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Bannister
3/30/09

CS FOR SENATE BILL NO. 149()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION.

BY

Offered:

Referred:

Sponsor(s): SENATORS PASKVAN, Therriault

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the regulation of residential real property mortgage lending,**
2 **including the licensing of mortgage lenders, mortgage brokers, and mortgage loan**
3 **originators and compliance with certain federal laws relating to residential mortgage**
4 **lending; and providing for an effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 *** Section 1.** AS 06.01.050(3) is amended to read:

7 (3) "financial institution" means an institution subject to the regulation
8 of the department under this title; in this paragraph, "institution" includes a
9 commercial bank, savings bank, credit union, premium finance company, small loan
10 company, bank holding company, financial holding company, trust company, savings
11 and loan association, deferred deposit advance licensee under AS 06.50, **and** a
12 licensee under **AS 06.62** [AS 06.60, A SMALL MORTGAGE LENDER UNDER
13 AS 06.60, AND AN ORIGINATOR UNDER AS 06.60 WHO IS EMPLOYED BY
14 OR WORKS UNDER EXCLUSIVE CONTRACT FOR A SMALL MORTGAGE

LENDER; IN THIS PARAGRAPH,

(A) "LICENSEE UNDER AS 06.60" HAS THE MEANING GIVEN TO "LICENSEE" IN AS 06.60.990;

(B) "ORIGINATOR UNDER AS 06.60" HAS THE MEANING GIVEN TO "ORIGINATOR" IN AS 06.60.990;

(C) "SMALL MORTGAGE LENDER UNDER AS 06.60" HAS THE MEANING GIVEN TO "SMALL MORTGAGE LENDER" IN AS 06.60.990];

* **Sec. 2.** AS 06 is amended by adding a new chapter to read:

Chapter 62. Regulation of Mortgage Lending.

Article 1. Regulation of Mortgage Lending.

Sec. 06.62.010. Regulation of mortgage lending. The department shall regulate mortgage lending activities in the state, including licensing and otherwise regulating a person doing business in the state as a mortgage lender, mortgage broker, or mortgage loan originator. In this section, "doing business in the state" includes doing business in the state from a location outside the state or from an Internet website that originates inside or outside the state.

Sec. 06.62.020. Duties of the department. The department shall adopt regulations necessary to implement, interpret, or make specific this chapter, including provisions relating to

(1) licensing of a mortgage lender, mortgage broker, or mortgage loan originator, including submission of fingerprints for criminal history background checks for an applicant or licensee;

(2) examination, investigation, and discipline of a person required to be licensed under this chapter;

(3) competency testing and continuing education requirements for persons required to be licensed under this chapter;

(4) mortgage business duties and restrictions, including refinancing activities and escrow accounts;

(5) compliance with federal requirements, including 12 U.S.C. 5101 - 5116 (Secure and Fair Enforcement for Mortgage Licensing Act of 2008);

(6) compliance with the requirements of the registry for licensing by the state of mortgage lenders, mortgage brokers, and mortgage loan originators;

(7) enforcement of provisions of law relating to mortgage lending, including enforcement by cease and desist orders, censure orders, removal orders, penalty assessments, license suspensions, license revocations, license nonrenewals, rescission orders, disgorgement orders, restitution orders, summary orders, temporary orders, and orders barring persons from certain positions;

(8) bonding requirements, administration of the provisions of AS 06.62.380 - 06.62.470, relating to the mortgage loan originator surety fund, and AS 06.62.480, relating to a program administration fee; and

(9) the assessment of fees and other charges, including fund fees, late payment penalties, and the reimbursement of investigation and examination expenses related to the regulation of mortgage lending activities.

Sec. 06.62.030. Relationship to registry and other agencies. The department may establish relationships or enter into contracts with the registry or other entities designated by the registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

Sec. 06.62.040. Waiver or modification of requirements. For the purpose of participating in the registry, the department may waive or modify, in whole or in part, by regulation or order, any or all of the requirements of this chapter and establish new requirements as reasonably necessary to participate in the registry.

Sec. 06.62.050. Authorization to license. (a) The department shall require mortgage licensees and mortgage loan originators to be licensed and registered through the registry.

(b) The department may participate in the registry and pay the fees required for participation in the registry.

(c) The department may establish by regulation or order requirements for licensees under the registry, as necessary, including

(1) background checks of

(A) criminal history, through fingerprint or other databases;

(B) civil or administrative records;

(C) credit history; or

(D) any other information considered by the registry;

(2) the payment of fees to apply for or renew licenses or take other action relating to licensing through the registry;

(3) the setting or resetting of renewal or reporting dates, as necessary; and

(4) requirements for amending or surrendering a license or for other activities as the department considers necessary for participation in the registry.

Sec. 06.62.060. Registry information challenge process. The department shall establish by regulation a process whereby mortgage licensees and mortgage loan originators may challenge information entered into the registry by the department.

Sec. 06.62.070. Background checks. (a) To apply for licensing as a mortgage loan originator or mortgage licensee, the applicant shall, at a minimum, furnish to the registry information concerning the applicant's identity, including

(1) fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive the information for a state, national, and international criminal history background check; and

(2) personal history and experience in a form prescribed by the registry, and authorization for the registry and the department to obtain

(A) an investigative credit report from a consumer reporting agency; in this subparagraph, "investigative credit report" and "consumer reporting agency" have the meanings given in 15 U.S.C. 1681a (Fair Credit Reporting Act); and

(B) information related to administrative, civil, or criminal findings by a governmental jurisdiction.

(b) For the purposes of this section and to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of (a)(1) and (2)(B) of this section, the department may use the registry as a channeling agent for requesting information from and distributing information to the federal Department of Justice or another governmental agency.

(c) For the purposes of this section and to reduce the points of contact that the

1 department may have to maintain for purposes of (a)(2)(A) and (B) of this section, the
2 department may use the registry as an agent to channel requests and the distribution of
3 information to and from a source as directed by the department.

4 **Sec. 06.62.080. Investigation.** The department shall investigate an applicant
5 for a license to determine if the applicant satisfies the requirements of this chapter for
6 the license subject to renewal by the department.

7 **Sec. 06.62.090. Educational requirements for mortgage loan originators.**
8 (a) Before being licensed as a mortgage loan originator, an individual must complete
9 at least 20 hours of education approved under (b) of this section. At a minimum, the
10 education must include

11 (1) three hours of instruction in federal law and regulations;

12 (2) three hours of ethics instruction, which must include instruction on
13 fraud, consumer protection, and fair lending issues; and

14 (3) two hours of training related to lending standards for the
15 nontraditional mortgage product marketplace.

16 (b) For the purposes of (a) of this section, prelicensing education courses shall
17 be reviewed and approved by the registry based on reasonable standards. Review and
18 approval of a prelicensing education course must include review and approval of the
19 course provider.

20 (c) Nothing in this section precludes a prelicensing education course that is
21 approved by the registry and that is provided by the employer of the applicant, an
22 entity affiliated with the applicant, or a subsidiary or affiliate of an employer or entity
23 affiliated with the applicant.

24 (d) Prelicensing education may be offered in a classroom, online, or by other
25 means approved by the registry.

26 (e) The prelicensing education requirements approved by the registry in (a)(1)
27 - (3) of this section in another state shall be accepted as credit toward completion of
28 prelicensing education requirements in this state.

29 **Sec. 06.62.100. Testing of mortgage loan originators.** (a) Before being
30 licensed as a mortgage loan originator, an individual shall pass, under the standards
31 established by this section, a qualified written test developed by the registry and

1 administered by a test provider approved by the registry based on reasonable
2 standards.

3 (b) A written test shall be treated as a qualified written test for purposes of (a)
4 of this section if the test adequately measures the applicant's knowledge and
5 comprehension in appropriate subject areas, including

6 (1) ethics;

7 (2) federal law relating to mortgage origination;

8 (3) state law relating to mortgage origination;

9 (4) other relevant federal and state law, including law relating to fraud,
10 consumer protection, the nontraditional mortgage marketplace, and fair lending.

11 (c) This section does not prohibit a test provider approved by the registry from
12 providing a test at the location of the employer of the applicant or the location of a
13 subsidiary or affiliate of the employer of the applicant or the location of an entity with
14 whom the applicant holds an exclusive arrangement to conduct the business of a
15 mortgage loan originator.

16 (d) To pass a qualified written test, 75 percent of the questions must be
17 answered correctly.

18 (e) An individual may retake a test three consecutive times, but each
19 consecutive taking must occur at least 30 days after taking the preceding test.

20 (f) After failing three consecutive tests, an individual shall wait at least six
21 months before retaking the test.

22 (g) A licensed mortgage loan originator who fails to maintain a valid license
23 for a period of five years or longer is required to retake the test required by this section
24 before being licensed as a mortgage loan originator, regardless of the amount of time
25 the individual has been a licensed mortgage loan originator.

26 (h) The department may assess a fee for each administration of a qualified
27 written test.

28 **Sec. 06.62.110. Determinations for license issuance.** Before issuing a
29 mortgage license, the department shall determine that

30 (1) the applicant has complied with the requirements of this chapter for
31 obtaining the mortgage license;

(2) the financial responsibility, experience, and general fitness of the applicant and of the applicant's directors, officers, members, owners, and other principals, the character of the applicant and the applicant's directors, officers, members, owners, and other principals, and the organization and operation of the applicant indicate that the business will be operated efficiently and fairly, in the public interest, and under the law; and

(3) the department has not found grounds for denial of a mortgage license under AS 06.62.120.

Sec. 06.62.120. Issuance of license. The department may not issue a mortgage loan originator license unless the department finds, at a minimum, that the applicant

(1) has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that, if a revocation has been formally vacated, the revocation is not considered a revocation under this paragraph;

(2) has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application, if the felony involved an act of fraud or dishonesty, a breach of trust, or money laundering, except that if the applicant has been pardoned for the conviction, the conviction is not considered a conviction under this paragraph;

(3) has demonstrated financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently under this chapter; under this paragraph,

(A) an applicant does not show financial responsibility if the applicant has shown inattention to or neglect of the management of the person's own financial condition;

(B) a determination that an applicant has not shown financial responsibility may include

(i) current outstanding judgments against the applicant, except judgments related solely to a claim related to medical expenses;

(ii) current outstanding tax liens or other government liens and filings against the applicant;

(iii) foreclosures of the applicant's property within the three years preceding the application;

(iv) a pattern by the applicant of seriously delinquent accounts within the three years preceding the application;

(4) has completed the prelicensing education requirement in AS 06.62.090;

(5) has passed a written test that meets the test requirements in AS 06.62.100;

(6) has paid into the fund as required by AS 06.62.400; and

(7) has complied with the requirements of this chapter and paid all fees for obtaining the mortgage loan originator license.

Article 2. License Duration, Renewal, and Surrender.

Sec. 06.62.130. Duration of license. A license issued under this chapter remains in effect until December 31 of the year in which the license is issued, unless the license is revoked, suspended, surrendered, or becomes inactive under this chapter.

Sec. 06.62.140. Renewal of license. (a) If a licensee intends to renew a license, the licensee shall, 30 days before the expiration of the licensee's license, submit to the department

(1) a renewal application in the form and manner established by the department;

(2) the annual license fee;

(3) if the renewal is for a mortgage license,

(A) a report, as required by regulation, identifying any changes in the information provided to the department; and

(B) current information indicating that the mortgage licensee continues to meet the minimum standards for the license issuance;

(4) if the renewal is for a mortgage loan originator license,

(A) a report, as required by regulation, identifying any changes in the information provided to the department;

(B) current information indicating that the mortgage loan originator continues to meet the minimum standards for license issuance;

(C) certificates or other documents that show the mortgage loan originator has satisfied the annual continuing education requirements of AS 06.62.090;

(D) the fund fee required by AS 06.62.400; and

(E) payment of any other required fees for renewal of the license.

Sec. 06.62.150. Standards for license renewal for mortgage loan originators. (a) The minimum standards for license renewal for mortgage loan originators include that

(1) the mortgage loan originator continues to meet the minimum standards for license issuance under AS 06.62.110;

(2) the mortgage loan originator has satisfied the annual continuing education requirements of AS 06.62.160; and

(3) the mortgage loan originator has paid all required fees for renewal of the license;

(b) If a mortgage loan originator licensee fails to satisfy the minimum standards for license renewal, the mortgage loan originator's license expires at the end of the period for which the license was issued. The department may adopt procedures for the reinstatement of expired licenses. The procedures must be consistent with the standards established by the registry.

Sec. 06.62.160. Continuing education requirements for mortgage loan originators. (a) To meet the annual continuing education requirements under AS 06.62.150, a licensed mortgage loan originator shall complete at least eight hours of education approved under (b) of this section. At a minimum, these hours must include

(1) three hours of instruction in federal law and regulations;

(2) two hours of ethics instruction, which must include instruction on fraud, consumer protection, and fair lending issues; and

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For the purposes of (a) of this section, continuing education courses shall

1 be reviewed and approved by the registry based on reasonable standards. Review and
2 approval of a continuing education course must include review and approval of the
3 course provider.

4 (c) Nothing in this section precludes an education course that is approved by
5 the registry and that is provided by the employer of the applicant, an entity affiliated
6 with the applicant, or a subsidiary or affiliate of an employer or entity affiliated with
7 the applicant.

8 (d) Continuing education may be offered in a classroom, online, or by other
9 means approved by the registry.

10 (e) A licensed mortgage loan originator

11 (1) except as provided by (i) of this section and AS 06.62.150(b), may
12 only receive credit for a continuing education course in the calendar year in which the
13 course is taken; and

14 (2) may not retake an approved course that the mortgage loan
15 originator has passed in the same or successive years to meet the annual requirements
16 for continuing education.

17 (f) A licensed mortgage loan originator who is an approved instructor of an
18 approved continuing education course may receive credit for the licensed mortgage
19 loan originator's own annual continuing education requirement at the rate of two hours
20 credit for each one hour taught.

21 (g) Successful completion of the education requirements approved by the
22 registry in (a)(1) - (3) of this section in another state shall be accepted as credit
23 towards completion of continuing education requirements in this state.

24 (h) Before a new or renewed license may be issued to a licensed mortgage
25 loan originator who has become unlicensed, the mortgage loan originator shall
26 complete the continuing education requirements for the last calendar year in which the
27 mortgage loan originator's license was valid.

28 (i) A person meeting the requirements of AS 06.62.150, other than the
29 continuing education requirement of AS 06.62.150(a)(2), may make up a deficiency in
30 continuing education in a manner established by regulation.

31 **Sec. 06.62.170. Surrender of license.** (a) A licensee may voluntarily surrender

1 a license issued to the licensee by delivering written notice to the department that the
2 licensee intends to surrender the license, except that a mortgage licensee may not
3 voluntarily surrender a license until all loans of that mortgage licensee have been paid
4 in full or sold.

5 (b) A licensee shall surrender a license issued to the licensee if the licensee
6 has not engaged in mortgage loan activity for 12 consecutive months.

7 (c) Surrender of a license under this section does not affect the licensee's civil
8 or criminal liability for acts committed before surrender of the license.

9 **Article 3. Licensee Obligations.**

10 **Sec. 06.62.180. Annual report.** (a) Each year, on or before a date established
11 by the department by regulation, a mortgage licensee shall file a report with the
12 department providing relevant information that the department requires concerning the
13 business and operations of the mortgage licensee. The content and form of the report
14 shall be established by the department by regulation.

15 (b) Each mortgage licensee shall submit to the registry reports of the condition
16 of the licensee, which must be in the form and contain the information that the registry
17 may require.

18 (c) A mortgage licensee who fails to file a report required by this section is
19 subject to a civil penalty of \$25 for each day's failure to file the report.

20 **Sec. 06.62.190. Records of mortgage licensee.** (a) The requirements of this
21 section apply to the business transactions of a mortgage licensee that occur entirely or
22 partially in this state.

23 (b) A mortgage licensee shall keep and use, in the mortgage licensee's
24 business accounting, records that are in accord with generally accepted accounting
25 principles.

26 (c) A mortgage licensee shall maintain a record of the account of each
27 borrower and for each mortgage loan and mortgage loan application related to the
28 purchase or refinancing of an existing mortgage loan. This record must contain all
29 documents, work papers, electronic correspondence, and forms that are produced or
30 prepared for the mortgage loan by the mortgage licensee. The mortgage licensee shall
31 retain each document, work paper, electronic correspondence, and form for 36 months

1 after the date it was created.

2 (d) A mortgage licensee shall retain for at least three years after final payment
3 is made on a mortgage loan, or three years after a mortgage loan is sold, whichever
4 event occurs first, the original contract for the mortgage licensee's compensation,
5 copies of the note, settlement statement, and truth-in-lending disclosure, an accounting
6 of fees received in connection with the loan, and other papers and records relating to
7 the loan that may be required by department order or regulation.

8 (e) If a mortgage licensee conducts business as a mortgage loan servicing
9 agent for mortgage loans that the mortgage licensee owns, or as an agent for other
10 mortgage lenders or investors, the mortgage licensee shall, in addition to complying
11 with (b) and (c) of this section, maintain a record for each mortgage loan serviced. The
12 record of each mortgage loan must include the amount of the mortgage loan, the total
13 amount of interest and finance charges on the mortgage loan, the interest rate on the
14 mortgage loan, the amount of each payment to be made on the mortgage loan, a
15 description of the collateral taken for the mortgage loan, a history of all payments
16 received by the mortgage licensee on the mortgage loan, a detailed history of the
17 amount of each payment that is applied to the reduction of the mortgage loan
18 principal, the interest that accrues on the mortgage loan, any other fees and charges
19 that are related to the mortgage loan, and any other papers required by law, department
20 order, or regulation. The mortgage licensee shall retain the record required by this
21 subsection for three years after the loan is sold to another mortgage loan servicing
22 agent or after the mortgage loan is satisfied, whichever event occurs first.

23 (f) In this section, "mortgage loan servicing agent" means a person who acts
24 on behalf of the owner of a mortgage loan to collect payments on the mortgage loan
25 and to enforce the terms of the mortgage loan.

26 **Sec. 06.62.200. Availability of out-of-state records.** A mortgage licensee
27 who operates an office or other place of business outside this state shall, at the request
28 of the department,

29 (1) make the records of the office or place of business available to the
30 department at a location in this state; or

31 (2) reimburse the department for reasonable costs, as provided in

AS 06.62.297, incurred by the department in conjunction with an investigation or examination conducted at the office or place of business.

Sec. 06.62.210. Restriction on mortgage loan originator licensee's work. A mortgage loan originator licensee may not work as a mortgage loan originator licensee unless the mortgage loan originator licensee works under contract for, or as an employee of, one mortgage licensee.

Sec. 06.62.220. Restrictions on mortgage licensee's performance of mortgage loan originator activities. A mortgage licensee may not perform mortgage loan originator activities unless the mortgage licensee performs the activities through a licensed mortgage loan originator who is an employee of or under exclusive contract with a mortgage licensee.

Sec. 06.62.230. Mortgage licensee's employment of, contract with, and liability for mortgage loan originator. (a) A mortgage licensee may not employ or enter into a contract with a person who acts as a mortgage loan originator for the mortgage licensee unless the person has a mortgage loan originator license.

(b) A mortgage licensee is liable for the conduct of a person acting as a mortgage loan originator if the mortgage licensee knows or should have known that the person's conduct violates this chapter and the person is employed by or is under contract with the mortgage licensee to act as a mortgage loan originator.

Article 4. Discipline and Investigation.

Sec. 06.62.240. Disciplinary action. (a) In addition to any other disciplinary action allowed under this chapter or under AS 06.01, the department may, under AS 44.62 (Administrative Procedure Act),

(1) deny, suspend, revoke, condition, or decline to renew a license or take other disciplinary action against a licensee, including action under AS 06.01 or a regulation adopted under this chapter or AS 06.01, if the department finds that

(A) the licensee or applicant failed to comply with an applicable provision of this title, an applicable regulation adopted under this title, a lawful demand, ruling, order, or requirement of the department, or other state or federal law applicable to the conduct of the licensee's business;

(B) the licensee has, with respect to a mortgage loan

transaction,

(i) made a material misrepresentation;

(ii) made a false promise;

(iii) engaged in a serious course of misrepresentation or made a false promise through another licensee;

(iv) engaged in conduct that is fraudulent or dishonest;

(v) procured, or helped another person to procure, a license by deceiving the department;

(vi) engaged in conduct of which the department did not have knowledge when the department issued the license, if the conduct demonstrates that the licensee is not fit to engage in the activities for which the licensee was licensed; or

(vii) authorized, directed, planned, or aided in the publishing, distribution, or circulation of a materially false statement or a material misrepresentation concerning the licensee's business or concerning mortgage loans originated in the course of the licensee's business in this or another state;

(2) deny, suspend, revoke, condition, or decline to renew a license if an applicant, or licensee fails to meet the minimum standards for issuance and renewal of a license or knowingly withholds information or makes a material misstatement in an application for or renewal of a license.

(b) The department may

(1) order restitution against persons subject to this chapter for violations of this chapter;

(2) impose fines on persons subject to this chapter under AS 06.62.350 or AS 06.01.035;

(3) issue orders as follows:

(A) order a person subject to this chapter to stop conducting business, including an immediate temporary order to stop;

(B) order or direct a person subject to this chapter to stop violating this chapter, including an immediate temporary order to stop;

(C) enter an immediate temporary order to cease business under a license or interim license if the department determines that a license was erroneously granted or a licensee is currently in violation of this chapter;

(D) order other affirmative action that the department considers necessary.

(c) In addition to the bases for disciplinary action under (a) of this section, the department may revoke the license of a licensee if the department finds that

(1) the licensee's license has, at any time, been revoked in a governmental jurisdiction, except that, if a revocation has been formally vacated, the revocation is not considered a revocation under this paragraph;

(2) has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court while licensed under this chapter or at any time if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering, except that if the licensee was pardoned for the conviction, the conviction is not considered a conviction under this paragraph.

(d) A person whose license is revoked under this section is not qualified to receive a new license until the person provides proof acceptable to the department that the person has been unconditionally discharged from the conviction. In this subsection, "unconditionally discharged" has the meaning given to "unconditional discharge" in AS 12.55.185.

(e) A disciplinary action under this section may be taken by itself or in conjunction with one or more other disciplinary actions under this chapter.

Sec. 06.62.250. Suspension or revocation related to fund. (a) When an award is made from the fund, the department may suspend, revoke, or decline to renew the license of the mortgage loan originator licensee whose actions formed the basis of the award.

(b) The department shall lift a suspension made under (a) of this section if the mortgage loan originator licensee reaches an agreement with the department on terms and conditions for the repayment to the fund of the money awarded to the claimant and the costs of hearing the fund claim. The department may reimpose the suspension if the mortgage loan originator licensee violates the terms of a repayment agreement

1 entered into under this subsection.

2 **Sec. 06.62.260. Divestment.** If the department revokes a mortgage license, the
3 mortgage licensee shall divest itself of all outstanding loans that were issued under this
4 chapter by selling or assigning them to another mortgage licensee. Divestment under
5 this section must be approved by the department.

6 **Sec. 06.62.270. Reinstatement.** The department may reinstate a revoked
7 license if the licensee complies with this chapter or with a demand, ruling, or
8 requirement made by the department under this chapter. Before reinstatement of a
9 license, the licensee shall pay any fees, restitution, and civil penalties owing under this
10 chapter.

11 **Sec. 06.62.280. Revocation, removal, or suspension of mortgage loan**
12 **originator licensee.** If the department finds that a mortgage loan originator licensee is
13 dishonest, reckless, or incompetent when operating as a mortgage loan originator or
14 fails to comply with applicable law, with regulations or orders of the department, or
15 with written requirements or instructions of the department relating to the mortgage
16 loan originator licensee, the department may revoke or suspend the mortgage loan
17 originator license, remove the mortgage loan originator licensee from operating as a
18 mortgage loan originator in the state, or order a person licensed under this title to
19 remove the mortgage loan originator licensee from operating as a mortgage loan
20 originator for the person.

21 **Sec. 06.62.290. Removal by entity.** A mortgage licensee shall remove a
22 mortgage loan originator licensee from acting as a mortgage loan originator for the
23 mortgage licensee if the department directs the mortgage licensee to remove the
24 mortgage loan originator licensee under AS 06.62.280.

25 **Sec. 06.62.293. Publication of disciplinary action.** The department may
26 release for publication on the Internet and in the area where a person who is required
27 to be licensed under this chapter operates as a mortgage lender, mortgage broker, or
28 mortgage loan originator a notice of disciplinary action taken by the department
29 against the person.

30 **Sec. 06.62.295. Department list.** The department may make available to the
31 public a list of all persons who are licensed under this chapter and who have been

1 censured, who have been barred from holding a position, or who have had their
2 licenses suspended or revoked under this chapter. The department shall update the list
3 on a monthly basis.

4 **Sec. 06.62.297. Investigation and examination authority.** (a) For the purpose
5 of initial licensing, license renewal, license suspension, license conditioning, license
6 revocation, license termination, or general or specific inquiry or investigation to
7 determine compliance with this chapter, the department may access, receive, and use
8 any books, accounts, records, files, documents, information, or evidence, including

9 (1) criminal, civil, and administrative history information, including
10 nonconviction information; in this paragraph, "nonconviction information" has the
11 meaning given in AS 12.62.900;

12 (2) personal history and experience information, including
13 investigative credit reports obtained from a consumer reporting agency; in this
14 paragraph, "investigative credit report" and "consumer reporting agency" have the
15 meanings given in 15 U.S.C. 1861a (Fair Credit Reporting Act); and

16 (3) other documents, information, and evidence the department
17 considers relevant to the inquiry or investigation, regardless of the location,
18 possession, control, or custody of the documents, information, or evidence.

19 (b) Notwithstanding AS 06.01.015, for the purpose of investigating violations
20 or complaints arising under this chapter, or for the purpose of examination, the
21 department may review, investigate, or examine an applicant, licensee, or another
22 individual or person subject to this chapter as often as necessary to carry out the
23 purposes of this chapter.

24 (c) The department may direct, subpoena, or order the attendance of and
25 examine under oath all persons whose testimony may be required about the loans or
26 the business or subject matter of an examination or investigation, and may direct,
27 subpoena, or order the persons to produce books, accounts, records, files, and other
28 documents the department considers relevant to the examination or investigation.

29 (d) A licensee, individual, or other person subject to this chapter shall make
30 available to the department, on request, the place of business, books, records,
31 accounts, safes, and vaults relating to the operations of the licensee, individual, or

1 other person subject to this chapter. The department may interview the officers,
2 principals, mortgage loan originators, employees, independent contractors, agents, and
3 customers of the licensee, individual, or other person subject to this chapter
4 concerning the licensee's, individual's, or other person's business. The department may
5 conduct the examination without prior notice to the licensee.

6 (e) If a person refuses to comply with a subpoena, the superior court, on
7 application by the department, may issue to the person an order requiring the person to
8 appear before the department to produce documentary evidence or to give evidence
9 touching the matter under investigation or in question.

10 (f) A licensee, individual, or other person subject to this chapter shall make or
11 compile reports or prepare other information as directed by the department to carry out
12 the purposes of this section, including

13 (1) accounting compilations;

14 (2) information lists and data concerning loan transactions in a format
15 prescribed by the department; and

16 (3) other information considered necessary to carry out the purposes of
17 this section.

18 (g) In making an examination or investigation authorized by this chapter, the
19 department may control access to documents and records of the licensee, individual, or
20 other person under examination or investigation. The department may take possession
21 of the documents and records or place a person in exclusive charge of the documents
22 and records in the place where they are usually kept. During the period of control, an
23 individual or person may not remove or attempt to remove any of the documents and
24 records except under a court order or with the consent of the department. Unless the
25 department has reasonable grounds to believe the documents or records of the licensee
26 have been or are at risk of being altered or destroyed for purposes of concealing a
27 violation of this chapter, the licensee or owner of the documents and records shall
28 have access to the documents or records as necessary to conduct its ordinary business
29 affairs.

30 (h) To carry out the purposes of this section, the department may

31 (1) retain attorneys, accountants, or other professionals and specialists

1 as examiners, auditors, or investigators to conduct or assist in the conduct of
2 examinations or investigations;

3 (2) enter into agreements or relationships with other government
4 officials or regulatory associations to improve efficiency and reduce the regulatory
5 burden by sharing resources, standardized or uniform methods or procedures, and
6 documents, records, information, and evidence obtained under this section;

7 (3) use, hire, contract, or employ publicly or private analytical systems,
8 methods, or software to examine or investigate the licensee, individual, or other person
9 subject to this chapter;

10 (4) accept and rely on examination or investigation reports made by
11 other government officials in this or another state; or

12 (5) accept audit reports made by an independent certified public
13 accountant for the licensee, individual, or other person subject to this chapter in the
14 course of that part of the examination covering the same general subject matter as the
15 audit and incorporate the audit report in the report of the examination, report of
16 investigation, or other writing of the department.

17 (i) The authority of this section remains in effect, whether or not a licensee,
18 individual, or other person subject to this chapter acts or claims to act under a
19 licensing or registration law of this state, or claims to act without the authority.

20 (j) A licensee, individual, or other person subject to investigation or
21 examination under this section may not knowingly withhold, abstract, remove,
22 mutilate, destroy, or secrete any books, records, computer records, or other
23 information.

24 (k) A person shall reimburse the department for reasonable costs incurred by
25 the department to conduct an examination or investigation under this section. The
26 reimbursement under this subsection may not exceed the rate of \$75 an hour for the
27 examination, plus travel costs, including a per diem allowance that does not exceed the
28 per diem allowance for employees of the state under AS 39.20.110.

29 **Sec. 06.62.300. Report to registry.** Notwithstanding AS 06.01.025, the
30 department shall regularly report violations of this chapter, as well as enforcement
31 actions and other relevant information, to the registry, subject to the confidentiality

provisions of AS 06.62.500.

Article 5. Duties and Restrictions.

Sec. 06.62.310. False, misleading, or deceptive advertising prohibited. A person may not advertise, print, display, publish, distribute, broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner a statement or representation with regard to the rates, terms, or conditions for a mortgage loan that is false, misleading, or deceptive.

Sec. 06.62.320. Compliance with federal requirements. A person subject to this chapter shall conduct the person's mortgage loan activities in compliance with the following federal statutes and with 12 CFR Part 226 and other regulations adopted by the federal government under the following federal statutes:

- (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of 1974);
- (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);
- (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);
- (4) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit Protection Act);
- (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968); and
- (6) any other federal law or regulation, including 12 U.S.C. 5101 - 5116 (Secure and Fair Enforcement for Mortgage Licensing Act of 2008), if the primary purpose of the law or regulation is to regulate residential mortgage lending.

Sec. 06.62.330. Prohibited activities. In addition to activities prohibited elsewhere in this chapter or by other law, a person who is a licensee, a person who is required to be licensed under this chapter, and a person who is licensed under AS 06.20 may not

- (1) misrepresent or conceal material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower to enter into a mortgage loan transaction;
- (2) pursue a course of misrepresentation through an agent;
- (3) directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud a person;

- 1 (4) engage in any unfair or deceptive practice toward any person;
- 2 (5) obtain property by fraud or misrepresentation;
- 3 (6) solicit or enter into a contract with a borrower that provides, in
- 4 substance, that the person subject to this chapter may earn a fee or commission
- 5 through using the person's best efforts to obtain a loan, even though a loan is not
- 6 actually obtained for the borrower;
- 7 (7) solicit, advertise, or enter into a contract for specific interest rates,
- 8 points, or other financing terms unless the terms are actually available at the time of
- 9 soliciting, advertising, or contracting;
- 10 (8) conduct a business covered by this chapter without holding a valid
- 11 license as required under this chapter, or assist a person in the conduct of business
- 12 under this chapter without a valid license as required under this chapter;
- 13 (9) fail to make disclosures as required by this chapter or by another
- 14 applicable state or federal law, including regulations adopted under the law;
- 15 (10) fail to comply with this chapter or regulations adopted under this
- 16 chapter or fail to comply with another state or federal law, including regulations
- 17 adopted under the law, applicable to a business authorized or conducted under this
- 18 chapter;
- 19 (11) make, in any manner, a false or deceptive statement or
- 20 representation;
- 21 (12) negligently make a false statement or knowingly and wilfully omit
- 22 a material fact in connection with information or reports filed with a governmental
- 23 agency or the registry or in connection with an investigation conducted by the
- 24 department or another governmental agency;
- 25 (13) make a payment, threat, or promise, directly or indirectly, to a
- 26 person for the purposes of influencing the independent judgment of the person in
- 27 connection with a mortgage loan, or make a payment, threat, or promise, directly or
- 28 indirectly, to an appraiser of a property, for the purpose of influencing the independent
- 29 judgment of the appraiser with respect to the value of the property;
- 30 (14) collect, charge, attempt to collect, attempt to charge, or use or
- 31 propose an agreement purporting to collect or charge a fee prohibited by this chapter;

1 (15) cause or require a borrower to obtain property insurance coverage
2 in an amount that exceeds the replacement cost, as established by the property insurer,
3 of the improvements;

4 (16) improperly refuse to issue a satisfaction of a mortgage loan;

5 (17) fail to account for or deliver to a person money, a document, or
6 another thing of value obtained in connection with a mortgage loan, including money
7 provided for a real estate appraisal or a credit report if the person is not entitled to
8 retain the money under the circumstances;

9 (18) pay, receive, or collect, in whole or in part, a commission, fee, or
10 other compensation for brokering a mortgage loan in violation of this chapter,
11 including a mortgage loan brokered by an unlicensed person;

12 (19) fail to disburse money in accordance with a written commitment
13 or agreement to make a mortgage loan;

14 (20) engage in a transaction, practice, or course of business that is not
15 engaged in by the person in good faith or fair dealing or that constitutes a fraud on a
16 person in connection with the brokering, making, purchase, or sale of a mortgage loan;

17 (21) influence or attempt to influence, through coercion, extortion, or
18 bribery, the development, reporting, result, or review of a real estate appraisal sought
19 in connection with a mortgage loan; this paragraph does not prohibit a person from
20 asking an appraiser to

21 (A) consider additional appropriate property information;

22 (B) provide further detail, substantiation, or explanation for the
23 appraiser's value determination; or

24 (C) correct errors in the appraisal report;

25 (22) make a false or misleading statement in a mortgage loan
26 commitment or prequalification letter, or omit relevant information or conditions in a
27 loan commitment or prequalification letter, that the person knew or reasonably should
28 have known from a preliminary examination of the borrower's loan application, credit
29 report, assets, and income, unless the borrower made a false or misleading statement
30 or omitted relevant information in the loan application that the person relied on when
31 issuing the loan commitment or prequalification letter;

(23) engage in a practice or course of business in which the ultimate rates, terms, or costs of mortgage loans are materially worse for the borrower than they are represented to be in the first good faith estimates the person provides to the borrower, unless

(A) the person's generally published or advertised rates, terms, or costs, if any, change for a borrower's loan program; or

(B) new or changed information from the borrower makes it necessary to change the loan program offered to the borrower;

(24) represent that the person has a license, registration, title, certification, sponsorship, approval, status, affiliation, or connection that the person does not have;

(25) engage in unfair, deceptive, or fraudulent advertising.

Sec. 06.62.335. Prohibition regarding certain activities. An individual engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

Sec. 06.62.340. Criminal penalties. (a) The department may report violations under (b) – (e) of this section to the attorney general, who may take action to enforce the criminal penalties provided in (b) – (e) of this section.

(b) A person who knowingly provides false or misleading information to the department that is material under this chapter is guilty of a class A misdemeanor.

(c) A person who is required to be licensed under this chapter and who knowingly fails to account for or deliver to a person money, deposits, or checks or other forms of negotiable instruments in violation of this chapter is guilty of a class A misdemeanor.

(d) A person who is required to be licensed under this chapter and who knowingly fails to disburse money belonging to a borrower without just cause is guilty of a class A misdemeanor.

(e) Unless the person is exempt from licensing under this chapter, a person

1 who knowingly does business in this state as a mortgage lender, mortgage broker, or
2 mortgage loan originator without a license issued under this chapter is guilty of a class
3 A misdemeanor.

4 **Sec. 06.62.350. Civil penalty.** (a) The department may impose a civil penalty
5 on

6 (1) a mortgage loan originator if the department finds, on the record
7 after notice and opportunity for hearing under AS 44.62 (Administrative Procedure
8 Act), that the mortgage loan originator has violated or failed to comply with a
9 requirement of this chapter or a regulation adopted or order issued under this chapter;

10 (2) a person who violates this chapter, a regulation adopted under this
11 chapter, or an order issued under this chapter.

12 (b) The civil penalty under (a) of this section may not exceed \$10,000 for each
13 violation or failure to comply.

14 **Sec. 06.62.355. Remedies not exclusive.** The remedies provided by this
15 chapter are not exclusive and may be sought in combination with other remedies
16 available under law to enforce this chapter.

17 **Sec. 06.62.360. Unfair trade practices and consumer protection.** (a) This
18 chapter may not be interpreted to prevent the attorney general or any other person
19 from exercising the rights provided under AS 45.50.471 - 45.50.561.

20 (b) If the department determines that a licensee or a person acting on behalf of
21 the licensee is in violation of, or has violated, a provision of this chapter or the
22 regulations adopted under this chapter, the department may refer the information to the
23 attorney general and request that the attorney general investigate the violation under
24 AS 45.50.495. The attorney general may enjoin a violation of this chapter and may
25 seek restitution, rescission, and other relief as allowed by law.

26 **Sec. 06.62.370. Other investigations.** In addition to another investigation
27 allowed under this chapter, the department may conduct other examinations, periodic
28 audits, special audits, investigations, and hearings as may be necessary and proper for
29 the efficient administration of this chapter.

30 **Sec. 06.62.375. Authority of department.** The department may make a ruling,
31 demand, or finding that the department determines is necessary for the proper conduct

1 of a licensee's business regulated by this chapter or for the enforcement of this chapter,
2 including an order for the payment of restitution. The ruling, demand, or finding must
3 be consistent with this chapter.

4 **Article 6. Mortgage Loan Originator Surety Fund.**

5 **Sec. 06.62.380. Mortgage loan originator surety fund.** The mortgage loan
6 originator surety fund is established as a separate account in the general fund. The
7 purpose of the fund is to pay fund claims against mortgage loan originator licensees.

8 **Sec. 06.62.390. Composition of fund.** The fund consists of appropriations of
9 payments made by mortgage loan originator licensees under AS 06.62.400, filing fees
10 for fund claims, income earned on the investment of the money in the fund, and other
11 money appropriated to the fund.

12 **Sec. 06.62.400. Required fund fees.** A person who applies for or renews a
13 mortgage loan originator license shall pay to the department a fund fee established by
14 the department.

15 **Sec. 06.62.410. Maximum liability.** (a) Payment of a fund claim out of the
16 fund may not exceed \$15,000 for each claimant and \$15,000 for each mortgage loan
17 transaction regardless of the number of persons injured or the number of pieces of
18 residential real property involved in the mortgage loan transaction.

19 (b) The liability of the fund for fund claims against one mortgage loan
20 originator licensee may not exceed \$50,000.

21 (c) If the liability limit under (b) of this section is insufficient to pay in full the
22 valid fund claims of all persons who have filed fund claims regarding one mortgage
23 loan originator licensee, the \$50,000 shall be distributed among the claimants in the
24 ratio that their individual fund claims bear to the aggregate of valid claims against that
25 mortgage loan originator licensee. The department shall distribute the money among
26 the persons entitled to share in the recovery without regard to the order in which their
27 fund claims were filed.

28 **Sec. 06.62.420. Other rights of claimant.** The rights granted to a claimant
29 under AS 06.62.380 - 06.62.470 do not limit any other cause of action the claimant
30 may have against a mortgage loan originator.

31 **Sec. 06.62.430. Election to use small claims court.** (a) Within 30 days after

1 receiving a copy of a fund claim under this chapter, the mortgage loan originator
2 licensee against whom the claim is made may elect to defend the fund claim as a small
3 claims action in district court under District Court Rules of Civil Procedure if the
4 claim does not exceed the small claims jurisdictional limit.

5 (b) A mortgage loan originator licensee who elects under (a) of this section to
6 defend a fund claim in district court under the small claims rules may not revoke the
7 election without the consent of the person who filed the fund claim.

8 (c) On receipt of a valid written election under (a) of this section, the
9 department shall dismiss the fund claim filed with the department and notify the
10 person who filed the fund claim that the fund claim will not be reimbursed by the
11 fund, but that the person who filed the fund claim may bring a small claims action in
12 the appropriate district court.

13 **Sec. 06.62.440. False claims or documents.** A person who knowingly files a
14 notice, statement, or other document under AS 06.62.380 - 06.62.450 that contains a
15 material misstatement of fact is guilty of a class A misdemeanor.

16 **Sec. 06.62.450. Right to subrogation.** When the department has paid fund
17 money to a claimant, the department shall be subrogated to all of the rights of the
18 claimant to the amount paid, and the claimant shall assign all right, title, and interest in
19 that portion of the claim to the department.

20 **Sec. 06.62.460. Claim hearing.** Except as otherwise provided by
21 AS 06.62.430, a hearing on a fund claim shall be handled by the office of
22 administrative hearings (AS 44.64.010).

23 **Sec. 06.62.470. Definition.** In AS 06.62.380 - 06.62.470, "fund claim" means a
24 claim against the fund.

25 **Article 7. Program Administration Fee.**

26 **Sec. 06.62.480. Authorization of program administration fee.** (a) The
27 department may establish and collect a program administration fee for each mortgage
28 loan transaction to reimburse the state for the cost of administering this chapter.

29 (b) The program administration fee shall be paid by a borrower who is
30 providing real property as security for the mortgage loan, except that, if the regulations
31 of a federal or state loan program that insures the loan and that applies to the mortgage

1 loan transaction prohibits the borrower from paying the program administration fee,
2 another party to the mortgage loan transaction shall pay the program administration
3 fee.

4 (c) If there are multiple mortgage loan instruments recorded for a single
5 mortgage loan transaction, the department shall collect only one program
6 administration fee.

7 (d) The program administration fees collected under this section shall be
8 separately accounted for and may be appropriated by the legislature to the department
9 for the operation of this chapter.

10 (e) In this section, "mortgage loan instrument" means a deed of trust,
11 mortgage, or another loan instrument recorded to encumber residential real property in
12 the state.

13 **Article 8. Miscellaneous Provisions.**

14 **Sec. 06.62.500. Confidentiality.** (a) Except as otherwise provided in this
15 section or in 12 U.S.C. 5111, a requirement under federal or state law regarding the
16 privacy or confidentiality of information or material provided to the registry, and a
17 privilege arising under federal or state law, including the rules of a federal or state
18 court, with respect to the information or material, continues to apply to the information
19 or material after the information or material has been disclosed to the registry. The
20 information and material may be shared with all state and federal regulatory officials
21 with mortgage industry oversight authority without the loss of privilege or the loss of
22 confidentiality protections provided by federal and state laws.

23 (b) The department may enter into agreements or sharing arrangements with
24 other governmental agencies, the organizations identified in 12 U.S.C. 5102(5) as the
25 organizations that develop and maintain the registry, and other associations
26 representing governmental agencies in accordance with any applicable regulation or
27 order.

28 (c) Information or material that is subject to a privilege or confidentiality
29 under (a) of this section is not subject to

30 (1) disclosure under a federal or state law governing the disclosure to
31 the public of information held by an officer or an agency of the federal government or

1 the respective state; or

2 (2) subpoena or discovery, or admission into evidence, in a private
3 civil action or administrative process, unless, with respect to a privilege held by the
4 registry with respect to the information or material, the person to whom the
5 information or material pertains waives, in whole or in part, in the discretion of the
6 person, that privilege.

7 (d) A state law, including AS 40.25.100 - 40.25.220 and a comparable law of
8 another state, relating to the disclosure of confidential supervisory information and
9 information or material described in (a) of this section that is inconsistent with (a) of
10 this section is superseded by the requirements of (a) of this section to the extent state
11 law provides less confidentiality or a weaker privilege.

12 (e) This section does not apply to the information or material relating to the
13 employment history of and publicly adjudicated disciplinary and enforcement actions
14 against mortgage loan originators that is included in the registry for access by the
15 public.

16 **Sec. 06.62.510. Liability.** A state official or agency or an employee of a state
17 agency is not subject to a civil action or proceeding for monetary damages because of
18 the good faith action or omission of an officer or employee of the agency, while acting
19 within the scope of office or employment, relating to the collection, furnishing, or
20 dissemination of information concerning persons who are mortgage loan originators or
21 are applying for licensing as mortgage loan originators.

22 **Sec. 06.62.520. Effect of revocation, suspension, or surrender of license.**
23 The revocation, suspension, or surrender of a license does not impair or otherwise
24 affect the rights or obligations of a preexisting lawful contract between the licensee
25 and a borrower.

26 **Sec. 06.62.530. Untrue, misleading, or false statements.** A person may not,
27 in a document filed with the department or in an examination, an investigation, a
28 hearing, or another proceeding under this chapter, make or cause to be made an untrue
29 statement of a material fact, or fail to state a material fact necessary to make the
30 statement made, in the light of the circumstances under which it is made, not
31 misleading or false.

Article 9. General Provisions.

Sec. 06.62.900. Definitions. In this chapter, unless the context otherwise requires,

(1) "department" means the Department of Commerce, Community, and Economic Development;

(2) "dwelling" means a residential structure or mobile home that contains one to four family housing units, or the individual units of condominiums or cooperatives;

(3) "fund" means the mortgage loan originator surety fund established under AS 06.62.380;

(4) "fund claim" means a claim against the fund;

(5) "individual" means a natural person;

(6) "knowingly" has the meaning given in AS 11.81.900;

(7) "license" means a license issued under this chapter;

(8) "licensed mortgage loan originator" means a mortgage loan originator who holds a license;

(9) "licensee" means a person who holds a license issued under this chapter;

(10) "loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person required to be licensed or exempt from licensing under this chapter; in this paragraph, "clerical or support duties" includes, subsequent to the receipt of an application,

(A) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage loan; and

(B) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about mortgage loan rates or terms;

(11) "mortgage broker" means a person who, for compensation or gain,

1 or in the expectation of compensation or gain, directly or indirectly, by telephone, by
2 electronic means, by mail, through the Internet, in person, or by the person itself or a
3 mortgage loan originator

4 (A) arranges with a variety of lending sources, who may be
5 private lenders, institutional investors, or wholesale lenders, to provide
6 financing for mortgage loans; or

7 (B) assists or offers to assist a borrower or potential borrower
8 to obtain financing for mortgage loans;

9 (12) "mortgage lender" means a person who consummates and funds a
10 mortgage loan and who is named as the payee in the promissory note and as the
11 beneficiary of the deed of trust; "mortgage lender" does not include a subsequent
12 purchaser for a mortgage loan or an interest in a mortgage loan that is originated by a
13 licensee under this chapter;

14 (13) "mortgage licensee" means a mortgage lender licensee or a
15 mortgage broker licensee;

16 (14) "mortgage loan" means a loan primarily for personal, family, or
17 household use that is secured by a mortgage, deed of trust, or other equivalent
18 consensual security interest on a dwelling or residential real estate on which is
19 constructed or intended to be constructed a dwelling;

20 (15) "mortgage loan originator"

21 (A) means an individual who, for compensation or gain or in
22 the expectation of compensation or gain,

23 (i) takes a mortgage loan application; or

24 (ii) offers or negotiates terms of a mortgage loan;

25 (B) does not include an individual engaged solely as a loan
26 processor or underwriter except as otherwise provided in regulation;

27 (C) does not include a person that only performs real estate
28 brokerage activities and is licensed or registered under applicable state law,
29 unless the person or entity is compensated by a lender, a mortgage broker, or
30 other mortgage loan originator, or by any agent of the lender, mortgage broker,
31 or other mortgage loan originator; in this subparagraph, "real estate brokerage

activity" means an activity that involves offering or providing real estate brokerage services to the public, including

(i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) negotiating, on behalf of a party, a portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction;

(iv) engaging in an activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) offering to engage in an activity, or act in a capacity, described in (i), (ii), (iii), or (iv) of this subparagraph; and

(D) does not include a person solely involved in extensions of credit relating to timeshare plans; in this subparagraph, "timeshare plan" has the meaning given in 11 U.S.C. 101 (Bankruptcy Code);

(16) "mortgage loan originator license" means a license issued to a person to operate as a mortgage loan originator;

(17) "operate" means hold out, do business, offer to provide, or provide; in this paragraph, "hold out" means to represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform an activity for which a license is required under this chapter;

(18) "program administration fee" means the fee described under AS 06.62.480;

(19) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

1 (20) "registry" means the Nationwide Mortgage Licensing System and
2 Registry; in this paragraph, "Nationwide Mortgage Licensing System and Registry"
3 has the meaning given in 12 U.S.C. 5102;

4 (21) "residential real estate" means real property located in the state on
5 which a dwelling is constructed or intended to be constructed;

6 **Sec. 06.62.995. Short title.** This chapter may be cited as the Alaska SAFE
7 Mortgage Licensing Act of 2009.

8 * **Sec. 3.** AS 09.38.065(a) is amended to read:

9 (a) **Notwithstanding** [SUBJECT TO AS 06.60.360(e), AND
10 NOTWITHSTANDING] other provisions of this chapter,

11 (1) a creditor may make a levy against exempt property of any kind to
12 enforce a claim for

13 (A) child support;

14 (B) unpaid earnings of up to one month's compensation or the
15 full-time equivalent of one month's compensation for personal services of an
16 employee; or

17 (C) state or local taxes;

18 (2) a creditor may make a levy against exempt property to enforce a
19 claim for

20 (A) the purchase price of the property or a loan made for the
21 express purpose of enabling an individual to purchase the property and used
22 for that purpose;

23 (B) labor or materials furnished to make, repair, improve,
24 preserve, store, or transport the property; and

25 (C) a special assessment imposed to defray costs of a public
26 improvement benefiting the property; and

27 (3) a creditor may make a levy against exempt property of any kind to
28 enforce the claim of a victim, including a judgment of restitution on behalf of a victim
29 of a crime or a delinquent act, if the claim arises from conduct of the debtor that
30 results in a conviction of a crime or an adjudication of delinquency, except that the
31 debtor is entitled to an exemption in property

1 (A) not to exceed an aggregate value of \$3,000 chosen by the
2 debtor from the following categories of property:

3 (i) household goods and wearing apparel reasonably
4 necessary for one household;

5 (ii) books and musical instruments, if reasonably held
6 for the personal use of the debtor or a dependent of the debtor; and

7 (iii) family portraits and heirlooms of particular
8 sentimental value to the debtor; and

9 (B) not to exceed an aggregate value of \$2,800 of the debtor's
10 implements, professional books, and tools of the trade.

11 * Sec. 4. AS 12.62.400 is amended to read:

12 **Sec. 12.62.400. National criminal history record checks for employment,**
13 **licensing, and other noncriminal justice purposes.** To obtain a national criminal
14 history record check for determining a person's qualifications for a license, permit,
15 registration, employment, or position, a person shall submit the person's fingerprints to
16 the department with the fee established by AS 12.62.160. The department may submit
17 the fingerprints to the Federal Bureau of Investigation to obtain a national criminal
18 history record check of the person for the purpose of evaluating a person's
19 qualifications for

20 (1) a license or conditional contractor's permit to manufacture, sell,
21 offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage
22 under AS 04.11;

23 (2) licensure as a mortgage lender, a mortgage broker, or an originator
24 under AS 06.62 [AS 06.60];

25 (3) admission to the Alaska Bar Association under AS 08.08;

26 (4) licensure as a collection agency operator under AS 08.24;

27 (5) a certificate of fitness to handle explosives under AS 08.52;

28 (6) licensure to practice nursing or certification as a nurse aide under
29 AS 08.68;

30 (7) a position involving supervisory or disciplinary power over a minor
31 or dependent adult for which criminal justice information may be released under

AS 12.62.160(b)(9);

(8) a teacher certificate under AS 14.20;

(9) licensure as a security guard under AS 18.65.400 - 18.65.490;

(10) a concealed handgun permit under AS 18.65.700 - 18.65.790;

(11) licensure as an insurance producer, managing general agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus lines broker, or independent adjuster under AS 21.27;

(12) serving and executing process issued by a court by a person designated under AS 22.20.130;

(13) a school bus driver license under AS 28.15.046;

(14) licensure as an operator or an instructor for a commercial driver training school under AS 28.17;

(15) registration as a broker-dealer, agent, investment adviser representative, or state investment adviser under AS 45.55.030 - 45.55.060.

* **Sec. 5.** AS 12.62.400 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, an applicant for a license under AS 06.62 may submit the applicant's fingerprints to the Nationwide Mortgage Licensing System and Registry. In this section, "Nationwide Mortgage Licensing System and Registry" has the meaning given in 12 U.S.C. 5102(5).

* **Sec. 6.** AS 44.62.330(a)(48) is amended to read:

(48) Department of Commerce, Community, and Economic Development relating to mortgage lending under AS 06.62 [AS 06.60].

* **Sec. 7.** AS 44.64.030(a)(5) is amended to read:

(5) AS 06 (banks, financial institutions, and fund claims), except as provided otherwise by AS 06.62.460 [AS 06.60.590];

* **Sec. 8.** AS 45.50.481(c) is amended to read:

(c) The exemption in (a)(1) of this section does not apply to an act or transaction regulated under AS 06.62 [AS 06.60].

* **Sec. 9.** AS 06.60.010, 06.60.015, 06.60.017, 06.60.020, 06.60.025, 06.60.026, 06.60.027, 06.60.030, 06.60.035, 06.60.040, 06.60.045, 06.60.050, 06.60.060, 06.60.065, 06.60.070, 06.60.075, 06.60.080, 06.60.085, 06.60.090, 06.60.095, 06.60.097, 06.60.100, 06.60.105,

06.60.110, 06.60.115, 06.60.120, 06.60.130, 06.60.135, 06.60.140, 06.60.145, 06.60.150,
06.60.155, 06.60.157, 06.60.159, 06.60.160, 06.60.200, 06.60.210, 06.60.230, 06.60.240,
06.60.250, 06.60.260, 06.60.270, 06.60.280, 06.60.320, 06.60.330, 06.60.340, 06.60.350,
06.60.360, 06.60.370, 06.60.380, 06.60.400, 06.60.410, 06.60.420, 06.60.430, 06.60.440,
06.60.500, 06.60.510, 06.60.520, 06.60.530, 06.60.540, 06.60.550, 06.60.560, 06.60.570,
06.60.580, 06.60.590, 06.60.600, 06.60.610, 06.60.620, 06.60.630, 06.60.640, 06.60.650,
06.60.660, 06.60.670, 06.60.680, 06.60.690, 06.60.700, 06.60.710, 06.60.720, 06.60.730,
06.60.740, 06.60.745, 06.60.750, 06.60.800, 06.60.810, 06.60.850, 06.60.860, 06.60.890,
06.60.895, 06.60.900, 06.60.905, 06.60.910, 06.60.920, 06.60.990, 06.60.995;
AS 09.38.015(e); and AS 45.50.471(b)(52) are repealed.

* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: EXISTING LICENSES ISSUED UNDER FORMER AS 06.60. (a) Except as provided by (c) and (d) of this section, a person holding a valid license issued under former AS 06.60 as of July 1, 2010, may continue to operate under that license until the license expires, is revoked, or is suspended, and AS 06.62, as enacted by sec. 2 of this Act, including its provisions on expiration, renewal, prohibitions, revocation, suspension, and enforcement, apply to the license and to the person's operation under the license.

(b) A person who is not licensed under former AS 06.60 and seeks to be licensed under AS 06.62, enacted by sec. 2 of this Act, may submit an application as directed by the department on or after August 1, 2009.

(c) A person who holds a license under former AS 06.60 shall submit the person's current records to the registry on or after August 1, 2009, and shall complete that submittal process by October 31, 2009.

(d) A person who holds a license under former AS 06.60 has until December 31, 2010, to renew the person's license using the registry.

(e) An individual previously licensed under former AS 06.60 who applies to be licensed as a mortgage loan originator under AS 06.62, enacted by sec. 2 of this Act, after July 1, 2010, shall provide proof to the department that the individual has completed all of the continuing education requirements for the year in which the individual last held the license under former AS 06.60. In this subsection, "mortgage loan originator" has the meaning given

1 in AS 06.62.900, enacted by sec. 2 of this Act.

2 (f) In this section,

3 (1) "AS 06.62" means AS 06.62 and the regulations adopted under AS 06.62;

4 (2) "department" has the meaning given in AS 06.62.900, enacted by sec. 2 of
5 this Act;

6 (3) "registry" has the meaning given in AS 06.62.900 enacted by sec. 2 of this
7 Act.

8 * **Sec. 11.** The uncoded law of the State of Alaska is amended by adding a new section to
9 read:

10 **TRANSITION: REGULATIONS.** The Department of Commerce, Community, and
11 Economic Development may adopt regulations necessary to implement the changes made by
12 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
13 before July 1, 2010.

14 * **Sec. 12.** Section 11 of this Act takes effect immediately under AS 01.10.070(c).

15 * **Sec. 13.** AS 06.62.030, 06.62.040, 06.62.050, 06.62.060, 06.62.070, and 06.62.900,
16 enacted by sec. 2 of this Act, and sec. 10 of this Act take effect July 30, 2009.

17 * **Sec. 14.** Except as provided in secs. 12 and 13 of this Act, this Act takes effect July 1,
18 2010.