

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 6-991.22; 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, 6-991.20 AND 6-991.21; 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 of a loan in the~~  
19 ~~mortgage industry or communication with a borrower to obtain information~~  
20 ~~necessary for the processing of a loan. Administrative or clerical tasks do~~  
21 ~~not include holding oneself out to the public as able to obtain a loan.~~

22 ~~2.~~ 1. "Affiliate" means an entity that directly or indirectly,  
23 through intermediaries, controls, is controlled by or is under common control  
24 with the entity specified.

25 2. "CLERICAL OR SUPPORT DUTIES" MEANS DUTIES SUBSEQUENT TO THE RECEIPT  
26 OF A RESIDENTIAL MORTGAGE LOAN APPLICATION, INCLUDING BOTH OF THE FOLLOWING:

27 (a) THE RECEIPT, COLLECTION, DISTRIBUTION AND ANALYSIS OF INFORMATION  
28 COMMON FOR THE PROCESSING OR UNDERWRITING OF A RESIDENTIAL MORTGAGE LOAN.

29 (b) THE COMMUNICATION WITH A CONSUMER TO OBTAIN THE INFORMATION  
30 NECESSARY FOR THE PROCESSING OR UNDERWRITING OF A LOAN IF THE COMMUNICATION  
31 DOES NOT INCLUDE OFFERING OR NEGOTIATING LOAN RATES OR TERMS OR COUNSELING  
32 CONSUMERS ABOUT RESIDENTIAL MORTGAGE LOAN RATES OR TERMS.

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

35 ~~3.~~ 4. "Continuing education unit" means a fifty minute period of time  
36 in a continuing education course that relates to the mortgage industry or to  
37 mortgage transactions, including courses taken to maintain recognized  
38 industry designations.

39 5. "DEPOSITORY INSTITUTION" HAS THE SAME MEANING PRESCRIBED IN THE  
40 FEDERAL DEPOSIT INSURANCE ACT (12 UNITED STATES CODE SECTION 1813) AND  
41 INCLUDES CREDIT UNIONS.

42 6. "FEDERAL BANKING AGENCY" MEANS THE BOARD OF GOVERNORS OF THE  
43 FEDERAL RESERVE SYSTEM, THE COMPTROLLER OF THE CURRENCY, THE DIRECTOR OF THE  
44 OFFICE OF THRIFT SUPERVISION, THE NATIONAL CREDIT UNION ADMINISTRATION OR THE  
45 FEDERAL DEPOSIT INSURANCE CORPORATION.

1           7. "IMMEDIATE FAMILY MEMBER" MEANS A SPOUSE, CHILD, SIBLING, PARENT,  
2 GRANDPARENT, GRANDCHILD, STEPPARENT, STEPCHILD OR STEPSIBLING WHETHER RELATED  
3 BY ADOPTION OR BLOOD.

4           8. "JUDGMENT" MEANS EITHER:

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

6           (b) A CRIMINAL RESTITUTION ORDER ISSUED PURSUANT TO SECTION 13-603 OR  
7 18 UNITED STATES CODE SECTION 3663.

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

13          9. "JUDGMENT DEBTOR" MEANS ANY DEFENDANT UNDER THIS ARTICLE WHO IS THE  
14 SUBJECT OF A JUDGMENT.

15          ~~4-~~ 10. "License" means a license issued under this article.

16          ~~5-~~ 11. "Licensee" means a person licensed under this article.

17          ~~6-~~ 12. "Loan originator":

18          ~~(a) Means a natural person employed by a mortgage broker or mortgage~~  
19 ~~banker who either takes a residential mortgage loan application for a~~  
20 ~~mortgage broker or mortgage banker to obtain a third party lender or offers~~  
21 ~~or negotiates terms of a mortgage loan for direct or indirect compensation or~~  
22 ~~gain or in the expectation of direct or indirect compensation or gain.~~

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

25          ~~(c) Does not mean a person who performs purely administrative or~~  
26 ~~clerical tasks and who is employed by a mortgage broker or mortgage banker.~~

27          (a) MEANS A NATURAL PERSON WHO FOR COMPENSATION OR GAIN OR IN THE  
28 EXPECTATION OF COMPENSATION OR GAIN DOES ANY OF THE FOLLOWING:

29           (i) TAKES A RESIDENTIAL MORTGAGE LOAN APPLICATION.

30           (ii) OFFERS OR NEGOTIATES TERMS OF A RESIDENTIAL MORTGAGE LOAN.

31           (iii) ON BEHALF OF A BORROWER, NEGOTIATES WITH A LENDER OR NOTEHOLDER  
32 TO OBTAIN A TEMPORARY OR PERMANENT MODIFICATION IN AN EXISTING RESIDENTIAL  
33 MORTGAGE LOAN AGREEMENT.

34          (b) DOES NOT INCLUDE:

35           (i) AN INDIVIDUAL ENGAGED SOLELY AS A LOAN PROCESSOR OR UNDERWRITER  
36 EXCEPT AS PROVIDED IN SECTION 6-991.02.

37           (ii) A PERSON WHO ONLY PERFORMS REAL ESTATE BROKERAGE ACTIVITIES AND  
38 WHO IS LICENSED IN ACCORDANCE WITH TITLE 32, CHAPTER 20, UNLESS THE PERSON IS  
39 COMPENSATED BY A LENDER, A MORTGAGE BROKER OR ANY OTHER LOAN ORIGINATOR OR BY  
40 AN AGENT OF THE LENDER, MORTGAGE BROKER OR OTHER LOAN ORIGINATOR.

41           (iii) A PERSON SOLELY INVOLVED IN EXTENSIONS OF CREDIT RELATING TO A  
42 TIMESHARE PLAN AS DEFINED IN 11 UNITED STATES CODE SECTION 101(53D).

43           (iv) A PERSON WHO MAKES FIVE OR FEWER MORTGAGE LOANS PER CALENDAR  
44 YEAR.

1 (v) A PERSON WHO TAKES BACK A PURCHASE MONEY MORTGAGE IN CONNECTION  
2 WITH THE SALE OF RESIDENTIAL REAL ESTATE.

3 (vi) AN EMPLOYER MAKING A MORTGAGE LOAN TO AN EMPLOYEE.

4 13. "LOAN PROCESSOR OR UNDERWRITER" MEANS AN INDIVIDUAL WHO PERFORMS  
5 CLERICAL OR SUPPORT DUTIES AS AN EMPLOYEE AT THE DIRECTION OF AND SUBJECT TO  
6 THE SUPERVISION AND INSTRUCTION OF A PERSON WHO IS LICENSED OR WHO IS EXEMPT  
7 FROM LICENSURE UNDER ARTICLE 1 OR 2 OF THIS CHAPTER.

8 ~~7.~~ 14. "Mortgage banker" means a person who is licensed pursuant to  
9 article 2 of this chapter.

10 ~~8.~~ 15. "Mortgage broker" means a person who is licensed pursuant to  
11 article 1 of this chapter.

12 ~~9.~~ 16. "Mortgage loan" OR "RESIDENTIAL MORTGAGE LOAN" means a loan  
13 ~~secured by a mortgage or deed of trust or any lien interest on real estate~~  
14 ~~located in this state established with the consent of the owner of the real~~  
15 ~~estate.~~ FOR PERSONAL FAMILY OR HOUSEHOLD USE THAT IS SECURED BY A MORTGAGE,  
16 DEED OF TRUST OR OTHER EQUIVALENT CONSensual SECURITY INTEREST ON A DWELLING,  
17 AS DEFINED IN THE TRUTH IN LENDING ACT (15 UNITED STATES CODE SECTION  
18 1602(v)), OR RESIDENTIAL REAL ESTATE ON WHICH A DWELLING IS CONSTRUCTED OR  
19 INTENDED TO BE CONSTRUCTED.

20 17. "REAL ESTATE BROKERAGE ACTIVITY" MEANS ANY ACTIVITY THAT INVOLVES  
21 OFFERING OR PROVIDING REAL ESTATE BROKERAGE SERVICES TO THE PUBLIC,  
22 INCLUDING:

23 (a) ACTING AS A REAL ESTATE SALESPERSON OR REAL ESTATE BROKER FOR A  
24 BUYER, SELLER, LESSOR OR LESSEE OF REAL PROPERTY.

25 (b) BRINGING TOGETHER PARTIES INTERESTED IN THE SALE, PURCHASE, LEASE,  
26 RENTAL OR EXCHANGE OF REAL PROPERTY.

27 (c) NEGOTIATING ON BEHALF OF ANY PARTY ANY PORTION OF A CONTRACT  
28 RELATING TO THE SALE, PURCHASE, LEASE, RENTAL OR EXCHANGE OF REAL PROPERTY  
29 OTHER THAN IN CONNECTION WITH PROVIDING FINANCING WITH RESPECT TO ANY  
30 TRANSACTION.

31 (d) ENGAGING IN ANY ACTIVITY FOR WHICH A PERSON IS REQUIRED TO BE  
32 LICENSED AS A REAL ESTATE SALESPERSON OR REAL ESTATE BROKER UNDER TITLE 32,  
33 CHAPTER 20.

34 (e) OFFERING TO ENGAGE IN ANY ACTIVITY OR ACT IN ANY CAPACITY  
35 DESCRIBED IN SUBDIVISION (a), (b), (c) OR (d) OF THIS PARAGRAPH.

36 18. "REGISTERED LOAN ORIGINATOR" MEANS ANY INDIVIDUAL WHO IS BOTH OF  
37 THE FOLLOWING:

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

43 (b) AN EMPLOYEE OF ONE OF THE FOLLOWING:

44 (i) A DEPOSITORY INSTITUTION.

1 (ii) A SUBSIDIARY THAT IS OWNED AND CONTROLLED BY A DEPOSITORY  
2 INSTITUTION AND REGULATED BY A FEDERAL BANKING AGENCY.

3 (iii) AN INSTITUTION REGULATED BY THE FARM CREDIT ADMINISTRATION.

4 19. "RESIDENTIAL MORTGAGE LOAN SERVICER" MEANS ANY PERSON WHO DOES  
5 EITHER OF THE FOLLOWING:

6 (a) ON BEHALF OF THE NOTEHOLDER, COLLECTS OR RECEIVES PAYMENTS,  
7 INCLUDING PAYMENTS OF PRINCIPAL, INTEREST, ESCROW MONIES AND OTHER MONIES  
8 DUE, ON OBLIGATIONS DUE AND OWING TO THE NOTEHOLDER PURSUANT TO A RESIDENTIAL  
9 MORTGAGE LOAN.

10 (b) WHEN THE BORROWER IS IN DEFAULT OR IN FORESEEABLE LIKELIHOOD OF  
11 DEFAULT, WORKS ON BEHALF OF THE NOTEHOLDER WITH THE BORROWER TO MODIFY THE  
12 OBLIGATIONS EITHER TEMPORARILY OR PERMANENTLY IN ORDER TO AVOID FORECLOSURE  
13 OR OTHERWISE TO FINALIZE COLLECTION THROUGH THE FORECLOSURE PROCESS.

14 20. "RESIDENTIAL REAL ESTATE" MEANS ANY PROPERTY THAT IS LOCATED IN  
15 THIS STATE AND ON WHICH A DWELLING IS CONSTRUCTED OR INTENDED TO BE  
16 CONSTRUCTED.

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

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

24 6-991.01. Exemptions

25 This article does not apply to:

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

36 ~~2. A person who is licensed pursuant to article 1, 2 or 3 of this~~  
37 ~~chapter.~~

38 1. REGISTERED LOAN ORIGINATORS.

39 2. AN INDIVIDUAL WHO OFFERS OR NEGOTIATES TERMS OF A RESIDENTIAL  
40 MORTGAGE LOAN SECURED BY A DWELLING THAT SERVED AS THE INDIVIDUAL'S  
41 RESIDENCE.

42 3. A person who is a responsible individual as described in section  
43 6-903, ~~6-943~~ OR ~~6-973~~ and who does not act as a loan originator pursuant to  
44 article 1, 2 or 3 of this chapter.

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

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

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

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

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

17           8. AN INDIVIDUAL WHO OFFERS TO NEGOTIATE TERMS OF A RESIDENTIAL  
18 MORTGAGE LOAN WITH OR ON BEHALF OF THE INDIVIDUAL'S IMMEDIATE FAMILY MEMBER  
19 AND WHO DOES NOT OTHERWISE ENGAGE IN THE BUSINESS OF A LOAN ORIGINATOR.

20           9. A MANUFACTURED HOME RETAILER AND ITS EMPLOYEES IF PERFORMING ONLY  
21 CLERICAL OR SUPPORT DUTIES IN CONNECTION WITH THE SALE OR LEASE OF A  
22 MANUFACTURED HOME AND THE MANUFACTURED HOME RETAILER AND ITS EMPLOYEES  
23 RECEIVE NO COMPENSATION OR OTHER GAIN FROM A MORTGAGE BANKER OR A MORTGAGE  
24 BROKER FOR THE PERFORMANCE OF THE CLERICAL OR SUPPORT DUTIES.

25           10. AN INDIVIDUAL WHO IS EMPLOYED BY A RESIDENTIAL MORTGAGE LOAN  
26 SERVICER IF THE INDIVIDUAL IS INVOLVED SOLELY IN LOSS MITIGATION EFFORTS,  
27 UNLESS THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
28 DETERMINES THAT THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF  
29 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101  
30 THROUGH 5116) REQUIRES THE INDIVIDUAL TO BE LICENSED AS A MORTGAGE LOAN  
31 ORIGINATOR. FOR THE PURPOSES OF THIS PARAGRAPH, "LOSS MITIGATION EFFORTS"  
32 MEANS A RESIDENTIAL MORTGAGE LOAN BORROWER IS IN DEFAULT OR DEFAULT IS  
33 REASONABLY FORESEEABLE AND AN INDIVIDUAL WORKS WITH THE BORROWER ON BEHALF OF  
34 THE RESIDENTIAL MORTGAGE LOAN SERVICER TO MODIFY EITHER TEMPORARILY OR  
35 PERMANENTLY THE OBLIGATION OR TO OTHERWISE MITIGATE LOSS ON AN EXISTING  
36 RESIDENTIAL MORTGAGE LOAN.

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

39           6-991.02. Prohibited acts

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

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

44           ~~2. A person is not entitled to receive compensation in connection with~~  
45 ~~arranging for or negotiating a mortgage loan if the person is not licensed~~



~~pursuant to this chapter. Notwithstanding section 6-984, subsection B, a loan originator shall not pay compensation to, contract with or employ as an independent contractor a person who is acting as a loan originator, mortgage broker, mortgage banker or commercial mortgage banker but who is not licensed under this chapter.~~

2. AN INDIVIDUAL IS NOT ENTITLED TO RECEIVE COMPENSATION IN CONNECTION WITH ARRANGING FOR OR NEGOTIATING A MORTGAGE LOAN IF THE INDIVIDUAL IS NOT LICENSED PURSUANT TO THIS CHAPTER. AN INDIVIDUAL WHO IS NOT SPECIFICALLY EXEMPTED FROM LICENSURE PURSUANT TO THIS ARTICLE SHALL NOT ENGAGE IN THE BUSINESS OF A LOAN ORIGINATOR WITH RESPECT TO ANY DWELLING IN THIS STATE WITHOUT FIRST OBTAINING AND MAINTAINING ANNUALLY A LICENSE PURSUANT TO THIS ARTICLE. EACH LICENSED LOAN ORIGINATOR MUST REGISTER WITH AND MAINTAIN A VALID UNIQUE IDENTIFIER ISSUED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS SUCCESSOR.

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

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

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

(b) Not secured by a mortgage or deed of trust or other lien interest in real property UNLESS EMPLOYED BY A CONSUMER LENDER.

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

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

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

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

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

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

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

4           10. A loan originator shall not fail to truthfully account for the  
5 monies belonging to a party to a mortgage loan transaction or fail to  
6 disburse monies in accordance with the employing mortgage broker or mortgage  
7 banker agreements.

8           11. A loan originator shall not engage in illegal or improper business  
9 practices.

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

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

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

18           (a) THE NAME AND LICENSE NUMBER AS ISSUED ON THE EMPLOYING MORTGAGE  
19 BROKER'S, MORTGAGE BANKER'S OR CONSUMER LENDER'S PRINCIPAL PLACE OF BUSINESS  
20 LICENSE.

21           (b) APPROVAL OF THE EMPLOYING MORTGAGE BROKER, MORTGAGE BANKER OR  
22 CONSUMER LENDER.

23           (c) THE UNIQUE IDENTIFIER THE LOAN ORIGINATOR MAINTAINS WITH THE  
24 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE  
25 AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122  
26 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS  
27 SUCCESSOR.

28          15. ON REQUEST, A LOAN ORIGINATOR SHALL MAKE AVAILABLE TO THE  
29 SUPERINTENDENT THE BOOKS AND RECORDS RELATING TO THE LOAN ORIGINATOR'S  
30 OPERATIONS. THE SUPERINTENDENT MAY HAVE ACCESS TO THE BOOKS AND RECORDS AND  
31 INTERVIEW THE OFFICERS, PRINCIPALS, EMPLOYEES, INDEPENDENT CONTRACTORS,  
32 AGENTS AND CUSTOMERS OF THE LOAN ORIGINATOR CONCERNING THEIR BUSINESS. IN  
33 CONNECTION WITH A REQUEST PURSUANT TO THIS PARAGRAPH, A PERSON MAY NOT  
34 KNOWINGLY WITHHOLD, ABSTRACT, REMOVE, MUTILATE, DESTROY OR SECRETE ANY BOOKS,  
35 RECORDS OR OTHER INFORMATION.

36          16. A LOAN PROCESSOR OR UNDERWRITER WHO IS AN INDEPENDENT CONTRACTOR  
37 MAY NOT ENGAGE IN THE ACTIVITIES OF A LOAN PROCESSOR OR UNDERWRITER UNLESS  
38 THE LOAN PROCESSOR OR UNDERWRITER OBTAINS AND MAINTAINS A LICENSE PURSUANT TO  
39 SECTION 6-991.03. EACH INDEPENDENT CONTRACTOR LOAN PROCESSOR OR UNDERWRITER  
40 LICENSED AS A LOAN ORIGINATOR MUST HAVE AND MAINTAIN A VALID UNIQUE  
41 IDENTIFIER.

42          17. AN INDIVIDUAL ENGAGING SOLELY IN LOAN PROCESSOR OR UNDERWRITER  
43 ACTIVITIES SHALL NOT REPRESENT TO THE PUBLIC THROUGH ADVERTISING OR OTHER  
44 MEANS OF COMMUNICATING THAT THE INDIVIDUAL CAN OR WILL PERFORM ANY OF THE  
45 ACTIVITIES OF A LOAN ORIGINATOR.

1           Sec. 6. Section 6-991.03, Arizona Revised Statutes, is amended to  
2 read:

3           6-991.03. Licensing; renewal; qualifications; application; fees

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

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

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

17           (a) THREE HOURS OF FEDERAL LAW.

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

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

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

25           (a) FEDERAL LAWS.

26           (b) LAWS OF THIS STATE.

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

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

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

35           5. SUBMITTED FINGERPRINTS TO THE DEPARTMENT FOR THE PURPOSE OF A  
36 BACKGROUND INVESTIGATION.

37           6. PAID AN AMOUNT TO BE DETERMINED BY THE SUPERINTENDENT FOR DEPOSIT  
38 IN THE MORTGAGE RECOVERY FUND ESTABLISHED PURSUANT TO SECTION 6-991.09 OR  
39 DEPOSITED WITH THE SUPERINTENDENT A BOND EXECUTED BY THE APPLICANT'S EMPLOYER  
40 AS PRINCIPAL AND A SURETY COMPANY LICENSED TO DO BUSINESS IN THIS STATE FOR  
41 THE BENEFIT OF ANY PERSON AGGRIEVED BY ANY ACT, REPRESENTATION, TRANSACTION  
42 OR CONDUCT OF A LICENSED LOAN ORIGINATOR THAT VIOLATES THIS TITLE OR THE  
43 RULES ADOPTED PURSUANT TO THIS TITLE. NOTWITHSTANDING SECTION 6-903 OR  
44 6-943, THE AMOUNT OF THE BOND SHALL BE IN AN AMOUNT OF NOT LESS THAN TWO  
45 HUNDRED THOUSAND DOLLARS. LOAN ORIGINATORS WORKING UNDER THE EMPLOYER BOND

1 DESCRIBED IN THIS PARAGRAPH DO NOT HAVE TO CONTRIBUTE TO THE MORTGAGE  
2 RECOVERY FUND.

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

6 ~~D. Beginning January 1, 2010, an applicant for renewal of a loan~~  
7 ~~originator license shall have satisfactorily completed six continuing~~  
8 ~~education units before submitting the renewal application.~~

9 D. BEFORE SUBMITTING A RENEWAL APPLICATION, AN APPLICANT FOR RENEWAL  
10 OF A LOAN ORIGINATOR LICENSE SHALL HAVE SATISFACTORILY COMPLETED EIGHT  
11 APPROVED CONTINUING EDUCATION UNITS THAT INCLUDE AT LEAST:

12 1. THREE HOURS OF FEDERAL LAW.

13 2. TWO HOURS OF ETHICS, INCLUDING INSTRUCTION ON FRAUD, CONSUMER  
14 PROTECTION AND FAIR LENDING ISSUES.

15 3. TWO HOURS OF TRAINING RELATED TO LENDING STANDARDS FOR THE  
16 NONTRADITIONAL MORTGAGE PRODUCT MARKETPLACE.

17 E. EDUCATION COURSES TAKEN BEFORE LICENSURE SHALL BE REVIEWED AND  
18 APPROVED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED  
19 BY THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L.  
20 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR  
21 ITS SUCCESSOR.

22 F. CONTINUING EDUCATION COURSES SHALL BE REVIEWED AND APPROVED BY THE  
23 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE  
24 AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122  
25 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101 THROUGH 5116) OR ITS  
26 SUCCESSOR. A LICENSED LOAN ORIGINATOR:

27 1. MAY ONLY RECEIVE CREDIT FOR A CONTINUING EDUCATION COURSE IN THE  
28 YEAR IN WHICH THE COURSE IS TAKEN.

29 2. MAY NOT TAKE THE SAME APPROVED COURSE IN THE SAME YEAR OR  
30 SUCCESSIVE YEARS TO MEET THE ANNUAL REQUIREMENTS FOR CONTINUING EDUCATION.

31 ~~E.~~ G. The nonrefundable application fee shall accompany each  
32 application for an original loan originator license ~~only~~.

33 ~~F. A loan originator shall not advertise for or solicit mortgage~~  
34 ~~business in any manner without using the name and license number as issued on~~  
35 ~~the employing mortgage broker's or mortgage banker's principal place of~~  
36 ~~business license and without the approval of the employing mortgage broker or~~  
37 ~~mortgage banker.~~

38 ~~G.~~ H. A license issued pursuant to this article is not transferable  
39 or assignable.

40 I. AT THE SUPERINTENDENT'S DISCRETION, APPLICATION FEES MAY BE WAIVED  
41 IF THE APPLICANT IS A HOUSING COUNSELOR CERTIFIED BY THE UNITED STATES  
42 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND EMPLOYED BY A NONPROFIT  
43 AGENCY.

44 J. EACH MORTGAGE BROKER OR MORTGAGE BANKER SHALL SUBMIT TO THE  
45 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY ESTABLISHED BY THE SECURE

1 AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (P.L. 110-289; 122  
2 STAT. 2810; 12 UNITED STATES CODE SECTIONS 1501 THROUGH 5116) OR ITS  
3 SUCCESSOR REPORTS OF CONDITION THAT ARE IN A FORM AND THAT CONTAIN  
4 INFORMATION REQUIRED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM.

5 K. THE SUPERINTENDENT SHALL ESTABLISH A PROCESS FOR LOAN ORIGINATORS  
6 TO CHALLENGE INFORMATION THAT THE SUPERINTENDENT ENTERS INTO THE NATIONWIDE  
7 MORTGAGE LICENSING SYSTEM AND REGISTRY.

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

10 6-991.04. Issuance of license; notice from employing mortgage  
11 broker, mortgage banker or consumer lender;  
12 renewal; inactive status; address change; fee

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

20 B. On issuance of the license, the superintendent shall keep the loan  
21 originator's license until a mortgage broker or mortgage banker licensed  
22 pursuant to this chapter ~~OR A CONSUMER LENDER~~ employs the loan originator and  
23 the employer provides a written notice that the employer has hired the loan  
24 originator. The employer shall provide the notice before the loan originator  
25 begins working for the employer. The notice shall be from an officer or  
26 other person authorized by the employer. The notice shall contain a request  
27 for the loan originator's license and shall be dated, signed and notarized.  
28 On receipt of the request, the superintendent shall forward the loan  
29 originator's license to the employing mortgage broker, ~~or~~ mortgage banker ~~OR~~  
30 ~~CONSUMER LENDER~~.

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

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

37 E. A loan originator shall pay the renewal fee every year on or before  
38 December 31. Licenses not renewed by December 31 are suspended and the  
39 licensee shall not act as a loan originator until the license is renewed or a  
40 new license is issued pursuant to this article. A person may renew a  
41 suspended license by paying the renewal fee plus a dollar amount to be  
42 determined by the superintendent for each day after December 31 that a  
43 license renewal fee is not received by the superintendent.

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

4 G. From December 1 through December 31 of each renewal period, a  
5 licensee may request inactive status for the following license period. The  
6 license shall be placed on inactive status after the licensee pays to the  
7 superintendent the inactive status renewal fee and surrenders the license to  
8 the superintendent. During inactive status, an inactive licensee shall not  
9 act as a loan originator. A licensee may not be on inactive status for more  
10 than two consecutive renewal periods in any ten year period. The license  
11 expires if the licensee violates this subsection.

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

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

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

17 3. Paying the annual licensing fee.

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

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

25 J. A loan originator shall immediately notify the superintendent of a  
26 change in the loan originator's residence address. The superintendent shall  
27 endorse the change of address on the license for a fee to be determined by  
28 the superintendent.

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

32 1. Notify the superintendent of the licensee's termination.

33 2. Return the license to the superintendent.

34 L. AN APPLICANT FOR A LOAN ORIGINATOR LICENSE WHO IS CURRENTLY  
35 REGISTERED WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY  
36 ESTABLISHED BY THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF  
37 2008 (P.L. 110-289; 122 STAT. 2810; 12 UNITED STATES CODE SECTIONS 5101  
38 THROUGH 5116) OR ITS SUCCESSOR MAY BE GRANTED A TEMPORARY LICENSE FOR A  
39 PERIOD NOT TO EXCEED ONE HUNDRED EIGHTY DAYS.

40 M. THE SUPERINTENDENT SHALL ESTABLISH A PROCESS FOR LOAN ORIGINATORS  
41 TO CHALLENGE INFORMATION THAT THE SUPERINTENDENT ENTERS INTO THE NATIONWIDE  
42 MORTGAGE LICENSING SYSTEM AND REGISTRY.

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

3           6-991.05. Denial, suspension or revocation of licenses

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

6           1. Is not a person of honesty, truthfulness or good character.

7           2. DOES NOT HAVE THE FINANCIAL RESPONSIBILITY, EXPERIENCE OR  
8 COMPETENCE TO ADEQUATELY SERVE THE PUBLIC OR TO WARRANT THE BELIEF THAT THE  
9 APPLICANT OR LICENSEE WILL ACT LAWFULLY, HONESTLY AND FAIRLY PURSUANT TO THIS  
10 ARTICLE.

11           ~~2-~~ 3. Has violated any law, rule or order.

12           ~~3-~~ 4. Has been convicted ~~in any state~~ of a felony DURING THE SEVEN  
13 YEAR PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION or any crime of  
14 breach of trust or dishonesty, FRAUD OR MONEY LAUNDERING AT ANY TIME  
15 PRECEDING THE DATE OF APPLICATION.

16           ~~4-~~ 5. Has had a final judgment entered against the applicant or  
17 licensee in a civil action on grounds of fraud, deceit or misrepresentation,  
18 and the conduct on which the judgment is based indicates that it would be  
19 contrary to the interest of the public to permit the person to be licensed.

20           ~~5-~~ 6. Has had an administrative agency of this state, the federal  
21 government or any other state or territory of the United States enter an  
22 order against the applicant or licensee involving fraud, deceit or  
23 misrepresentation, and the facts relating to the order indicate that it would  
24 be contrary to the interest of the public to permit the person to be  
25 licensed.

26           ~~6-~~ 7. Has made a material misstatement or suppressed or withheld  
27 information on the application for a license or any document required to be  
28 filed with the superintendent.

29           8. HAS HAD A LOAN ORIGINATOR LICENSE, CONSUMER LENDER LICENSE,  
30 MORTGAGE BROKER LICENSE OR MORTGAGE BANKER LICENSE REVOKED OR DENIED IN THIS  
31 STATE OR ANY OTHER STATE.

32           B. If a licensee or applicant under this article is indicted or  
33 informed against for forgery, embezzlement, obtaining money under false  
34 pretenses, extortion, criminal conspiracy to defraud or a similar offense,  
35 and a certified copy of the indictment or information or other proper  
36 evidence of the indictment or information is filed with the superintendent,  
37 the superintendent may suspend the license or refuse to grant a license to an  
38 applicant pending trial on the indictment.

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

41           6-991.07. Examination; fee; definition

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

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

8           7. The terms and conditions of conforming and nonconforming  
9 residential mortgage products.

10          8. The principles of appraisal independence.

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

12          ~~C. The department shall supervise the administration of the~~  
13 ~~examination to applicants for licenses at least once every six months. The~~  
14 ~~department shall reasonably prescribe the time, place and conduct of~~  
15 ~~examinations and collect a fee in an amount to be determined by the~~  
16 ~~superintendent for administration of the examination to be assessed to all~~  
17 ~~persons taking the examination. The test may be given in either written or~~  
18 ~~electronic format.~~

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

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

29          ~~F.~~ E. The superintendent ~~shall~~ MAY determine the fee for each  
30 examination. THE SUPERINTENDENT MAY CONTRACT FOR THE EXAMINATION FOR THE  
31 LICENSING OF APPLICANTS. IF THE SUPERINTENDENT CONTRACTS FOR THE  
32 EXAMINATION, THE FEE FOR EXAMINATION FOR LICENSES PURSUANT TO THIS SECTION IS  
33 PAYABLE DIRECTLY TO THE CONTRACTOR BY THE APPLICANT FOR EXAMINATION.

34          ~~G.~~ F. For the purposes of this section, "applicant" means a person  
35 who has submitted a completed application in the form prescribed by the  
36 superintendent.

37          Sec. 10. Renumber

38          Section 6-991.08, Arizona Revised Statutes, is renumbered as section  
39 6-991.22.

40          Sec. 11. Title 6, chapter 9, article 4, Arizona Revised Statutes, is  
41 amended by adding a new section 6-991.08, to read:

42          6-991.08. Reasonable efforts to secure advantageous loan for  
43 borrower

44          A LOAN ORIGINATOR SHALL MAKE REASONABLE EFFORTS TO SECURE A LOAN THAT  
45 IS REASONABLY ADVANTAGEOUS TO THE BORROWER CONSIDERING ALL OF THE



1 CIRCUMSTANCES, INCLUDING THE INTEREST RATES, CHARGES AND REPAYMENT TERMS OF  
2 THE LOAN.

3 Sec. 12. Title 6, chapter 9, article 4, Arizona Revised Statutes, is  
4 amended by adding sections 6-991.09, 6-991.10, 6-991.11, 6-991.12, 6-991.13,  
5 6-991.14, 6-991.15, 6-991.16, 6-991.17, 6-991.18, 6-991.19, 6-991.20 and  
6 6-991.21, to read:

7 6-991.09. Mortgage recovery fund; liability limits

8 A. THE SUPERINTENDENT SHALL ESTABLISH AND MAINTAIN A MORTGAGE RECOVERY  
9 FUND CONSISTING OF THE MONIES RECEIVED BY THE SUPERINTENDENT PURSUANT TO THIS  
10 ARTICLE FOR THE BENEFIT OF ANY PERSON AGGRIEVED BY ANY ACT, REPRESENTATION,  
11 TRANSACTION OR CONDUCT OF A LICENSED LOAN ORIGINATOR THAT VIOLATES THIS TITLE  
12 OR THE RULES ADOPTED PURSUANT TO THIS TITLE.

13 B. ON NOTICE FROM THE SUPERINTENDENT, THE STATE TREASURER SHALL INVEST  
14 AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES  
15 EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

16 C. NOTWITHSTANDING ANY OTHER LAW, THE SUPERINTENDENT MAY SPEND  
17 INTEREST MONIES FROM THE FUND THAT ARE NECESSARY TO INCREASE PUBLIC AWARENESS  
18 OF THE FUND, BUT THAT DO NOT TO EXCEED FIFTY THOUSAND DOLLARS IN ANY FISCAL  
19 YEAR.

20 D. THE FUND SHALL ONLY PAY FOR A LOSS THAT IS AN ACTUAL AND DIRECT  
21 OUT-OF-POCKET LOSS TO AN AGGRIEVED PERSON DIRECTLY ARISING OUT OF A MORTGAGE  
22 TRANSACTION, INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS.

23 E. THE MORTGAGE RECOVERY FUND'S LIABILITY SHALL NOT EXCEED:

24 1. TWO HUNDRED THOUSAND DOLLARS FOR EACH TRANSACTION, REGARDLESS OF  
25 THE NUMBER OF PERSONS AGGRIEVED OR THE NUMBER OF LICENSEES OR PARCELS OF REAL  
26 ESTATE INVOLVED.

27 2. FIVE HUNDRED THOUSAND DOLLARS FOR EACH LICENSEE.

28 F. THE LIABILITY OF THE FUND FOR THE ACTS OF A LICENSED LOAN  
29 ORIGINATOR IS TERMINATED ON THE ISSUANCE OF ORDERS AUTHORIZING PAYMENTS FROM  
30 THE FUND IN AN AGGREGATE AMOUNT AS PRESCRIBED BY SUBSECTION E OF THIS  
31 SECTION.

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

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

40 I. THE FUND SHALL NOT PAY ANY CLAIM UNTIL THE PENAL SUMS OF THE BONDS  
41 REQUIRED UNDER SECTION 6-903 OR 6-943 HAVE BEEN EXHAUSTED.

42 6-991.10. Payments to the mortgage recovery fund

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

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

6 6-991.11. Statute of limitations; service of summons;  
7 application for payment; insufficient monies;  
8 definition

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

12 B. IF AN AGGRIEVED PERSON COMMENCES AN ACTION FOR A JUDGMENT THAT MAY  
13 RESULT IN AN ORDER FOR PAYMENT FROM THE MORTGAGE RECOVERY FUND AND THE  
14 DEFENDANT LICENSEE CANNOT BE SERVED PROCESS PERSONALLY IN THIS STATE, THE  
15 SUMMONS MAY BE SERVED BY THE ALTERNATIVE METHODS OF SERVICE PROVIDED FOR BY  
16 THE ARIZONA RULES OF CIVIL PROCEDURE, INCLUDING SERVICE BY PUBLICATION. A  
17 JUDGMENT THAT COMPLIES WITH THIS SECTION AND THAT WAS OBTAINED AFTER SERVICE  
18 BY PUBLICATION ONLY APPLIES TO AND IS ENFORCEABLE AGAINST THE MORTGAGE  
19 RECOVERY FUND. THE DEPARTMENT MAY INTERVENE IN AND DEFEND ANY SUCH ACTION.

20 C. AN AGGRIEVED PERSON MAY APPLY TO THE DEPARTMENT FOR PAYMENT FROM  
21 THE MORTGAGE RECOVERY FUND AFTER THE AGGRIEVED PERSON OBTAINS A JUDGMENT  
22 AGAINST A LOAN ORIGINATOR BASED ON THE LICENSEE'S ACT, REPRESENTATION,  
23 TRANSACTION OR CONDUCT IN VIOLATION OF THIS TITLE OR THE RULES ADOPTED  
24 PURSUANT TO THIS TITLE. THE CLAIMANT MUST FILE THE ORIGINAL APPLICATION,  
25 INCLUDING APPENDICES, WITHIN TWO YEARS AFTER THE TERMINATION OF ALL  
26 PROCEEDINGS, REVIEWS AND APPEALS CONNECTED WITH THE JUDGMENT. THE  
27 SUPERINTENDENT, IN THE SUPERINTENDENT'S SOLE DISCRETION, MAY WAIVE THE TWO  
28 YEAR APPLICATION DEADLINE IF THE SUPERINTENDENT DETERMINES THAT THE WAIVER  
29 BEST SERVES THE PUBLIC INTEREST. DELIVERY OF THE APPLICATION MUST BE BY  
30 PERSONAL SERVICE OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

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

34 E. THE DEPARTMENT SHALL PRESCRIBE AND SUPPLY AN APPLICATION FORM THAT  
35 INCLUDES DETAILED INSTRUCTIONS WITH RESPECT TO DOCUMENTARY EVIDENCE,  
36 PLEADINGS, COURT RULINGS, THE PRODUCTS OF DISCOVERY IN THE UNDERLYING  
37 LITIGATION AND NOTICE REQUIREMENTS TO THE JUDGMENT DEBTOR UNDER SECTION  
38 6-991.12. THE CLAIMANT MUST SUBMIT THE CLAIM ON AN APPLICATION FORM SUPPLIED  
39 BY THE DEPARTMENT. THE APPLICATION MUST INCLUDE:

- 40 1. THE CLAIMANT'S NAME AND ADDRESS.
- 41 2. IF THE CLAIMANT IS REPRESENTED BY AN ATTORNEY, THE ATTORNEY'S NAME,  
42 BUSINESS ADDRESS AND TELEPHONE NUMBER.
- 43 3. THE JUDGMENT DEBTOR'S NAME AND ADDRESS OR, IF UNKNOWN, THE NAMES  
44 AND ADDRESSES OF PERSONS WHO MAY KNOW THE JUDGMENT DEBTOR'S PRESENT LOCATION.

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

7           5. THE IDENTIFICATION OF THE JUDGMENT, THE AMOUNT OF THE CLAIM AND AN  
8 EXPLANATION OF ITS COMPUTATION, INCLUDING AN ITEMIZED LIST OF ACTUAL AND  
9 COMPENSATORY DAMAGES AWARDED AND CLAIMED.

10          6. FOR THE PURPOSE OF AN APPLICATION THAT IS NOT BASED ON A CRIMINAL  
11 RESTITUTION ORDER, A STATEMENT BY THE CLAIMANT, SIGNED UNDER PENALTY OF  
12 PERJURY, THAT THE COMPLAINT ON WHICH THE UNDERLYING JUDGMENT IS BASED WAS  
13 PROSECUTED CONSCIENTIOUSLY AND IN GOOD FAITH. FOR THE PURPOSES OF THIS  
14 PARAGRAPH, "CONSCIENTIOUSLY AND IN GOOD FAITH" MEANS THAT ALL OF THE  
15 FOLLOWING APPLY:

16           (a) NO PARTY WHO WAS POTENTIALLY LIABLE TO THE CLAIMANT IN THE  
17 UNDERLYING TRANSACTION WAS INTENTIONALLY AND WITHOUT GOOD CAUSE OMITTED FROM  
18 THE COMPLAINT.

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

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

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

28           (a) THE CLAIMANT HAS NOT INTENTIONALLY AND WITHOUT GOOD CAUSE FAILED  
29 TO PURSUE ANY PERSON POTENTIALLY LIABLE TO THE CLAIMANT IN THE UNDERLYING  
30 TRANSACTION OTHER THAN A DEFENDANT WHO IS THE SUBJECT OF A CRIMINAL  
31 RESTITUTION ORDER.

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

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

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

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

44           (b) THE CLAIMANT HAS COMPLIED WITH ALL OF THE REQUIREMENTS OF THIS  
45 ARTICLE.

1 (c) THE JUDGMENT UNDERLYING THE CLAIM MEETS THE REQUIREMENTS OF THIS  
2 ARTICLE.

3 (d) THE CLAIMANT HAS RECORDED A CERTIFIED COPY OF THE SUPERIOR COURT  
4 JUDGMENT OR TRANSCRIPT OF JUDGMENT PURSUANT TO SECTIONS 33-961 AND 33-962 IN  
5 THE COUNTY IN WHICH THE JUDGMENT WAS OBTAINED AND IN THE COUNTY IN WHICH ALL  
6 JUDGMENT DEBTORS RESIDE AND HAS PROVIDED A COPY OF THE RECORDED JUDGMENT TO  
7 THE SUPERINTENDENT.

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

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

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

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

18 (g) THE CLAIMANT HAS CAUSED A WRIT OF GARNISHMENT TO BE ISSUED TO EACH  
19 KNOWN EMPLOYER OF THE JUDGMENT DEBTOR ASCERTAINED BY THE CLAIMANT, THAT EACH  
20 GARNISHEE DEFENDANT HAS COMPLIED WITH THE RESPECTIVE WRIT AND ANY JUDGMENT OR  
21 ORDER RESULTING FROM THE WRIT AND THAT THE AMOUNT REALIZED FROM ALL JUDGMENTS  
22 AGAINST THE GARNISHEE DEFENDANTS WAS INSUFFICIENT TO SATISFY THE BALANCE DUE  
23 ON THE JUDGMENT.

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

26 (i) ANY AMOUNT RECOVERED OR ANTICIPATED FROM THE JUDGMENT DEBTOR OR  
27 DEBTORS.

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

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

33 (iv) ANY AMOUNT RECOVERED OR ANTICIPATED FROM IN COURT OR OUT OF COURT  
34 SETTLEMENTS.

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

37 F. IF THE CLAIM IS BASED ON A JUDGMENT AGAINST A LOAN ORIGINATOR AND  
38 THE CLAIMANT HAS NOT OBTAINED A JUDGMENT AGAINST THE LOAN ORIGINATOR'S  
39 EMPLOYING MORTGAGE BROKER, MORTGAGE BANKER OR CONSUMER LENDER IF ANY, OR HAS  
40 NOT DILIGENTLY PURSUED THE ASSETS OF THE EMPLOYING MORTGAGE BROKER, MORTGAGE  
41 BANKER OR CONSUMER LENDER THE DEPARTMENT SHALL DENY THE CLAIM FOR FAILURE TO  
42 DILIGENTLY PURSUE THE ASSETS OF ALL OTHER PERSONS LIABLE TO THE CLAIMANT IN  
43 THE TRANSACTION UNLESS THE CLAIMANT DEMONSTRATES, BY CLEAR AND CONVINCING  
44 EVIDENCE, THAT EITHER:

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

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

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

13           H. IF THE SUPERINTENDENT FINDS IT IS LIKELY THAT THE TOTAL REMAINING  
14 LIABILITY OF THE RECOVERY FUND IS INSUFFICIENT TO PAY IN FULL THE VALID  
15 CLAIMS OF ALL AGGRIEVED PERSONS WHO MAY HAVE CLAIMS AGAINST ANY ONE LICENSEE,  
16 THE SUPERINTENDENT MAY PETITION THE COURT TO INITIATE A PRORATION PROCEEDING.  
17 THE COURT SHALL GRANT THE PETITION AND ORDER A HEARING TO DISTRIBUTE THE  
18 TOTAL REMAINING LIABILITY OF THE FUND AMONG THE APPLICANTS IN THE RATIO THAT  
19 THEIR RESPECTIVE CLAIMS BEAR TO THE AGGREGATE OF THE VALID CLAIMS OR IN  
20 ANOTHER MANNER THAT THE COURT DEEMS EQUITABLE. THE SUPERINTENDENT OR ANY  
21 PARTY MAY FILE A PROPOSED PLAN FOR EQUITABLE DISTRIBUTION OF THE AVAILABLE  
22 MONIES. THE DISTRIBUTION OF MONIES SHALL BE AMONG THE PERSONS ENTITLED TO  
23 SHARE THEM, WITHOUT REGARD TO THE ORDER OF PRIORITY IN WHICH THEIR RESPECTIVE  
24 JUDGMENTS MAY HAVE BEEN OBTAINED OR THEIR RESPECTIVE APPLICATIONS MAY HAVE  
25 BEEN FILED. THE COURT MAY REQUIRE ALL APPLICANTS AND PROSPECTIVE APPLICANTS  
26 AGAINST ONE LICENSEE TO BE JOINED IN ONE ACTION IF THE RESPECTIVE RIGHTS OF  
27 ALL THE APPLICANTS TO THE RECOVERY FUND MAY BE EQUITABLY ADJUDICATED AND  
28 SETTLED. THE COURT SHALL NOT INCLUDE IN THE CLAIMS FOR PRORATION THE CLAIM  
29 OF ANY PERSON WHO HAS NOT, WITHIN NINETY DAYS AFTER THE COURT HAS ENTERED THE  
30 ORDER FOR PRORATION, FILED A COMPLAINT WITH THE COURT, SERVED THE LICENSEE  
31 AND PROVIDED WRITTEN NOTICE OF THE CLAIM TO THE SUPERINTENDENT. THE  
32 LIABILITY OF THE FUND ON ANY APPLICATION AFFECTED BY A PRORATION PROCEEDING  
33 IS BASED ON THE LIMITS IN EFFECT ON THE DATE WHEN THE LAST APPLICATION FOR  
34 PAYMENT IS FILED. THE COURT MAY REFUSE TO CONSIDER OR AWARD PRORATED  
35 RECOVERY TO ANY PERSON WHO FAILS TO EXPEDITIOUSLY PROSECUTE A CLAIM AGAINST  
36 THE LICENSEE OR PROMPTLY FILE AN APPLICATION FOR PAYMENT AND SUBMIT  
37 SUPPORTING DOCUMENTATION AS REQUIRED BY THIS ARTICLE.

38           I. IF, AT ANY TIME, THE MONEY DEPOSITED IN THE MORTGAGE RECOVERY FUND  
39 IS INSUFFICIENT TO SATISFY ANY DULY AUTHORIZED CLAIM OR PORTION OF A CLAIM,  
40 THE SUPERINTENDENT, WHEN SUFFICIENT MONEY HAS BEEN DEPOSITED IN THE MORTGAGE  
41 RECOVERY FUND, SHALL SATISFY THE UNPAID CLAIMS OR PORTIONS OF CLAIMS, IN THE  
42 ORDER THAT THE CLAIMS OR PORTIONS OF CLAIMS WERE ORIGINALLY FILED, PLUS  
43 ACCUMULATED INTEREST AT THE RATE OF FOUR PER CENT A YEAR.

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

1           6-991.12. Notice of claim to judgment debtor: response

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

7                                 NOTICE

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

12                         IF YOU WISH TO CONTEST PAYMENT FROM THE MORTGAGE RECOVERY  
13 FUND, YOU MUST FILE A WRITTEN RESPONSE TO THE APPLICATION. THE  
14 SUPERINTENDENT OF FINANCIAL INSTITUTIONS MUST RECEIVE YOUR  
15 RESPONSE AT (ADDRESS) WITHIN THIRTY-FIVE CALENDAR DAYS AFTER THE  
16 DATE THIS NOTICE IS (MAILED, DELIVERED, FIRST PUBLISHED). YOU  
17 MUST ALSO SEND A COPY OF THE RESPONSE TO THE CLAIMANT. IF YOU  
18 FAIL TO RESPOND AS REQUIRED, YOU WAIVE YOUR RIGHT TO PRESENT  
19 YOUR OBJECTIONS TO PAYMENT.

20           B. IF THE JUDGMENT DEBTOR HOLDS A CURRENT LICENSE ISSUED BY THE  
21 DEPARTMENT, THE NOTICE AND COPY OF THE APPLICATION MAY BE SERVED BY CERTIFIED  
22 MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO THE JUDGMENT DEBTOR'S LATEST  
23 BUSINESS OR RESIDENCE ADDRESS ON FILE WITH THE DEPARTMENT. IF THE JUDGMENT  
24 DEBTOR DOES NOT HOLD A CURRENT LICENSE AND IF PERSONAL DELIVERY CANNOT BE  
25 EFFECTED BY EXERCISING REASONABLE DILIGENCE, THE CLAIMANT MUST PUBLISH THE  
26 NOTICE ONCE A WEEK FOR TWO CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL  
27 CIRCULATION IN THE COUNTY IN WHICH THE JUDGMENT DEBTOR WAS LAST KNOWN TO  
28 RESIDE.

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

34           6-991.13. Correction of deficiencies in the application

35           A. IF THE SUPERINTENDENT DETERMINES THAT A CLAIMANT'S APPLICATION  
36 FAILS TO COMPLY SUBSTANTIALLY WITH THE REQUIREMENTS OF SECTION 6-991.11 OR  
37 RULES ADOPTED PURSUANT TO THIS ARTICLE, THE SUPERINTENDENT, WITHIN THIRTY  
38 CALENDAR DAYS AFTER RECEIVING THE APPLICATION, SHALL MAIL AN ITEMIZED LIST OF  
39 DEFICIENCIES TO THE CLAIMANT. FOR THE PURPOSES OF THIS SUBSECTION, "COMPLY  
40 SUBSTANTIALLY" MEANS FILING WITH THE DEPARTMENT THE DOCUMENTS THAT ARE  
41 MINIMALLY NECESSARY TO PROCESS A CLAIM, INCLUDING AT LEAST A CERTIFIED COPY  
42 OF THE JUDGMENT, LEGIBLE COPIES OF DOCUMENTS ESTABLISHING THE UNDERLYING  
43 TRANSACTION AND AMOUNTS OF LOSSES SUFFERED AND A STATEMENT CONCERNING AMOUNTS  
44 RECOVERED FROM OR ON BEHALF OF THE JUDGMENT DEBTOR.

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

7 C. THE DEADLINE PRESCRIBED BY SECTION 6-991.15 FOR THE SUPERINTENDENT  
8 TO MAKE A DECISION ON THE APPLICATION IS SUSPENDED FROM THE DATE THE  
9 SUPERINTENDENT MAILES THE LIST OF DEFICIENCIES TO THE APPLICANT UNTIL THE DATE  
10 THE DEPARTMENT RECEIVES THE REQUESTED INFORMATION.

11 6-991.14. Investigation and discovery

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

15 6-991.15. Final decision and order on claim; notice

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

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

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

23 3. THE CLAIMANT AGREES IN WRITING TO EXTEND THE TIME FOR MAKING A  
24 DECISION.

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

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

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

37 1. IF THE SUPERINTENDENT DENIES THE APPLICATION, THE NOTICE SHALL  
38 INCLUDE THE FOLLOWING:

39 THE CLAIMANT'S APPLICATION HAS BEEN DENIED. IF THE  
40 CLAIMANT WISHES TO PURSUE THE APPLICATION IN COURT, THE CLAIMANT  
41 MUST FILE THE APPLICATION IN THE COURT IN WHICH THE UNDERLYING  
42 JUDGMENT WAS ENTERED WITHIN SIX MONTHS AFTER RECEIVING THIS  
43 NOTICE, PURSUANT TO SECTION 6-991.16, ARIZONA REVISED STATUTES.

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

5           THE DECISION OF THE SUPERINTENDENT OF FINANCIAL  
6 INSTITUTIONS ON THE CLAIM OF (NAME OF CLAIMANT) IS TO PAY  
7 \$\_\_\_\_\_ FROM THE MORTGAGE RECOVERY FUND. A COPY OF THAT  
8 DECISION AND ORDER IS ENCLOSED. IF YOU DESIRE A JUDICIAL REVIEW  
9 OF THE SUPERINTENDENT'S DECISION AND ORDER OR THE TERMINATION OF  
10 YOUR LICENSES AND LICENSE RIGHTS, YOU MAY PETITION THE SUPERIOR  
11 COURT, IN THE COUNTY IN WHICH THE JUDGMENT THAT IS THE BASIS OF  
12 THIS CLAIM WAS RENDERED, FOR A JUDICIAL REVIEW. TO BE TIMELY,  
13 YOU MUST FILE THE PETITION WITH THE COURT WITHIN THIRTY CALENDAR  
14 DAYS AFTER RECEIVING THIS NOTICE.

15       6-991.16. Claimant's right to appeal denial of claim; service  
16 of notice of appeal; response; failure to file  
17 response

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

24       B. THE CLAIMANT MUST SERVE A COPY OF THE VERIFIED APPLICATION ON THE  
25 SUPERINTENDENT AND ON THE JUDGMENT DEBTOR AND FILE A CERTIFICATE OR AFFIDAVIT  
26 OF SERVICE WITH THE COURT. SERVICE ON THE SUPERINTENDENT SHALL BE MADE BY  
27 CERTIFIED MAIL ADDRESSED TO THE SUPERINTENDENT. SERVICE ON A JUDGMENT DEBTOR  
28 SHALL BE MADE PURSUANT TO SECTION 6-991.12 AND SHALL INCLUDE THE FOLLOWING  
29 NOTICE:

30                               NOTICE

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

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



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

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

8 6-991.17. Superintendent's standing in court

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

14 6-991.18. Subrogation of rights; collection

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

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

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

29 D. THE ATTORNEY GENERAL SHALL BRING ANY ACTIONS TO RECOVER AMOUNTS  
30 PAID FROM THE FUND, INCLUDING INTEREST, ATTORNEY FEES AND COSTS OF  
31 COLLECTION, PURSUANT TO THIS ARTICLE IN THE NAME OF THIS STATE IN THE  
32 SUPERIOR COURT IN THE COUNTY IN WHICH THE VIOLATION OCCURRED OR IN A COUNTY  
33 IN WHICH THE SUPERINTENDENT MAINTAINS AN OFFICE. A CERTIFIED COPY OF A  
34 SUPERINTENDENT'S ORDER REQUIRING PAYMENT FROM THE FUND MAY BE FILED IN THE  
35 OFFICE OF THE CLERK OF THE SUPERIOR COURT. THE CLERK SHALL TREAT THE  
36 SUPERINTENDENT'S ORDER IN THE SAME MANNER AS A JUDGMENT OF THE SUPERIOR  
37 COURT. A SUPERINTENDENT'S ORDER SO FILED HAS THE SAME EFFECT AND MAY BE  
38 RECORDED, ENFORCED OR SATISFIED IN A SIMILAR MANNER, AS A JUDGMENT OF THE  
39 SUPERIOR COURT. NO FILING FEE IS REQUIRED UNDER THIS SUBSECTION.

40 6-991.19. Waiver of rights

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

1           6-991.20. Effect of article on disciplinary action

2           THIS ARTICLE DOES NOT LIMIT THE AUTHORITY OF THE SUPERINTENDENT TO TAKE  
3           DISCIPLINARY ACTION AGAINST ANY LICENSEE FOR A VIOLATION OF THIS CHAPTER OR  
4           OF THE RULES ADOPTED PURSUANT TO THIS CHAPTER. THE REPAYMENT IN FULL OF ALL  
5           OBLIGATIONS TO THE FUND BY ANY LICENSEE DOES NOT NULLIFY OR MODIFY THE EFFECT  
6           OF ANY OTHER DISCIPLINARY PROCEEDING BROUGHT PURSUANT TO THIS CHAPTER OR THE  
7           RULES ADOPTED PURSUANT TO THIS CHAPTER.

8           6-991.21. Financial services fund; use of fund

9           A. THE FINANCIAL SERVICES FUND IS ESTABLISHED CONSISTING OF LOAN  
10          ORIGINATOR FEES COLLECTED PURSUANT TO THIS ARTICLE. THE SUPERINTENDENT SHALL  
11          ADMINISTER THE FUND FOR THE SUPERVISION AND REGULATION OF LOAN ORIGINATORS.

12          B. MONIES DEPOSITED IN THE FINANCIAL SERVICES FUND ARE SUBJECT TO  
13          SECTION 35-143.01.