE SUPERINTENDENT A BOND EXECUTED BY THE
43 APPLICANT'S EMPLOYER AS PRINCIPAL AND A SURETY COMPANY LICENSED TO DO
44 BUSINESS IN THIS STATE AS A SURETY PURSUANT TO SECTION 6-903 OR 6-943.

1 5. SUBMITTED FINGERPRINTS TO THE DEPARTMENT FOR THE PURPOSE OF A
2 BACKGROUND INVESTIGATION.

3 6. PAID AN AMOUNT TO BE DETERMINED BY THE SUPERINTENDENT FOR DEPOSIT
4 IN THE MORTGAGE RECOVERY FUND ESTABLISHED BY SECTION 6-991.09 OR DEPOSITED
5 WITH THE SUPERINTENDENT A BOND EXECUTED BY THE APPLICANT'S EMPLOYER AS
6 PRINCIPAL AND A SURETY COMPANY LICENSED TO DO BUSINESS IN THIS STATE FOR THE
7 BENEFIT OF ANY PERSON AGGRIEVED BY ANY ACT, REPRESENTATION, TRANSACTION OR
8 CONDUCT OF A LICENSED LOAN ORIGINATOR THAT VIOLATES THIS TITLE OR THE RULES
9 ADOPTED PURSUANT TO THIS TITLE. NOTWITHSTANDING SECTION 6-903 OR 6-943, THE
10 AMOUNT OF THE BOND SHALL BE IN AN AMOUNT OF NOT LESS THAN TWO HUNDRED
11 THOUSAND DOLLARS. LOAN ORIGINATORS WORKING UNDER THE EMPLOYER BOND DESCRIBED
12 IN THIS PARAGRAPH DO NOT HAVE TO CONTRIBUTE TO THE MORTGAGE RECOVERY FUND.

13 C. A person shall make an application for a license or renewal of a
14 license in writing in the manner prescribed by the superintendent and
15 accompanied by the information prescribed by the superintendent.

16 D. ~~Beginning January 1, 2010,~~ An applicant for renewal of a loan
17 originator license shall have satisfactorily completed ~~six~~ EIGHT continuing
18 education units before submitting the renewal application.

19 E. The nonrefundable application fee shall accompany each application
20 for an original loan originator license ~~only~~.

21 ~~F. A loan originator shall not advertise for or solicit mortgage
22 business in any manner without using the name and license number as issued on
23 the employing mortgage broker's or mortgage banker's principal place of
24 business license and without the approval of the employing mortgage broker or
25 mortgage banker.~~

26 ~~G.~~ F. A license issued pursuant to this article is not transferable
27 or assignable.

28 Sec. 7. Section 6-991.04, Arizona Revised Statutes, is amended to
29 read:

30 6-991.04. Issuance of license; notice from employing mortgage
31 broker, mortgage banker or consumer lender;
32 renewal; inactive status; address change; fee

33 A. The superintendent, on determining that an applicant is qualified
34 and has paid the required fees, shall issue a loan originator's license to
35 the applicant evidenced by a continuous certificate. The superintendent
36 shall grant or deny a license within one hundred twenty days after receiving
37 the completed application and fees. An applicant who has been denied a
38 license may not reapply for a license before one year from the date of the
39 previous application.

40 B. On issuance of the license, the superintendent shall keep the loan
41 originator's license until a mortgage broker or mortgage banker licensed
42 pursuant to this chapter OR A CONSUMER LENDER employs the loan originator and
43 the employer provides a written notice that the employer has hired the loan
44 originator. The employer shall provide the notice before the loan originator
45 begins working for the employer. The notice shall be from an officer or

1 other person authorized by the employer. The notice shall contain a request
2 for the loan originator's license and shall be dated, signed and notarized.
3 On receipt of the request, the superintendent shall forward the loan
4 originator's license to the employing mortgage broker, ~~or~~ mortgage banker OR
5 CONSUMER LENDER.

6 C. Licenses shall be issued for a one year period.

7 D. A loan originator shall make application for renewal on forms
8 prescribed by the superintendent. The application shall include original
9 certificates evidencing the loan originator's successful completion of ~~six~~
10 EIGHT continuing education units during the preceding one year period by a
11 continuing education provider approved by the superintendent.

12 E. A loan originator shall pay the renewal fee every year on or before
13 December 31. Licenses not renewed by December 31 are suspended and the
14 licensee shall not act as a loan originator until the license is renewed or a
15 new license is issued pursuant to this article. A person may renew a
16 suspended license by paying the renewal fee plus a dollar amount to be
17 determined by the superintendent for each day after December 31 that a
18 license renewal fee is not received by the superintendent.

19 F. Licenses that are not renewed by January 31 of each year expire. A
20 license shall not be granted to the holder of an expired license except as
21 provided in this article for the issuance of an original license.

22 G. From December 1 through December 31 of each renewal period, a
23 licensee may request inactive status for the following license period. The
24 license shall be placed on inactive status after the licensee pays to the
25 superintendent the inactive status renewal fee and surrenders the license to
26 the superintendent. During inactive status, an inactive licensee shall not
27 act as a loan originator. A licensee may not be on inactive status for more
28 than two consecutive renewal periods in any ten year period. The license
29 expires if the licensee violates this subsection.

30 H. At renewal an inactive licensee may return to active status by
31 doing all of the following:

32 1. Providing the superintendent with evidence that the licensee has
33 met the requirements of section 6-991.03, subsection B.

34 2. Making a written request to the superintendent for reactivation.

35 3. Paying the annual licensing fee.

36 4. Providing the superintendent with proof that the licensee meets all
37 other requirements for acting as a loan originator.

38 I. The employing mortgage broker, ~~or~~ mortgage banker OR CONSUMER
39 LENDER shall keep and maintain at the principal place of business in this
40 state the loan originator's license during the loan originator's employment.
41 A copy of the loan originator's license shall be available for public
42 inspection during regular business hours.

43 J. A loan originator shall immediately notify the superintendent of a
44 change in the loan originator's residence address. The superintendent shall

1 endorse the change of address on the license for a fee to be determined by
2 the superintendent.

3 K. Within five business days after any licensee's employment
4 termination, the employing mortgage broker, ~~or~~ mortgage banker OR CONSUMER
5 LENDER shall do both of the following:

- 6 1. Notify the superintendent of the licensee's termination.
- 7 2. Return the license to the superintendent.

8 L. AN APPLICANT FOR A LOAN ORIGINATOR LICENSE WHO IS CURRENTLY
9 REGISTERED WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY
10 ESTABLISHED BY THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF
11 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101
12 THROUGH 5116) OR ITS SUCCESSOR MAY BE GRANTED A TEMPORARY LICENSE FOR A
13 PERIOD NOT TO EXCEED ONE HUNDRED EIGHTY DAYS.

14 M. THE SUPERINTENDENT SHALL ESTABLISH A PROCESS FOR LOAN ORIGINATORS
15 TO CHALLENGE INFORMATION THAT THE SUPERINTENDENT ENTERS INTO THE NATIONWIDE
16 MORTGAGE LICENSING SYSTEM AND REGISTRY.

17 Sec. 8. Section 6-991.05, Arizona Revised Statutes, is amended to
18 read:

19 6-991.05. Denial, suspension or revocation of licenses

20 A. The superintendent may deny a license to a person or suspend or
21 revoke a license if the superintendent finds that an applicant or licensee:

- 22 1. Is not a person of honesty, truthfulness or good character.
- 23 2. DOES NOT HAVE THE FINANCIAL RESPONSIBILITY, EXPERIENCE OR
24 COMPETENCE TO ADEQUATELY SERVE THE PUBLIC OR TO WARRANT THE BELIEF THAT THE
25 APPLICANT OR LICENSEE WILL ACT LAWFULLY, HONESTLY AND FAIRLY PURSUANT TO THIS
26 ARTICLE.

27 ~~2-~~ 3. Has violated any law, rule or order.

28 ~~3-~~ 4. Has been convicted ~~in any state~~ of a felony DURING THE SEVEN
29 YEAR PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION or any crime of
30 breach of trust or dishonesty, FRAUD OR MONEY LAUNDERING AT ANY TIME
31 PRECEDING THE DATE OF APPLICATION.

32 ~~4-~~ 5. Has had a final judgment entered against the applicant or
33 licensee in a civil action on grounds of fraud, deceit or misrepresentation,
34 and the conduct on which the judgment is based indicates that it would be
35 contrary to the interest of the public to permit the person to be licensed.

36 ~~5-~~ 6. Has had an administrative agency of this state, the federal
37 government or any other state or territory of the United States enter an
38 order against the applicant or licensee involving fraud, deceit or
39 misrepresentation, and the facts relating to the order indicate that it would
40 be contrary to the interest of the public to permit the person to be
41 licensed.

42 ~~6-~~ 7. Has made a material misstatement or suppressed or withheld
43 information on the application for a license or any document required to be
44 filed with the superintendent.

1 8. HAS HAD A LOAN ORIGINATOR LICENSE, CONSUMER LENDER LICENSE,
2 MORTGAGE BROKER LICENSE OR MORTGAGE BANKER LICENSE REVOKED OR DENIED IN THIS
3 STATE OR ANY OTHER STATE.

4 B. If a licensee or applicant under this article is indicted or
5 informed against for forgery, embezzlement, obtaining money under false
6 pretenses, extortion, criminal conspiracy to defraud or a similar offense,
7 and a certified copy of the indictment or information or other proper
8 evidence of the indictment or information is filed with the superintendent,
9 the superintendent may suspend the license or refuse to grant a license to an
10 applicant pending trial on the indictment.

11 Sec. 9. Section 6-991.07, Arizona Revised Statutes, is amended to
12 read:

13 6-991.07. Examination; fee; definition

14 A. Each applicant for an original loan originator license, before
15 issuance of the license, shall take and pass an examination given under the
16 supervision of the department OR ITS DESIGNEE. The examination must
17 reasonably examine the applicant's knowledge of all of the following:

- 18 1. The obligations between principal and agent.
- 19 2. The applicable canons of business ethics.
- 20 3. This article and the rules adopted under this article.
- 21 4. The arithmetical computations common to mortgage brokerage.
- 22 5. The principles of real estate lending.
- 23 6. The general purposes and legal effect of mortgages, deeds of trust
24 and security agreements.

25 7. The terms and conditions of conforming and nonconforming
26 residential mortgage products.

- 27 8. The principles of appraisal independence.

28 B. The examination is subject to the superintendent's approval.

29 ~~C. The department shall supervise the administration of the~~
30 ~~examination to applicants for licenses at least once every six months. The~~
31 ~~department shall reasonably prescribe the time, place and conduct of~~
32 ~~examinations and collect a fee in an amount to be determined by the~~
33 ~~superintendent for administration of the examination to be assessed to all~~
34 ~~persons taking the examination. The test may be given in either written or~~
35 ~~electronic format.~~

36 ~~D.~~ C. An applicant may ~~not~~ take the examination ~~more than two times~~
37 ~~within a twelve month period~~ THREE CONSECUTIVE TIMES WITH EACH CONSECUTIVE
38 TAKING OCCURRING AT LEAST THIRTY DAYS AFTER THE PRECEDING EXAMINATION. AN
39 APPLICANT WHO FAILS THE EXAMINATION ON THREE CONSECUTIVE OCCASIONS MUST WAIT
40 AT LEAST SIX MONTHS BEFORE TAKING THE EXAMINATION AGAIN.

41 ~~E.~~ D. All examinations shall be given, conducted and graded in a fair
42 and impartial manner and without unfair discrimination between individuals
43 examined. The committee OR THE DEPARTMENT'S DESIGNEE shall inform the
44 applicant of the result of the examination within thirty days of the
45 examination.

1 F. THE LIABILITY OF THE FUND FOR THE ACTS OF A LICENSED LOAN
2 ORIGINATOR IS TERMINATED ON THE ISSUANCE OF ORDERS AUTHORIZING PAYMENTS FROM
3 THE FUND IN AN AGGREGATE AMOUNT AS PRESCRIBED BY SUBSECTION E OF THIS
4 SECTION.

5 G. THE FUND IS LIABLE TO PAY ONLY AGAINST THE LICENSE OF A NATURAL
6 PERSON, NOT ON THAT OF A CORPORATION, A PARTNERSHIP OR ANY OTHER FICTITIOUS
7 ENTITY.

8 H. THE FUND IS LIABLE TO PAY ONLY FOR DAMAGES ARISING OUT OF A
9 TRANSACTION IN WHICH THE DEFENDANT LICENSEE PERFORMED ACTS FOR WHICH A LOAN
10 ORIGINATOR LICENSE WAS REQUIRED OR WHEN THE DEFENDANT LICENSEE ENGAGED IN
11 FRAUD OR MISREPRESENTATION AND THE AGGRIEVED PERSON WAS HARMED DUE TO
12 RELIANCE ON THE DEFENDANT'S LICENSED STATUS.

13 6-991.10. Payments to the mortgage recovery fund

14 A. IN ADDITION TO ANY OTHER FEES, APPLICANTS SHALL PAY AN AMOUNT TO BE
15 DETERMINED BY THE SUPERINTENDENT TO THE MORTGAGE RECOVERY FUND ON APPLICATION
16 FOR AN ORIGINAL LOAN ORIGINATOR LICENSE.

17 B. IF, ON JUNE 30 OF ANY YEAR, THE BALANCE REMAINING IN THE MORTGAGE
18 RECOVERY FUND IS LESS THAN TWO MILLION DOLLARS, EVERY LICENSEE WHEN RENEWING
19 A LOAN ORIGINATOR LICENSE DURING THE FOLLOWING LICENSE YEAR SHALL PAY, IN
20 ADDITION TO THE LICENSE RENEWAL FEE, A FEE TO BE DETERMINED BY THE
21 SUPERINTENDENT FOR DEPOSIT IN THE MORTGAGE RECOVERY FUND.

22 6-991.11. Statute of limitations; service of summons;
23 application for payment; insufficient monies;
24 definition

25 A. AN ACTION FOR A JUDGMENT THAT SUBSEQUENTLY RESULTS IN AN ORDER FOR
26 PAYMENT FROM THE MORTGAGE RECOVERY FUND SHALL BE STARTED NO LATER THAN FIVE
27 YEARS AFTER THE ACCRUAL OF THE CAUSE OF ACTION.

28 B. IF AN AGGRIEVED PERSON COMMENCES AN ACTION FOR A JUDGMENT THAT MAY
29 RESULT IN AN ORDER FOR PAYMENT FROM THE MORTGAGE RECOVERY FUND AND THE
30 DEFENDANT LICENSEE CANNOT BE SERVED PROCESS PERSONALLY IN THIS STATE, THE
31 SUMMONS MAY BE SERVED BY THE ALTERNATIVE METHODS OF SERVICE PROVIDED FOR BY
32 THE ARIZONA RULES OF CIVIL PROCEDURE, INCLUDING SERVICE BY PUBLICATION. A
33 JUDGMENT THAT COMPLIES WITH THIS SECTION AND THAT WAS OBTAINED AFTER SERVICE
34 BY PUBLICATION ONLY APPLIES TO AND IS ENFORCEABLE AGAINST THE MORTGAGE
35 RECOVERY FUND. THE DEPARTMENT MAY INTERVENE IN AND DEFEND ANY SUCH ACTION.

36 C. AN AGGRIEVED PERSON MAY APPLY TO THE DEPARTMENT FOR PAYMENT FROM
37 THE MORTGAGE RECOVERY FUND AFTER THE AGGRIEVED PERSON OBTAINS A JUDGMENT
38 AGAINST A LOAN ORIGINATOR BASED ON THE LICENSEE'S ACT, REPRESENTATION,
39 TRANSACTION OR CONDUCT IN VIOLATION OF THIS TITLE OR THE RULES ADOPTED
40 PURSUANT TO THIS TITLE. THE CLAIMANT MUST FILE THE ORIGINAL APPLICATION,
41 INCLUDING APPENDICES, WITHIN TWO YEARS AFTER THE TERMINATION OF ALL
42 PROCEEDINGS, REVIEWS AND APPEALS CONNECTED WITH THE JUDGMENT. THE
43 SUPERINTENDENT, IN THE SUPERINTENDENT'S SOLE DISCRETION, MAY WAIVE THE TWO
44 YEAR APPLICATION DEADLINE IF THE SUPERINTENDENT DETERMINES THAT THE WAIVER

1 BEST SERVES THE PUBLIC INTEREST. DELIVERY OF THE APPLICATION MUST BE BY
2 PERSONAL SERVICE OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

3 D. THE APPLICATION MUST BE WITHIN THE LIMITATIONS PRESCRIBED IN
4 SECTION 6-991.09 AND FOR THE AMOUNT THAT IS UNPAID ON THE JUDGMENT AND THAT
5 REPRESENTS THE CLAIMANT'S ACTUAL AND DIRECT LOSS ON THE TRANSACTION.

6 E. THE DEPARTMENT SHALL PRESCRIBE AND SUPPLY AN APPLICATION FORM THAT
7 INCLUDES DETAILED INSTRUCTIONS WITH RESPECT TO DOCUMENTARY EVIDENCE,
8 PLEADINGS, COURT RULINGS, THE PRODUCTS OF DISCOVERY IN THE UNDERLYING
9 LITIGATION AND NOTICE REQUIREMENTS TO THE JUDGMENT DEBTOR UNDER SECTION
10 6-991.12. THE CLAIMANT MUST SUBMIT THE CLAIM ON AN APPLICATION FORM SUPPLIED
11 BY THE DEPARTMENT. THE APPLICATION MUST INCLUDE:

12 1. THE CLAIMANT'S NAME AND ADDRESS.

13 2. IF THE CLAIMANT IS REPRESENTED BY AN ATTORNEY, THE ATTORNEY'S NAME,
14 BUSINESS ADDRESS AND TELEPHONE NUMBER.

15 3. THE JUDGMENT DEBTOR'S NAME AND ADDRESS OR, IF UNKNOWN, THE NAMES
16 AND ADDRESSES OF PERSONS WHO MAY KNOW THE JUDGMENT DEBTOR'S PRESENT LOCATION.

17 4. A DETAILED NARRATIVE STATEMENT OF THE FACTS EXPLAINING THE
18 ALLEGATIONS OF THE COMPLAINT ON WHICH THE UNDERLYING JUDGMENT IS BASED, WITH
19 A COPY OF THE CONTRACTS, RECEIPTS AND OTHER DOCUMENTS FROM THE TRANSACTION,
20 THE LAST AMENDED COMPLAINT, ALL EXISTING RECORDED JUDGMENTS, DOCUMENTATION OF
21 ACTUAL AND DIRECT OUT-OF-POCKET LOSSES AND ANY OFFSETTING PAYMENT RECEIVED
22 AND ALL COLLECTION EFFORTS ATTEMPTED.

23 5. THE IDENTIFICATION OF THE JUDGMENT, THE AMOUNT OF THE CLAIM AND AN
24 EXPLANATION OF ITS COMPUTATION, INCLUDING AN ITEMIZED LIST OF ACTUAL AND
25 COMPENSATORY DAMAGES AWARDED AND CLAIMED.

26 6. FOR THE PURPOSE OF AN APPLICATION THAT IS NOT BASED ON A CRIMINAL
27 RESTITUTION ORDER, A STATEMENT BY THE CLAIMANT, SIGNED UNDER PENALTY OF
28 PERJURY, THAT THE COMPLAINT ON WHICH THE UNDERLYING JUDGMENT IS BASED WAS
29 PROSECUTED CONSCIENTIOUSLY AND IN GOOD FAITH. FOR THE PURPOSES OF THIS
30 PARAGRAPH, "CONSCIENTIOUSLY AND IN GOOD FAITH" MEANS THAT ALL OF THE
31 FOLLOWING APPLY:

32 (a) NO PARTY THAT WAS POTENTIALLY LIABLE TO THE CLAIMANT IN THE
33 UNDERLYING TRANSACTION WAS INTENTIONALLY AND WITHOUT GOOD CAUSE OMITTED FROM
34 THE COMPLAINT.

35 (b) NO PARTY NAMED IN THE COMPLAINT WHO OTHERWISE REASONABLY APPEARED
36 CAPABLE OF RESPONDING IN DAMAGES WAS INTENTIONALLY AND WITHOUT GOOD CAUSE
37 DISMISSED FROM THE COMPLAINT.

38 (c) THE CLAIMANT EMPLOYED NO OTHER PROCEDURAL MEANS CONTRARY TO THE
39 DILIGENT PROSECUTION OF THE COMPLAINT IN ORDER TO SEEK TO QUALIFY FOR THE
40 RECOVERY FUND.

41 7. FOR THE PURPOSE OF AN APPLICATION THAT IS BASED ON A CRIMINAL
42 RESTITUTION ORDER, ALL OF THE FOLLOWING STATEMENTS BY THE CLAIMANT, SIGNED
43 UNDER PENALTY OF PERJURY:

44 (a) THE CLAIMANT HAS NOT INTENTIONALLY AND WITHOUT GOOD CAUSE FAILED
45 TO PURSUE ANY PERSON POTENTIALLY LIABLE TO THE CLAIMANT IN THE UNDERLYING

1 TRANSACTION OTHER THAN A DEFENDANT WHO IS THE SUBJECT OF A CRIMINAL
2 RESTITUTION ORDER.

3 (b) THE CLAIMANT HAS NOT INTENTIONALLY AND WITHOUT GOOD CAUSE FAILED
4 TO PURSUE IN A CIVIL ACTION FOR DAMAGES ALL PERSONS WHO ARE POTENTIALLY
5 LIABLE TO THE CLAIMANT IN THE UNDERLYING TRANSACTION AND WHO OTHERWISE
6 REASONABLY APPEARED CAPABLE OF RESPONDING IN DAMAGES OTHER THAN A DEFENDANT
7 WHO IS THE SUBJECT OF A CRIMINAL RESTITUTION ORDER.

8 (c) THE CLAIMANT EMPLOYED NO OTHER PROCEDURAL MEANS CONTRARY TO THE
9 DILIGENT PROSECUTION OF THE COMPLAINT IN ORDER TO SEEK TO QUALIFY FOR THE
10 MORTGAGE RECOVERY FUND.

11 8. THE FOLLOWING STATEMENTS, SIGNED UNDER PENALTY OF PERJURY, AND
12 INFORMATION FROM THE CLAIMANT:

13 (a) THE CLAIMANT IS NOT A SPOUSE OF THE JUDGMENT DEBTOR OR A PERSONAL
14 REPRESENTATIVE OF THE SPOUSE.

15 (b) THE CLAIMANT HAS COMPLIED WITH ALL OF THE REQUIREMENTS OF THIS
16 ARTICLE.

17 (c) THE JUDGMENT UNDERLYING THE CLAIM MEETS THE REQUIREMENTS OF THIS
18 ARTICLE.

19 (d) THE CLAIMANT HAS RECORDED A CERTIFIED COPY OF THE SUPERIOR COURT
20 JUDGMENT OR TRANSCRIPT OF JUDGMENT PURSUANT TO SECTIONS 33-961 AND 33-962 IN
21 THE COUNTY IN WHICH THE JUDGMENT WAS OBTAINED AND IN THE COUNTY IN WHICH ALL
22 JUDGMENT DEBTORS RESIDE AND HAS PROVIDED A COPY OF THE RECORDED JUDGMENT TO
23 THE SUPERINTENDENT.

24 (e) THE CLAIMANT HAS CAUSED THE JUDGMENT DEBTOR TO MAKE DISCOVERY
25 UNDER OATH, PURSUANT TO SECTION 12-1631, CONCERNING THE DEBTOR'S PROPERTY.

26 (f) THE CLAIMANT HAS CAUSED A WRIT OF EXECUTION TO BE ISSUED ON THE
27 JUDGMENT AND THE OFFICER EXECUTING THE WRIT HAS MADE A RETURN SHOWING THAT
28 EITHER:

29 (i) NO PERSONAL OR REAL PROPERTY OF THE JUDGMENT DEBTOR LIABLE TO BE
30 LEVIED ON IN SATISFACTION OF THE JUDGMENT COULD BE FOUND, SOLD OR APPLIED.

31 (ii) THE AMOUNT REALIZED ON THE SALE OF THE PROPERTY, OR AS MUCH OF
32 THE PROPERTY THAT WAS FOUND, UNDER THE EXECUTION WAS INSUFFICIENT TO SATISFY
33 THE JUDGMENT.

34 (g) THE CLAIMANT HAS CAUSED A WRIT OF GARNISHMENT TO BE ISSUED TO EACH
35 KNOWN EMPLOYER OF THE JUDGMENT DEBTOR ASCERTAINED BY THE CLAIMANT, THAT EACH
36 GARNISHEE DEFENDANT HAS COMPLIED WITH THE RESPECTIVE WRIT AND ANY JUDGMENT OR
37 ORDER RESULTING FROM THE WRIT AND THAT THE AMOUNT REALIZED FROM ALL JUDGMENTS
38 AGAINST THE GARNISHEE DEFENDANTS WAS INSUFFICIENT TO SATISFY THE BALANCE DUE
39 ON THE JUDGMENT.

40 (h) THE CLAIMANT HAS DEDUCTED THE FOLLOWING AMOUNTS FROM THE ACTUAL OR
41 COMPENSATORY DAMAGES AWARDED BY THE COURT:

42 (i) ANY AMOUNT RECOVERED OR ANTICIPATED FROM THE JUDGMENT DEBTOR OR
43 DEBTORS.

1 (ii) ANY AMOUNT RECOVERED THROUGH COLLECTION EFFORTS UNDERTAKEN
2 PURSUANT TO SUBDIVISIONS (d) THROUGH (g) OF THIS PARAGRAPH AND INCLUDING AN
3 ITEMIZED VALUATION OF THE ASSETS DISCOVERED AND AMOUNTS APPLIED.

4 (iii) ANY AMOUNT RECOVERED OR ANTICIPATED FROM BONDING, INSURANCE OR
5 TITLE COMPANIES, INCLUDING RECOVERY OF PUNITIVE DAMAGES.

6 (iv) ANY AMOUNT RECOVERED OR ANTICIPATED FROM IN COURT OR OUT OF COURT
7 SETTLEMENTS.

8 (v) ANY AMOUNT OF TAX BENEFITS ACCRUED OR TAKEN AS DEDUCTIONS ON
9 FEDERAL, STATE OR LOCAL INCOME TAX RETURNS.

10 F. IF THE CLAIM IS BASED ON A JUDGMENT AGAINST A LOAN ORIGINATOR AND
11 THE CLAIMANT HAS NOT OBTAINED A JUDGMENT AGAINST THE LOAN ORIGINATOR'S
12 EMPLOYING MORTGAGE BROKER, MORTGAGE BANKER OR CONSUMER LENDER IF ANY, OR HAS
13 NOT DILIGENTLY PURSUED THE ASSETS OF THE EMPLOYING MORTGAGE BROKER, MORTGAGE
14 BANKER OR CONSUMER LENDER THE DEPARTMENT SHALL DENY THE CLAIM FOR FAILURE TO
15 DILIGENTLY PURSUE THE ASSETS OF ALL OTHER PERSONS LIABLE TO THE CLAIMANT IN
16 THE TRANSACTION UNLESS THE CLAIMANT DEMONSTRATES, BY CLEAR AND CONVINCING
17 EVIDENCE, THAT EITHER:

18 1. THE LOAN ORIGINATOR WAS NOT EMPLOYED BY A MORTGAGE BROKER, MORTGAGE
19 BANKER OR CONSUMER LENDER AT THE TIME OF THE TRANSACTION.

20 2. THE LOAN ORIGINATOR'S EMPLOYING MORTGAGE BROKER, MORTGAGE BANKER OR
21 CONSUMER LENDER WOULD NOT HAVE BEEN LIABLE TO THE CLAIMANT BECAUSE THE LOAN
22 ORIGINATOR ACTED OUTSIDE THE SCOPE OF EMPLOYMENT IN THE TRANSACTION.

23 G. THE SUPERINTENDENT, AT THE SUPERINTENDENT'S SOLE DISCRETION, MAY
24 WAIVE COMPLIANCE WITH ONE OR MORE OF THE REQUIREMENTS PRESCRIBED BY
25 SUBSECTION E, PARAGRAPH 8 OR SUBSECTION F OF THIS SECTION IF THE CLAIM IS
26 BASED ON AN AWARD PURSUANT TO A CRIMINAL RESTITUTION ORDER OR IF THE
27 SUPERINTENDENT IS SATISFIED THAT THE CLAIMANT HAS TAKEN ALL REASONABLE STEPS
28 TO COLLECT THE AMOUNT OF THE JUDGMENT OR THE UNSATISFIED PART OF THE JUDGMENT
29 FROM ALL JUDGMENT DEBTORS BUT HAS BEEN UNABLE TO COLLECT.

30 H. IF THE SUPERINTENDENT FINDS IT IS LIKELY THAT THE TOTAL REMAINING
31 LIABILITY OF THE RECOVERY FUND IS INSUFFICIENT TO PAY IN FULL THE VALID
32 CLAIMS OF ALL AGGRIEVED PERSONS WHO MAY HAVE CLAIMS AGAINST ANY ONE LICENSEE,
33 THE SUPERINTENDENT MAY PETITION THE COURT TO INITIATE A PRORATION PROCEEDING.
34 THE COURT SHALL GRANT THE PETITION AND ORDER A HEARING TO DISTRIBUTE THE
35 TOTAL REMAINING LIABILITY OF THE FUND AMONG THE APPLICANTS IN THE RATIO THAT
36 THEIR RESPECTIVE CLAIMS BEAR TO THE AGGREGATE OF THE VALID CLAIMS OR IN
37 ANOTHER MANNER THAT THE COURT DEEMS EQUITABLE. THE SUPERINTENDENT OR ANY
38 PARTY MAY FILE A PROPOSED PLAN FOR EQUITABLE DISTRIBUTION OF THE AVAILABLE
39 MONIES. THE DISTRIBUTION OF MONIES SHALL BE AMONG THE PERSONS ENTITLED TO
40 SHARE THEM, WITHOUT REGARD TO THE ORDER OF PRIORITY IN WHICH THEIR RESPECTIVE
41 JUDGMENTS MAY HAVE BEEN OBTAINED OR THEIR RESPECTIVE APPLICATIONS MAY HAVE
42 BEEN FILED. THE COURT MAY REQUIRE ALL APPLICANTS AND PROSPECTIVE APPLICANTS
43 AGAINST ONE LICENSEE TO BE JOINED IN ONE ACTION IF THE RESPECTIVE RIGHTS OF
44 ALL THE APPLICANTS TO THE RECOVERY FUND MAY BE EQUITABLY ADJUDICATED AND
45 SETTLED. THE COURT SHALL NOT INCLUDE IN THE CLAIMS FOR PRORATION THE CLAIM

1 OF ANY PERSON WHO HAS NOT, WITHIN NINETY DAYS AFTER THE COURT HAS ENTERED THE
2 ORDER FOR PRORATION, FILED A COMPLAINT WITH THE COURT, SERVED THE LICENSEE
3 AND PROVIDED WRITTEN NOTICE OF THE CLAIM TO THE SUPERINTENDENT. THE
4 LIABILITY OF THE FUND ON ANY APPLICATION AFFECTED BY A PRORATION PROCEEDING
5 IS BASED ON THE LIMITS IN EFFECT ON THE DATE WHEN THE LAST APPLICATION FOR
6 PAYMENT IS FILED. THE COURT MAY REFUSE TO CONSIDER OR AWARD PRORATED
7 RECOVERY TO ANY PERSON WHO FAILS TO EXPEDITIOUSLY PROSECUTE A CLAIM AGAINST
8 THE LICENSEE OR PROMPTLY FILE AN APPLICATION FOR PAYMENT AND SUBMIT
9 SUPPORTING DOCUMENTATION AS REQUIRED BY THIS ARTICLE.

10 I. IF, AT ANY TIME, THE MONEY DEPOSITED IN THE MORTGAGE RECOVERY FUND
11 IS INSUFFICIENT TO SATISFY ANY DULY AUTHORIZED CLAIM OR PORTION OF A CLAIM,
12 THE SUPERINTENDENT, WHEN SUFFICIENT MONEY HAS BEEN DEPOSITED IN THE MORTGAGE
13 RECOVERY FUND, SHALL SATISFY THE UNPAID CLAIMS OR PORTIONS OF CLAIMS, IN THE
14 ORDER THAT THE CLAIMS OR PORTIONS OF CLAIMS WERE ORIGINALLY FILED, PLUS
15 ACCUMULATED INTEREST AT THE RATE OF FOUR PER CENT A YEAR.

16 J. FOR THE PURPOSES OF THIS SECTION, "COMPLAINT" MEANS THE FACTS OF
17 THE TRANSACTION ON WHICH THE JUDGMENT IS BASED.

18 6-991.12. Notice of claim to judgment debtor; response

19 A. WITHIN THE SAME TIME PRESCRIBED BY SECTION 6-991.11, SUBSECTION C
20 FOR APPLYING FOR PAYMENT FROM THE MORTGAGE RECOVERY FUND, AN AGGRIEVED PARTY
21 WHO APPLIES FOR PAYMENT SHALL SERVE NOTICE OF THE CLAIM ON THE JUDGMENT
22 DEBTOR, TOGETHER WITH A COPY OF THE APPLICATION. THE NOTICE SHALL BE IN THE
23 FOLLOWING FORM:

24 NOTICE

25 BASED ON A JUDGMENT AGAINST YOU IN FAVOR OF (ENTER NAME OF
26 CLAIMANT), APPLICATION IS BEING MADE TO THE ARIZONA DEPARTMENT
27 OF FINANCIAL INSTITUTIONS FOR PAYMENT FROM THE MORTGAGE RECOVERY
28 FUND.

29 IF YOU WISH TO CONTEST PAYMENT FROM THE MORTGAGE RECOVERY
30 FUND, YOU MUST FILE A WRITTEN RESPONSE TO THE APPLICATION. THE
31 SUPERINTENDENT OF FINANCIAL INSTITUTIONS MUST RECEIVE YOUR
32 RESPONSE AT (ADDRESS) WITHIN THIRTY-FIVE CALENDAR DAYS AFTER THE
33 DATE THIS NOTICE IS (MAILED, DELIVERED, FIRST PUBLISHED). YOU
34 MUST ALSO SEND A COPY OF THE RESPONSE TO THE CLAIMANT. IF YOU
35 FAIL TO RESPOND AS REQUIRED, YOU WAIVE YOUR RIGHT TO PRESENT
36 YOUR OBJECTIONS TO PAYMENT.

37 B. IF THE JUDGMENT DEBTOR HOLDS A CURRENT LICENSE ISSUED BY THE
38 DEPARTMENT, THE NOTICE AND COPY OF THE APPLICATION MAY BE SERVED BY CERTIFIED
39 MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO THE JUDGMENT DEBTOR'S LATEST
40 BUSINESS OR RESIDENCE ADDRESS ON FILE WITH THE DEPARTMENT. IF THE JUDGMENT
41 DEBTOR DOES NOT HOLD A CURRENT LICENSE AND IF PERSONAL DELIVERY CANNOT BE
42 EFFECTED BY EXERCISING REASONABLE DILIGENCE, THE CLAIMANT MUST PUBLISH THE
43 NOTICE ONCE A WEEK FOR TWO CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL
44 CIRCULATION IN THE COUNTY IN WHICH THE JUDGMENT DEBTOR WAS LAST KNOWN TO
45 RESIDE.

1 C. IF THE JUDGMENT DEBTOR FAILS TO FILE A WRITTEN RESPONSE TO THE
2 APPLICATION WITH THE DEPARTMENT WITHIN THIRTY-FIVE CALENDAR DAYS AFTER
3 SERVICE UNDER SUBSECTION B OF THIS SECTION OR AFTER THE FIRST PUBLICATION OF
4 THE NOTICE, THE JUDGMENT DEBTOR IS NOT ENTITLED TO NOTICE OF ANY ACTION TAKEN
5 OR PROPOSED TO BE TAKEN BY THE SUPERINTENDENT WITH RESPECT TO THE CLAIM.

6 6-991.13. Correction of deficiencies in the application

7 A. IF THE SUPERINTENDENT DETERMINES THAT A CLAIMANT'S APPLICATION
8 FAILS TO COMPLY SUBSTANTIALLY WITH THE REQUIREMENTS OF SECTION 6-991.11 OR
9 RULES ADOPTED PURSUANT TO THIS ARTICLE, THE SUPERINTENDENT, WITHIN THIRTY
10 CALENDAR DAYS AFTER RECEIVING THE APPLICATION, SHALL MAIL AN ITEMIZED LIST OF
11 DEFICIENCIES TO THE CLAIMANT. FOR THE PURPOSES OF THIS SUBSECTION, "COMPLY
12 SUBSTANTIALLY" MEANS FILING WITH THE DEPARTMENT THE DOCUMENTS THAT ARE
13 MINIMALLY NECESSARY TO PROCESS A CLAIM, INCLUDING AT LEAST A CERTIFIED COPY
14 OF THE JUDGMENT, LEGIBLE COPIES OF DOCUMENTS ESTABLISHING THE UNDERLYING
15 TRANSACTION AND AMOUNTS OF LOSSES SUFFERED AND A STATEMENT CONCERNING AMOUNTS
16 RECOVERED FROM OR ON BEHALF OF THE JUDGMENT DEBTOR.

17 B. THE CLAIMANT MUST RESPOND WITHIN SIXTY CALENDAR DAYS AFTER
18 RECEIVING THE LIST OF DEFICIENCIES BY PROVIDING THE INFORMATION IDENTIFIED BY
19 THE SUPERINTENDENT. IF THE CLAIMANT FAILS TO CORRECT THE DEFICIENCIES WITHIN
20 SIXTY CALENDAR DAYS, THE DEPARTMENT SHALL CLOSE THE FILE UNLESS THE CLAIMANT
21 REQUESTS AN EXTENSION IN WRITING. A CLAIMANT WHOSE FILE HAS BEEN CLOSED MAY
22 SUBMIT A NEW APPLICATION AS PROVIDED BY SECTION 6-991.11.

23 C. THE DEADLINE PRESCRIBED BY SECTION 6-991.15 FOR THE SUPERINTENDENT
24 TO MAKE A DECISION ON THE APPLICATION IS SUSPENDED FROM THE DATE THE
25 SUPERINTENDENT MAILS THE LIST OF DEFICIENCIES TO THE APPLICANT UNTIL THE DATE
26 THE DEPARTMENT RECEIVES THE REQUESTED INFORMATION.

27 6-991.14. Investigation and discovery

28 IN CONSIDERING AND INVESTIGATING AN APPLICATION, THE DEPARTMENT MAY USE
29 ALL APPROPRIATE MEANS OF INVESTIGATION AND DISCOVERY THAT ARE AVAILABLE
30 PURSUANT TO THIS ARTICLE.

31 6-991.15. Final decision and order on claim; notice

32 A. THE SUPERINTENDENT SHALL MAKE A FINAL WRITTEN DECISION AND ORDER ON
33 A CLAIM WITHIN NINETY CALENDAR DAYS AFTER RECEIVING A COMPLETED APPLICATION
34 EXCEPT IN THE FOLLOWING CASES:

35 1. A PRORATION HEARING IS PENDING UNDER SECTION 6-991.11.

36 2. AN APPLICATION IS DEFICIENT OR FAILS TO COMPLY SUBSTANTIALLY WITH
37 THE REQUIREMENTS OF SECTION 6-991.11 OR RULES ADOPTED PURSUANT TO THIS
38 ARTICLE AS DETERMINED PURSUANT TO SECTION 6-991.13.

39 3. THE CLAIMANT AGREES IN WRITING TO EXTEND THE TIME FOR MAKING A
40 DECISION.

41 B. IF THE SUPERINTENDENT FAILS TO RENDER A WRITTEN DECISION AND ORDER
42 ON A CLAIM WITHIN NINETY CALENDAR DAYS AFTER RECEIVING A COMPLETED
43 APPLICATION, OR WITHIN AN EXTENDED PERIOD OF TIME PROVIDED UNDER SUBSECTION A
44 OF THIS SECTION, THE CLAIM IS CONSIDERED TO BE APPROVED ON THE DAY FOLLOWING
45 THE FINAL DAY FOR RENDERING THE DECISION.

1 C. THE SUPERINTENDENT MAY APPROVE OR DENY AN APPLICATION OR MAY ENTER
2 INTO A COMPROMISE WITH THE CLAIMANT TO PAY LESS IN SETTLEMENT THAN THE FULL
3 AMOUNT OF THE CLAIM. IF THE CLAIMANT REFUSES TO ACCEPT A SETTLEMENT OFFERED
4 BY THE SUPERINTENDENT, THE SUPERINTENDENT SHALL DENY THE CLAIM.

5 D. THE SUPERINTENDENT SHALL GIVE NOTICE OF A DECISION AND ORDER WITH
6 RESPECT TO THE CLAIM TO THE CLAIMANT AND TO ANY JUDGMENT DEBTOR WHO HAS FILED
7 A TIMELY RESPONSE TO THE CLAIM PURSUANT TO SECTION 6-991.12 AS FOLLOWS:

8 1. IF THE SUPERINTENDENT DENIES THE APPLICATION, THE NOTICE SHALL
9 INCLUDE THE FOLLOWING:

10 THE CLAIMANT'S APPLICATION HAS BEEN DENIED. IF THE
11 CLAIMANT WISHES TO PURSUE THE APPLICATION IN COURT, THE CLAIMANT
12 MUST FILE THE APPLICATION IN THE COURT IN WHICH THE UNDERLYING
13 JUDGMENT WAS ENTERED WITHIN SIX MONTHS AFTER RECEIVING THIS
14 NOTICE, PURSUANT TO SECTION 6-991.16, ARIZONA REVISED STATUTES.

15 2. IF THE SUPERINTENDENT'S DECISION IS TO MAKE A PAYMENT TO THE
16 CLAIMANT OUT OF THE MORTGAGE RECOVERY FUND, THE FOLLOWING NOTICE SHALL BE
17 GIVEN TO THE JUDGMENT DEBTOR WITH A COPY OF THE DECISION AND ORDER OF THE
18 SUPERINTENDENT:

19 THE DECISION OF THE SUPERINTENDENT OF FINANCIAL
20 INSTITUTIONS ON THE CLAIM OF (NAME OF CLAIMANT) IS TO PAY
21 \$_____ FROM THE MORTGAGE RECOVERY FUND. A COPY OF THAT
22 DECISION AND ORDER IS ENCLOSED. IF YOU DESIRE A JUDICIAL REVIEW
23 OF THE SUPERINTENDENT'S DECISION AND ORDER OR THE TERMINATION OF
24 YOUR LICENSES AND LICENSE RIGHTS, YOU MAY PETITION THE SUPERIOR
25 COURT, IN THE COUNTY IN WHICH THE JUDGMENT THAT IS THE BASIS OF
26 THIS CLAIM WAS RENDERED, FOR A JUDICIAL REVIEW. TO BE TIMELY,
27 YOU MUST FILE THE PETITION WITH THE COURT WITHIN THIRTY CALENDAR
28 DAYS AFTER RECEIVING THIS NOTICE.

29 6-991.16. Claimant's right to appeal denial of claim; service
30 of notice of appeal; response; failure to file
31 response

32 A. A CLAIMANT WHOSE APPLICATION IS DENIED PURSUANT TO SECTION 6-991.15
33 MAY FILE WITHIN SIX MONTHS AFTER RECEIVING NOTICE OF A DENIAL OF THE CLAIM A
34 VERIFIED APPLICATION IN THE COURT IN WHICH JUDGMENT WAS ENTERED IN THE
35 CLAIMANT'S FAVOR FOR AN ORDER DIRECTING PAYMENT OUT OF THE MORTGAGE RECOVERY
36 FUND BASED ON THE GROUNDS SET FORTH IN THE CLAIMANT'S APPLICATION TO THE
37 SUPERINTENDENT.

38 B. THE CLAIMANT MUST SERVE A COPY OF THE VERIFIED APPLICATION ON THE
39 SUPERINTENDENT AND ON THE JUDGMENT DEBTOR AND FILE A CERTIFICATE OR AFFIDAVIT
40 OF SERVICE WITH THE COURT. SERVICE ON THE SUPERINTENDENT SHALL BE MADE BY
41 CERTIFIED MAIL ADDRESSED TO THE SUPERINTENDENT. SERVICE ON A JUDGMENT DEBTOR
42 SHALL BE MADE PURSUANT TO SECTION 6-991.12 AND SHALL INCLUDE THE FOLLOWING
43 NOTICE:

NOTICE

AN APPLICATION HAS BEEN FILED WITH THE COURT FOR A PAYMENT FROM THE MORTGAGE RECOVERY FUND THAT WAS PREVIOUSLY DENIED BY THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS. IF YOU WISH TO DEFEND IN COURT AGAINST THIS CLAIM, YOU MUST FILE A WRITTEN RESPONSE WITH THE COURT WITHIN THIRTY CALENDAR DAYS AFTER YOU ARE SERVED WITH A COPY OF THE APPLICATION. IF YOU FAIL TO FILE A WRITTEN RESPONSE, YOU WAIVE YOUR RIGHT TO DEFEND AGAINST THE CLAIM.

C. THE SUPERINTENDENT AND THE JUDGMENT DEBTOR EACH MUST FILE A WRITTEN RESPONSE WITHIN THIRTY CALENDAR DAYS AFTER BEING SERVED WITH THE APPLICATION UNDER SUBSECTION B OF THIS SECTION. THE COURT SHALL SET THE MATTER FOR HEARING ON THE PETITION OF THE CLAIMANT. THE COURT SHALL GRANT A REQUEST OF THE SUPERINTENDENT FOR A CONTINUANCE OF AS MUCH AS THIRTY CALENDAR DAYS AND, ON A SHOWING OF GOOD CAUSE BY ANY PARTY, MAY CONTINUE THE HEARING FOR A TIME THAT THE COURT CONSIDERS TO BE APPROPRIATE.

D. AT THE HEARING, THE CLAIMANT MUST ESTABLISH COMPLIANCE WITH THE REQUIREMENTS OF SECTION 6-991.11.

E. IF THE JUDGMENT DEBTOR FAILS TO FILE A WRITTEN RESPONSE TO THE APPLICATION, THE SUPERINTENDENT MAY COMPROMISE OR SETTLE THE CLAIM AT ANY TIME DURING THE COURT PROCEEDINGS AND, ON JOINT PETITION OF THE APPLICANT AND THE SUPERINTENDENT, THE COURT SHALL ISSUE AN ORDER DIRECTING PAYMENT OUT OF THE MORTGAGE RECOVERY FUND.

6-991.17. Superintendent's standing in court

THE SUPERINTENDENT MAY ENTER AN APPEARANCE, FILE AN ANSWER, APPEAR AT THE COURT HEARING, DEFEND THE ACTION OR TAKE WHATEVER OTHER ACTION THE SUPERINTENDENT CONSIDERS APPROPRIATE ON BEHALF AND IN THE NAME OF THE MORTGAGE RECOVERY FUND AND TAKE RECOURSE THROUGH ANY APPROPRIATE METHOD OF REVIEW ON BEHALF OF, AND IN THE NAME OF, THE MORTGAGE RECOVERY FUND.

6-991.18. Subrogation of rights; collection

A. BEFORE RECEIVING PAYMENT FROM THE FUND, A CLAIMANT MUST COMPLETE AND EXECUTE, AS JUDGMENT CREDITOR, AN ASSIGNMENT OF JUDGMENT LIEN AND NOTICE OF SUBROGATION AND ASSIGNMENT OF RIGHTS TO THE CLAIMANT'S JUDGMENT ON A FORM PROVIDED BY THE DEPARTMENT.

B. IF THE SUPERINTENDENT HAS PAID FROM THE MORTGAGE RECOVERY FUND ANY SUM TO THE JUDGMENT CREDITOR, THE SUPERINTENDENT SHALL BE SUBROGATED TO ALL OF THE RIGHTS OF THE JUDGMENT CREDITOR AND THE JUDGMENT CREDITOR SHALL ASSIGN ALL THE RIGHTS, TITLE AND INTEREST IN THE JUDGMENT TO THE SUPERINTENDENT. THE SUPERINTENDENT MAY RECORD THE ASSIGNMENT OF JUDGMENT LIEN AND NOTICE OF SUBROGATION AND ASSIGNMENT OF RIGHTS. ANY AMOUNT AND INTEREST RECOVERED BY THE SUPERINTENDENT ON THE JUDGMENT SHALL BE DEPOSITED TO THE FUND.

C. IF THE SUPERINTENDENT IS SUBROGATED TO A CLAIMANT'S RIGHTS AS JUDGMENT CREDITOR, THE CLAIMANT SHALL NOT FILE A FULL OR PARTIAL SATISFACTION OF JUDGMENT WITHOUT THE SUPERINTENDENT'S PRIOR WRITTEN CONSENT.

1 D. THE ATTORNEY GENERAL SHALL BRING ANY ACTIONS TO RECOVER AMOUNTS
2 PAID FROM THE FUND, INCLUDING INTEREST, ATTORNEY FEES AND COSTS OF
3 COLLECTION, PURSUANT TO THIS ARTICLE IN THE NAME OF THIS STATE IN THE
4 SUPERIOR COURT IN THE COUNTY IN WHICH THE VIOLATION OCCURRED OR IN A COUNTY
5 IN WHICH THE SUPERINTENDENT MAINTAINS AN OFFICE. A CERTIFIED COPY OF A
6 SUPERINTENDENT'S ORDER REQUIRING PAYMENT FROM THE FUND MAY BE FILED IN THE
7 OFFICE OF THE CLERK OF THE SUPERIOR COURT. THE CLERK SHALL TREAT THE
8 SUPERINTENDENT'S ORDER IN THE SAME MANNER AS A JUDGMENT OF THE SUPERIOR
9 COURT. A SUPERINTENDENT'S ORDER SO FILED HAS THE SAME EFFECT AND MAY BE
10 RECORDED, ENFORCED OR SATISFIED IN A SIMILAR MANNER, AS A JUDGMENT OF THE
11 SUPERIOR COURT. NO FILING FEE IS REQUIRED UNDER THIS SUBSECTION.

12 6-991.19. Waiver of rights

13 THE FAILURE OF AN AGGRIEVED PERSON TO COMPLY WITH ALL OF THE PROVISIONS
14 OF THIS ARTICLE CONSTITUTES A WAIVER OF ANY RIGHTS.

15 6-991.20. Effect of article on disciplinary action

16 THIS ARTICLE DOES NOT LIMIT THE AUTHORITY OF THE SUPERINTENDENT TO TAKE
17 DISCIPLINARY ACTION AGAINST ANY LICENSEE FOR A VIOLATION OF THIS CHAPTER OR
18 OF THE RULES ADOPTED PURSUANT TO THIS CHAPTER. THE REPAYMENT IN FULL OF ALL
19 OBLIGATIONS TO THE FUND BY ANY LICENSEE DOES NOT NULLIFY OR MODIFY THE EFFECT
20 OF ANY OTHER DISCIPLINARY PROCEEDING BROUGHT PURSUANT TO THIS CHAPTER OR THE
21 RULES ADOPTED PURSUANT TO THIS CHAPTER.