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## **An Act To Conform State Mortgage Laws with Federal Laws**

**Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** certain changes to federal mortgage laws and regulations will become effective sooner than 90 days after adjournment; and

**Whereas,** failure to begin implementation of corresponding changes to state laws would result in disruption of mortgage lending in this State; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**Be it enacted by the People of the State of Maine as follows:**

### **PART A**

**Sec. A-1. 9-A MRSA §8-103, sub-§1-A, ¶L,** as enacted by PL 2007, c. 273, Pt. A, §4 and affected by §§37 and 41, is repealed and the following enacted in its place:

L. "Creditor" has the same meaning as set forth in section 1-301, subsection 17, and in addition includes those entities defined as "lender" as set forth in 24 Code of Federal Regulations, Section 3500.2 and includes a mortgage broker.

**Sec. A-2. 9-A MRSA §8-103, sub-§1-A, ¶Q-1** is enacted to read:

Q-1. "Higher-priced mortgage loan" means either:

(1) A residential mortgage loan that is a "nontraditional mortgage" as defined in paragraph T; or

(2) A "rate spread home loan" as defined in paragraph V.

**Sec. A-3. 9-A MRSA §8-103, sub-§1-A, ¶S,** as enacted by PL 2007, c. 273, Pt. A, §4 and affected by §§37 and 41, is amended to read:

S. "Mortgage broker" has the same meaning as set forth in 24 Code of Federal Regulations, Section 3500.2, except as otherwise provided in this Article.

**Sec. A-4. 9-A MRSA §8-103, sub-§1-A, ¶U,** as amended by PL 2007, c. 471, §5 and affected by §18, is repealed and the following enacted in its place:

U. "Points and fees" has the same meaning as set forth in 12 Code of Federal Regulations, Section 226.32(b)(1). In addition, "points and fees" includes:

(1) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents;

(2) All prepayment fees and penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and

(3) All compensation paid directly or indirectly to a mortgage broker from any source, including a mortgage broker that originates a loan in its own name in a table-funded transaction.

For open-end loans, points and fees are calculated by adding the total points and fees known at or before closing, including the maximum prepayment penalties that may be charged or collected under the terms of the loan documents and the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line.

**Sec. A-5. 9-A MRSA §8-103, sub-§1-A, ¶V**, as enacted by PL 2007, c. 273, Pt. A, §4 and affected by §§37 and 41, is amended to read:

V. "Rate spread home loan" means any loan for which the rate spread must be reported under the Home Mortgage Disclosure Act of 1975, Regulation C except that, beginning October 1, 2009, "rate spread home loan" has the same meaning as set forth for "higher-priced mortgage loans" in 12 Code of Federal Regulations, Section 203.4(a)(12); and 226.35(a). In addition, "rate spread home loan" means any loan that meets the criteria of a high-rate, high-fee mortgage.

**Sec. A-6. 9-A MRSA §8-103, sub-§1-A, ¶BB**, as amended by PL 2007, c. 471, §7 and affected by §18, is repealed.

**Sec. A-7. 9-A MRSA §8-104, sub-§1**, as amended by PL 1989, c. 502, Pt. D, §4, is repealed and the following enacted in its place:

1. The administrator shall adopt rules to carry out the purposes of this Article.

A. The rules may contain classifications, differentiations or other provisions, and may provide for those adjustments and exceptions for any class of transactions, that in the judgment of the administrator are necessary or proper to effectuate the purposes of this Article, to prevent circumvention or evasion of this Article and to facilitate compliance with this Article. Rules adopted pursuant to this Article are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

B. The administrator is authorized to adopt rules substantially similar to, or that afford more protection for consumers than, those codified in 12 Code of Federal Regulations, Part 226, except where this Article expressly directs otherwise. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. A-8. 9-A MRSA §8-206, sub-§3**, as amended by PL 2007, c. 273, Pt. A, §5 and affected by §41, is repealed and the following enacted in its place:

3. The following provisions apply to an extension of credit secured by the consumer's dwelling, other than an open-end credit plan:

A. Except as provided in paragraph G, in the case of any extension of credit that is secured by the dwelling of a consumer, which is also subject to the Real Estate Settlement Procedures Act of 1974, 12 United States Code, Section 2601 et seq., good faith estimates of the disclosures required under subsection 1 must be made in accordance with rules of the administrator under section 8-201, subsection 3 and must be delivered or placed in the mail not later than 3 business days after the creditor receives the consumer's bona fide application, which must be at least 7 business days before consummation of the transaction.

B. If the disclosure statement furnished within 3 days of the bona fide application indicates that the consumer will not be assessed a prepayment penalty, and if that statement is subsequently rendered inaccurate, the creditor shall notify the consumer of that change as soon as practicable and shall also furnish a corrected statement prior to the time of settlement or consummation.

C. In the case of an extension of credit that is secured by the dwelling of a consumer, the disclosures provided under paragraph A are in addition to the other disclosures required by subsection 1, and must:

(1) Include in conspicuous type size and format, the following statement: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application."; and

(2) Be provided in the form of final disclosures at the time of consummation of the transaction, in the form and manner prescribed by this section.

D. Beginning December 30, 2010, in the case of an extension of credit that is secured by the dwelling of a consumer, under which the annual rate of interest is variable or with respect to which the regular payments may otherwise be variable, in addition to the other disclosures required by subsection 1, the disclosures provided under this subsection must:

(1) Label the payment schedule as follows: "Payment Schedule: Payments Will Vary Based on Interest Rate Changes."; and

(2) State in conspicuous type size and format examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. Among the examples required to be provided under this subparagraph is an example that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the

contract, in accordance with the rules of the administrator. Prior to issuing any rules pursuant to this subparagraph, the administrator shall review consumer testing conducted by the Board of Governors of the Federal Reserve System to determine the appropriate format for providing the disclosures required under this subparagraph to consumers so that such disclosures can be easily understood, including the fact that the initial regular payments are for a specific time period that will end on a certain date, that payments will adjust afterwards potentially to a higher amount and that there is no guarantee that the borrower will be able to refinance to a lower amount.

E. In any case in which the disclosure statement under paragraph A contains an annual percentage rate of interest that is no longer accurate, as determined under section 8-106, subsection 3, the creditor shall furnish an additional, corrected statement to the borrower, not later than 3 business days before the date of consummation of the transaction.

F. The consumer must receive the disclosures required under this subsection before paying any fee to the creditor or other person in connection with the consumer's application for an extension of credit that is secured by the dwelling of a consumer. If the disclosures are mailed to the consumer, the consumer is considered to have received them 3 business days after they are mailed. A creditor or other person may impose a fee for obtaining the consumer's credit report before the consumer has received the disclosures under this subsection, provided the fee is bona fide and reasonable in amount.

G. To expedite consummation of a transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may waive or modify the timing requirements for disclosures under paragraph A, as long as:

(1) The term "bona fide personal emergency" may be further defined in rules issued by the administrator;

(2) The consumer provides to the creditor a dated, written statement describing the emergency and specifically waiving or modifying those timing requirements, which statement must bear the signature of all consumers entitled to receive the disclosures required by this subsection; and

(3) The creditor provides to the consumer at or before the time of such waiver or modification the final disclosures required by subsection 1.

H. The requirements of paragraphs C to G do not apply to extensions of credit relating to time-share estates as described in Title 33, section 591, subsection 7, or time-share plans as described in 11 United States Code, Section 101(53D).

**Sec. A-9. 9-A MRSA §8-206-C**, as corrected by RR 2007, c. 1, §4, is repealed.

**Sec. A-10. 9-A MRSA §8-206-D**, as amended by PL 2007, c. 471, §§11 and 12 and affected by §18, is repealed.

**Sec. A-11. 9-A MRSA §8-206-E**, as corrected by RR 2007, c. 1, §5, is amended to read:

**§ 8-206-E. Special liability for violations of residential mortgage loan, higher-priced mortgage loan and high-rate, high-fee mortgage loan requirements**

1. This section applies to any violation of section 8-206-A, ~~8-206-C~~8-206-H, 8-206-I or ~~8-206-D~~8-206-J in connection with the origination, brokering or servicing of a residential mortgage loan. This section does not apply to a purchaser or assignee of a residential mortgage loan except as permitted in section ~~8-206-C~~8-206-H, subsection 2.

2. Any person who has been found in violation of section 8-206-A, ~~8-206-C~~8-206-H, 8-206-I or ~~8-206-D~~8-206-J by a court may be liable to the borrower for the following:

A. Actual damages, including consequential and incidental damages. The borrower may not be required to demonstrate reliance in order to receive actual damages;

B. Statutory damages as follows:

(1) For violations described in section ~~8-206-C~~8-206-H, statutory damages equal to 2 times the finance charge paid under the loan and forfeiture of the remaining interest under the loan; and

(2) For violations described in section ~~8-206-D~~8-206-J, statutory damages in the amount of \$5,000 per violation;

C. Punitive damages for violations of section ~~8-206-C~~8-206-H or section ~~8-206-D~~8-206-I, subsection 1, paragraph **BD** when the violation was malicious or reckless; and

D. Costs, including reasonable attorney's fees.

3. A borrower may be granted injunctive, declaratory and other equitable relief the court determines appropriate in an action to enforce compliance with this section and sections 8-206-A, ~~8-206-C~~8-206-H, 8-206-I and ~~8-206-D~~8-206-J.

4. The right of rescission granted under 15 United States Code, Chapter 41, Subchapter I, Part A for a violation of that law is available to a borrower acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a residential mortgage loan at any time during the term of the loan. Any recoupment claim asserted pursuant to this provision is limited to amounts required to reduce or extinguish the borrower's liability under the residential mortgage loan plus amounts required to recover costs, including reasonable attorney's fees. This section may not be construed to limit recoupment rights available to the borrower under any other law.

5. The remedies provided in this section are not intended to be the exclusive remedies available to a borrower, nor must the borrower exhaust any administrative remedies provided under this section or any other applicable law before proceeding under this section.

6. Any person who knowingly violates section 8-206-A or ~~8-206-C~~8-206-H is guilty of a Class E crime.

7. A creditor in a residential mortgage loan who, when acting in good faith, fails to comply with the provisions of section 8-206-A, ~~8-206-C~~8-206-H, 8-206-I or ~~8-206-D~~8-206-J is deemed not to have violated those sections if the creditor establishes that either:

A. Within 30 days of the loan closing and prior to receiving any notice of the compliance failure, the creditor has made appropriate restitution to the borrower and appropriate adjustments have been made to the loan; or

B. Within 60 days of the loan closing and prior to receiving any notice of the compliance failure, when the compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, the borrower is notified of the compliance failure, appropriate restitution is made to the borrower and appropriate adjustments are made to the loan. Examples of a bona fide error include clerical, calculation, computer malfunction and programming and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

8. The remedies provided in this section are cumulative.

9. Notwithstanding any other provision of law, a residential mortgage loan agreement may not include any provision that waives any borrower's remedies available at law or equity, whether acting individually or on behalf of others similarly situated, or the borrower's rights to civil discovery or appeal. Any such provision is unenforceable and void as a matter of law.

10. Without regard to whether a borrower is acting individually or on behalf of others similarly situated, any provision of a residential mortgage loan agreement that allows a person to require a borrower to assert any claim or defense in a forum that is less convenient, more costly or more dilatory for the resolution of a dispute than a judicial forum established in this State where the borrower may otherwise properly bring a claim or defense or that limits in any way any claim or defense the borrower may have is unconscionable and void as a matter of law.

11. It is a violation of section 8-206-A, ~~8-206-C~~8-206-H, 8-206-I or ~~8-206-D~~8-206-J for any person to attempt in bad faith to avoid the application of those sections by dividing any loan transaction into separate parts or structuring a residential mortgage loan transaction as an open-end loan for the purpose of evading the provisions of those sections when the loan would have been a high-rate, high-fee mortgage if the loan had been structured as a closed-end loan or by engaging in any other subterfuge with the intent of evading any provision of this section.

**Sec. A-12. 9-A MRS §8-206-H** is enacted to read:

**§ 8-206-H. High-rate, high-fee mortgages**

1. The making of a high-rate, high-fee mortgage is subject to the following prohibitions, except that, notwithstanding any other provision of law, a residential mortgage loan made by the Maine State Housing Authority pursuant to Title 30-A, chapter 201 is not subject to the following prohibitions.

A. High-rate, high-fee mortgages are subject to the following restrictions.

(1) A high-rate, high-fee mortgage may not include payment terms under which the outstanding principal balance or accrued interest will increase at any time over the course of the loan because the regularly scheduled periodic payments do not cover the full amount of interest due.

(2) A high-rate, high-fee mortgage may not contain a provision that increases the interest rate after default. This subparagraph does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, as long as the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

(3) If the date of maturity of a high-rate, high-fee mortgage is accelerated due to default and the consumer is entitled to a rebate of interest, that rebate must be computed by a method that is not less favorable than the actuarial method, as that term is defined in the federal Housing and Community Development Act of 1992, Public Law No. 102-550, Section 933(d)106 Stat. 3672, 3892 (1992) and 15 United States Code, Section 1615.

(4) A high-rate, high-fee mortgage may not include terms under which more than 2 periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(5) A creditor may not make a payment to a contractor under a home improvement contract from amounts extended as credit under a high-rate, high-fee mortgage except:

(a) In the form of an instrument that is payable to the consumer or jointly to the consumer and the contractor; or

(b) At the election of the consumer, by a 3rd-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor and the contractor before the date of payment.

(6) All high-rate, high-fee mortgage documents that create a debt or pledge property as collateral must contain the following notice on the first page in a conspicuous manner: "Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers

or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor. Maine law also provides for the liability of purchasers or assignees of this high-rate, high-fee loan."

(7) For a high-rate, high-fee mortgage loan with a term of less than 5 years, the payment schedule may not include regular payments that when aggregated do not fully amortize the outstanding principal balance.

(8) A high-rate, high-fee mortgage loan may not include a demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance except in the following circumstances:

(a) There is fraud or material misrepresentation by the consumer in connection with the loan;

(b) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; or

(c) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan or any right of the creditor in such security.

(9) A creditor may not extend a high-rate, high-fee mortgage to a consumer based on the value of the consumer's collateral without regard to the consumer's ability to pay as described in section 8-206-I, subsection 1, paragraph A.

(10) High-rate, high-fee mortgages are subject to rules relating to escrows as described in section 8-206-I, subsection 1, paragraph C.

**B. High-rate, high-fee mortgages are subject to the following enhanced restrictions.**

(1) In connection with a high-rate, high-fee mortgage, a creditor may not directly or indirectly finance any points or fees.

(2) In addition to the limitation found in paragraph A, subparagraph (7), a high-rate, high-fee mortgage may not contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subparagraph does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

(3) A creditor may not make a high-rate, high-fee mortgage without first receiving certification from a counselor with a 3rd-party, nonprofit organization approved by the United States Department of Housing and Urban Development, a housing financing agency of this State or the Bureau of Consumer Credit Protection that the borrower has received counseling on the advisability of the loan transaction.

(4) A prepayment fee or penalty may not be included in the loan documents or charged under the terms of a high-rate, high-fee mortgage.

2. The following provisions apply to a claim made by a borrower against a purchaser or assignee of a high-rate, high-fee mortgage.

A. Any person who purchases or is otherwise assigned a high-rate, high-fee mortgage is subject to all affirmative claims and any defenses with respect to the loan that the borrower could assert against a creditor of the loan, except that this paragraph does not apply if the purchaser or assignee demonstrates by a preponderance of the evidence that it:

(1) Has in place, at the time of the purchase or assignment of the subject loan, policies that expressly prohibit its purchase or acceptance of assignment of any high-rate, high-fee mortgages;

(2) Requires by contract that a seller or assignor of residential mortgage loans to the purchaser or assignee represent and warrant to the purchaser or assignee that either the seller or assignor will not sell or assign any high-rate, high-fee mortgages to the purchaser or assignee, or the seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect; and

(3) Exercises reasonable due diligence, at the time of purchase or assignment of residential mortgage loans or within a reasonable period of time after the purchase or assignment of such residential mortgage loans, intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high-rate, high-fee mortgages. For purposes of this subparagraph, reasonable due diligence must provide for sampling and may not require loan-by-loan review.

Notwithstanding this paragraph, liability pursuant to this subsection may not accrue to a purchaser or assignee of a high-rate, high-fee mortgage as a result of an alleged violation by a creditor of section 8-206-I, subsection 1, paragraph D.

B. A borrower acting only in an individual capacity may assert claims that the borrower could assert against a creditor of the high-rate, high-fee mortgage against any subsequent holder or assignee of the high-rate, high-fee mortgage as follows:

(1) Within 5 years of the closing of a high-rate, high-fee mortgage, the borrower may assert a violation of this section in connection with the loan as an original action; and

(2) Within 10 years of the closing of a high-rate, high-fee mortgage, after an action to collect on the residential mortgage loan or foreclose on the collateral securing the residential mortgage loan has been initiated or the debt arising from the residential mortgage loan has been accelerated or the residential mortgage loan has become 60 days in default, the borrower may assert any defense, claim or counterclaim or action to enjoin foreclosure or preserve or obtain possession of the property that secures the loan.

A claim asserted by a borrower under this paragraph is limited to amounts required to reduce or extinguish the borrower's liability under the high-rate, high-fee mortgage, plus amounts required to recover costs, including reasonable attorney's fees.

3. This section applies notwithstanding any other provision of law, except that nothing in this section may be construed to limit the substantive rights, remedies or procedural rights available to a borrower against any creditor, assignee or holder of a high-rate, high-fee mortgage under any other law. The rights conferred on borrowers in subsection 2, paragraphs A and B are independent of each other and do not limit each other.

**Sec. A-13. 9-A MRSA §8-206-I** is enacted to read:

**§ 8-206-I. Higher-priced mortgage loans**

1. Higher-priced mortgage loans are subject to the following restrictions:

A. A creditor may not extend a higher-priced mortgage to a consumer based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation, including the consumer's current and reasonably expected income, employment, assets other than the collateral, credit history, debt-to-income ratio, current obligations and mortgage-related obligations.

(1) For purposes of this paragraph, mortgage-related obligations are expected property taxes, premiums for mortgage-related insurance required by the creditor as set forth in paragraph C and similar expenses.

(2) Under this paragraph, a creditor must verify the consumer's repayment ability as follows.

(a) A creditor must verify amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer's federal Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records or other 3rd-party documents that provide reasonably reliable evidence of the consumer's

income or assets. For the purposes of this division, "reasonably reliable evidence of the consumer's income or assets" includes, but is not limited to, statements from investment advisors, broker-dealers and others in a fiduciary relationship with the consumer as long as the statements reflect the consumer's actual income and not estimated, projected or anticipated income or a range of earnings for a consumer's type or class of employment.

(b) A creditor must verify the consumer's current obligations.

(3) A creditor is presumed to have complied with this paragraph with respect to a transaction if the creditor:

(a) Verifies the consumer's repayment ability as provided in subparagraphs (1) and (2);

(b) Determines the consumer's repayment ability using the largest payment of principal and interest scheduled in the first 7 years following consummation and taking into account current obligations and mortgage-related obligations; and

(c) Assesses the consumer's repayment ability taking into account at least one of the following:

(i) The ratio of total debt obligations to income; and

(ii) The income the consumer will have after paying debt obligations.

(4) Notwithstanding subparagraph (3), no presumption of compliance is available for a transaction for which:

(a) The regular periodic payments for the first 7 years would cause the principal balance to increase; or

(b) The term of the loan is less than 7 years and the regular periodic payments when aggregated do not fully amortize the outstanding principal balance.

(5) This paragraph does not apply to a temporary or so-called "bridge" loan with a term of 12 months or less, such as a loan to purchase a new dwelling when the consumer plans to sell a current dwelling within 12 months.

B. Beginning October 1, 2009, a higher-priced mortgage loan may not include a penalty for paying all or part of the principal before the date on which the principal is due except as allowed under subparagraph (1). The exception under subparagraph (1) does not apply to high-rate, high-fee mortgages, which are subject to section 8-206-H, subsection 1, paragraph B, subparagraph (4), and alternative mortgage transactions, which are subject to section 9-308.

(1) A higher-priced mortgage loan may provide for a prepayment penalty, including a refund calculated according to the sum of the balances method, as defined in section 2-503, subsection 7, under the terms of the loan if:

(a) The penalty will not apply after the 2-year period following consummation;

(b) The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor; and

(c) The amount of the periodic payment of principal or interest or both may not change during the 4-year period following consummation.

C. Beginning April 1, 2010, higher-priced loans are subject to the following requirements relating to escrow accounts:

(1) A creditor may not extend a loan secured by a first lien on a principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property or insurance protecting the creditor against the consumer's default or other credit loss.

(2) Notwithstanding the requirements set forth in subparagraph (1):

(a) Escrow accounts need not be established for loans secured by shares in a cooperative; and

(b) Insurance premiums described in subparagraph (1) need not be included in escrow accounts for loans secured by condominium units when the condominium association has an obligation to the condominium unit owners to maintain a master policy insuring condominium units.

(3) A creditor or servicer may permit a consumer to cancel the escrow account required in subparagraph (1) only in response to a consumer's dated written request to cancel the escrow account that is received no earlier than 365 days after consummation.

(4) For purposes of this paragraph, "escrow account" has the same meaning set forth in 24 Code of Federal Regulations, Section 3500.17(b).

D. A creditor may not knowingly or intentionally engage in the act or practice of flipping a residential mortgage loan when making a higher-priced mortgage loan. The administrator is authorized to adopt rules defining with reasonable specificity the requirements for compliance with this paragraph. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

**Sec. A-14. 9-A MRS §8-206-J** is enacted to read:

**§ 8-206-J. Residential mortgage loan requirements**

1. Beginning October 1, 2009, residential mortgage loans are subject to the following restrictions.

A. In connection with a consumer credit transaction secured by a consumer's principal dwelling, no creditor or mortgage broker, and no affiliate of a creditor or mortgage broker, shall directly or indirectly coerce, influence or otherwise encourage an appraiser to misstate or misrepresent the value of such dwelling.

(1) In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of this paragraph in connection with an appraisal may not extend credit based on such appraisal unless the creditor documents that it has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

(2) For purposes of this paragraph, "mortgage broker" means a person, other than an employee of a lender, who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates or otherwise obtains an extension of consumer credit for another person. "Mortgage broker" includes a person meeting this definition, even if the consumer credit obligation is initially payable to such person, unless the person provides the funds for the transaction at consummation out of the person's own resources, out of deposits held by the person or by drawing on a bona fide warehouse line of credit.

(3) For the purposes of this paragraph, "appraiser" means a person who engages in the business of providing assessments of the value of dwellings. "Appraiser" includes a person that employs, refers or manages appraisers and affiliates of such persons.

B. In connection with a consumer credit transaction secured by a consumer's principal dwelling, a servicer may not:

(1) Fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency or except as provided in subparagraph (4);

(2) Impose on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period;

(3) Fail to provide, within a reasonable time after receiving a request from the consumer or any person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to satisfy the consumer's obligation in full as of a specified date; or

(4) Fail to credit a payment as of 5 days after receipt if a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements.

For purposes of this paragraph, "servicer" and "servicing" have the same meanings as provided in 24 Code of Federal Regulations, Section 3500.2(b).

C. This subsection does not apply to a home equity line of credit subject to section 8-205.

2. Residential mortgage loans are subject to the following enhanced restrictions.

A. A creditor may not recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a residential mortgage loan that refinances all or a portion of the existing loan or debt.

B. A borrower may not be charged for a late payment unless the loan documents specifically authorize the charge, the charge is not imposed unless the payment is past due for 10 days or more and the charge does not exceed 5% of the amount of the late payment. A late payment charge may not be imposed more than once with respect to a particular late payment. If a late payment charge is deducted from a payment made on the residential mortgage loan and that deduction results in a subsequent default on a subsequent payment, a late payment charge may not be imposed for that default. A creditor or servicer may apply any payment made in the order of maturity to a prior period's payment due even if the result is late payment charges accruing on subsequent payments due.

C. A residential mortgage loan may not contain a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness. This paragraph does not prohibit the acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

D. A creditor making a residential mortgage loan may not finance directly or indirectly any credit life insurance, credit disability insurance, credit unemployment insurance or credit property insurance or any other life or health insurance or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis or through regularly scheduled periodic payments may not be considered financed by the creditor.

E. A borrower may not be charged a fee in addition to the actual public discharge fee to provide a release upon prepayment. Payoff balances must be provided in accordance with section 9-305-B.

F. The following provisions apply with respect to a right to cure default of a residential mortgage loan.

(1) If all defaults in connection with a residential mortgage loan are cured after the initiation of any action to foreclose, the creditor or the servicer shall take steps as necessary to terminate the foreclosure proceeding or other action. The borrower shall pay any reasonable costs incurred by the creditor or servicer before the cure of default. Cure of default reinstates the borrower to the same position as if the default had not occurred and nullifies, as of the date of the cure, any acceleration of any obligation under the security instrument or note arising from the default.

(2) A borrower has the right to cure a default once in a 12-month period.

3. The administrator, by rule or order, shall prohibit acts or practices in connection with:

A. Residential mortgage loans that the administrator finds unfair, deceptive or designed to evade the provisions of this section; and

B. Refinancing of residential mortgage loans that the administrator finds are associated with abusive lending practices or that are otherwise not in the interest of the borrowing public.

4. The Attorney General has jurisdiction to enforce this section against loan brokers and supervised lenders who are not supervised financial organizations through their general regulatory powers and through civil process. The administrator, through the Attorney General, may bring a civil action to restrain any person from violating this section.

5. The rights conferred by this section are independent of and in addition to any other rights under this Title and other state and federal laws.

**Sec. A-15. 9-A MRSA §8-208, sub-§1, ¶B**, as corrected by RR 1995, c. 2, §18, is amended to read:

B. In an individual action:

(i) Twice the amount of any finance charge in connection with the transaction; or

(ii) In the case of a consumer lease, 25% of the total amount of monthly payments under the lease.

Liability under this paragraph may not be less than \$100 nor greater than \$1,000; except that in the case of a credit transaction not under an open-end credit plan that is secured by real property or a dwelling, liability under this paragraph may not be less than ~~\$200~~\$400 nor greater than ~~\$2,000~~\$4,000;

**Sec. A-16. Effective date.** Those sections of this Act that amend the Maine Revised Statutes, Title 9-A, section 8-206, subsection 3 and section 8-208, subsection 1, paragraph B take effect July 30, 2009.

## PART B

**Sec. B-1. 9-A MRSA Art. 13** is enacted to read:

### ARTICLE 13

#### MAINE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2009

##### **§ 13-101. Short title**

This Article may be known and cited as "the Maine Secure and Fair Enforcement for Mortgage Licensing Act of 2009."

##### **§ 13-102. Definitions**

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings.

**1. Clerical or support duties.** "Clerical or support duties" may include subsequent to the receipt of an application:

A. The receipt, collection, distribution and analysis of information common for the processing, underwriting or modification of a residential 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 such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

**2. Depository institution.** "Depository institution" has the same meaning as in Section 3 of the Federal Deposit Insurance Act, and includes any credit union.

**3. Dwelling.** "Dwelling" has the same meaning as in the federal Truth in Lending Act, Section 103(v).

**4. Immediate family member.** "Immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild. "Immediate family member" includes stepparents, stepchildren, stepsiblings and adoptive relationships.

**5. Individual.** "Individual" means a natural person.

**6. Loan processor or underwriter.** "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 licensed or exempt from licensing under the provisions of this Title. 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 such individual can or will perform any of the activities of a mortgage loan originator.

**7. Mortgage loan originator.** "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include:

A. An individual engaged solely as a loan processor or underwriter except as otherwise provided in section 13-103, subsection 3, paragraph A;

B. A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with the laws of this State, unless the person or entity is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator; or

C. A person or entity solely involved in extensions of credit relating to time-share plans, as that term is defined in Title 11 United States Code, Section 101(53D).

**8. Nationwide mortgage licensing system and registry.** "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by a national organization dedicated to advancing the state banking system and a national association of residential mortgage regulators for the licensing and registration of licensed mortgage loan originators.

**9. Nontraditional mortgage product.** "Nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.

**10. Person.** "Person" means a natural person, corporation, company, limited liability company, partnership or association.

**11. Real estate brokerage activity.** "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

- A. Acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;
- B. Bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;
- C. Negotiating, on behalf of any party, any 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 any such transaction;
- D. Engaging in any 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
- E. Offering to engage in any activity or act in any capacity, described in this subsection.

**12. Registered mortgage loan originator.** "Registered mortgage loan originator" means an individual who:

A. Meets the definition of mortgage loan originator and is an employee of:

(1) A depository institution;

(2) A subsidiary that is:

(a) Owned and controlled by a depository institution; and

(b) Regulated by a federal banking agency; or

(3) An institution regulated by the federal Farm Credit Administration; and

B. Is registered with, and maintains a unique identifier through the nationwide mortgage licensing system and registry.

**13. Residential mortgage loan.** "Residential mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling.

**14. Residential real estate.** "Residential real estate" means any real property located in the State, upon which is constructed or intended to be constructed a dwelling.

**15. Unique identifier.** "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

### **§ 13-103. License and registration required**

**1. Requirement.** An individual, unless specifically exempted from this Article under subsection 2, may not engage in the business of a mortgage loan originator without obtaining and maintaining annually a license under this Article. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

**2. Exemption.** The following persons are exempt from this Article.

A. Registered mortgage loan originators, when acting for a depository institution; a subsidiary that is owned and controlled by a depository institution and that is regulated by a federal banking agency; or an institution regulated by the federal Farm Credit Administration.

B. An individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

C. An individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence.

D. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator.

E. An employee of a nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) and engaged in the financing of housing for low-income people under a program designed specifically for that purpose, to the extent exempted by the administrator by rule, advisory ruling or interpretation, after taking into consideration any rule, advisory ruling or interpretation issued by the United States Department of Housing and Urban Development.

F. A retail seller of a manufactured home to the extent determined by any rule, advisory ruling or interpretation issued by the United States Department of Housing and Urban Development.

**3. Loan processor or underwriter; license not required.** A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or by 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 is not required to obtain and maintain a license under subsection 1.

A. An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless that independent contractor obtains and maintains a license under subsection 1. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

**4. Rules; interim procedures and accept applications.** For the purposes of implementing an orderly and efficient licensing process, the administrator may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the administrator may establish expedited review and licensing procedures. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

### **§ 13-104. State license and registration application and issuance**

**1. Application form.** An applicant for a license as a mortgage loan originator shall apply using a form prescribed by the administrator. The form must contain content as set forth by rule, instruction or procedure of the administrator and may be changed or updated as necessary by the administrator in order to carry out the purposes of this Article.

**2. Relationships or contracts.** In order to fulfill the purposes of this Article, the administrator is authorized to establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this Article.

**3. Waive or modify requirements.** For the purpose of participating in the nationwide mortgage licensing system and registry, the administrator is authorized to waive or modify, in whole or in part, by rule or order, any or all of the requirements of this Article and to establish new requirements as reasonably necessary to participate in the nationwide mortgage licensing system and registry.

**4. Background checks.** In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the nationwide mortgage licensing system and registry information concerning the applicant's identity, including:

A. Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

B. Personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the administrator to obtain:

(1) An independent credit report from a consumer reporting agency described in the federal Fair Credit Reporting Act, Section 603(p) except that information on a credit report may not be used as the sole basis for the denial of a mortgage loan originator license pursuant to section 13-105; and

(2) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

**5. Agent for purposes of requesting and distributing criminal information.** For the purposes of this section and in order to reduce the points of contact that the administrator or the Federal Bureau of Investigation may have to maintain for purposes of subsection 4, the administrator may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency and from any source directed by the administrator.

### **§ 13-105. Issuance of license**

The administrator may not issue an applicant a mortgage loan originator license unless the applicant meets the following requirements.

**1. No license revocation.** The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction.

**2. No felony conviction.** Except if the administrator determines that a conviction as described in paragraph A does not affect the applicant's demonstration of good character and fitness under subsection 3, the applicant has not been convicted of, or pleaded guilty or nolo contendere to, a felony in a domestic, foreign or military court:

A. During the 7-year period preceding the date of the application for licensing and registration; or

B. At any time preceding the date of application, if the felony involved an act of fraud, dishonesty or a breach of trust or money laundering.

**3. Character and fitness.** The applicant has demonstrated financial responsibility, good character and general fitness commanding the confidence of the community and warranting a determination that the mortgage loan originator will operate honestly, fairly and efficiently in accordance with this Article.

**4. Prelicensing education.** The applicant has completed the prelicensing education requirement described in section 13-106.

**5. Written test.** The applicant has passed a written test that meets the requirement described in section 13-107.

**6. Surety bond or minimum net worth requirement.** The applicant has met the surety bond requirement or the net worth requirement as required pursuant to section 13-113.

### **§ 13-106. Prelicensing education for mortgage loan originators**

**1. Minimum education requirements.** In order to meet the prelicensing education requirement set forth in section 13-105, subsection 4, a person must complete at least 20 hours of education approved in accordance with subsection 2, which must include at least:

- A. Three hours of instruction in federal law and regulations;
- B. Three hours of ethics, which must include instruction on fraud, consumer protection and fair lending issues; and
- C. Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

**2. Approved education courses.** For purposes of subsection 1, prelicensing education courses must be reviewed and approved by the nationwide mortgage licensing system and registry based on reasonable standards. Review and approval of a prelicensing education course must include review and approval of the course provider.

**3. Approval of employer and affiliate education courses.** Nothing in this section precludes any prelicensing education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract or any subsidiary or affiliate of such employer or entity.

**4. Venue of education.** Prelicensing education may be offered either in a classroom, online or by any other means approved by the nationwide mortgage licensing system and registry.

**5. Reciprocity of education.** The completion of the prelicensing education requirements approved by the nationwide mortgage licensing system and registry under this section for any state must be accepted as credit towards completion of prelicensing education requirements in this State.

**6. Relicensing education requirements.** A person previously licensed under this Article who applies to be licensed again must prove that that person has completed all of the continuing education requirements for the year in which the license was last held.

### **§ 13-107. Testing of loan mortgage originators**

**1. Written test.** In order to meet the written test requirement required under section 13-105, subsection 5, an individual must pass, in accordance with the standards established under this section, a qualified written test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.

**2. Qualified test.** A written test may not be treated as a qualified written test for purposes of subsection 1 unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

- A. Ethics;
- B. Federal laws and regulations pertaining to mortgage origination;
- C. State laws and rules pertaining to mortgage origination;
- D. Federal and state laws, rules and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage product marketplace and fair lending issues.

**3. Testing location.** Nothing in this section prohibits a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of the applicant, or any subsidiary or affiliate of the employer of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

**4. Minimum competence.** An individual is not considered to have passed a qualified written test unless the individual achieves a test score of not less than 75% correct answers to questions.

- A. An individual may retake a test 3 consecutive times, undergoing each consecutive test at least 30 days after the preceding test.
- B. After failing 3 consecutive tests, an individual must wait at least 6 months before taking the test again.
- C. A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test.

## **§ 13-108. Standards for license renewal**

**1. Minimum standards.** The minimum standards for license renewal for mortgage loan originators include the following:

- A. The mortgage loan originator continues to meet the minimum standards for license issuance under section 13-105, subsections 1 to 5;
- B. The mortgage loan originator has satisfied the annual continuing education requirements described in section 13-109; and
- C. The mortgage loan originator has paid all required fees for renewal of the license.

**2. Failure to satisfy minimum standards of license renewal.** If a mortgage loan originator fails to satisfy the minimum standards for license renewal, that individual's license expires. The administrator may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the nationwide mortgage licensing system and registry.

## **§ 13-109. Continuing education for mortgage loan originators**

**1. Requirement.** In order to meet the annual continuing education requirements set forth in section 13-108, subsection 1, paragraph B, a licensed mortgage loan originator must complete at least 8 hours of education approved in accordance with subsection 2, which must include at least:

A. Three hours of federal laws and regulations;

B. Two hours of ethics, which must include instruction on fraud, consumer protection and fair lending issues; and

C. Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

**2. Approved education courses.** For purposes of subsection 1, continuing education courses must be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a continuing education course includes review and approval of the course provider.

**3. Approval of employer and affiliate education courses.** Nothing in this section precludes any education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract or any subsidiary or affiliate of such employer or entity.

**4. Venue of education.** Continuing education may be offered either in a classroom, online or by any other means approved by the nationwide mortgage licensing system and registry.

**5. Calculation of continuing education credits.** A licensed mortgage loan originator may:

A. Notwithstanding subsection 9 and section 13-108, subsection 2, receive credit for a continuing education course only in the year in which the course is taken; and

B. Not repeat an approved course in the same or successive years to meet the annual requirements for continuing education.

**6. Instructor credit.** A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every one hour taught.

**7. Reciprocity of education.** The completion of the education requirements approved by the nationwide mortgage licensing system and registry under this section for any state must be accepted as credit towards completion of continuing education requirements in this State.

**8. Lapse in license.** A person previously licensed under this Article as a licensed mortgage loan originator who subsequently becomes unlicensed must prove that the person has completed all of the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

**9. Deficiency in continuing education.** A person meeting the requirements of section 13-108, subsection 1, paragraphs A and C may make up any deficiency in continuing education as established by rule of the administrator.

### **§ 13-110. Authority to require license**

In addition to any other duties imposed upon the administrator by law, the administrator shall require mortgage loan originators to be licensed and registered through the nationwide mortgage licensing system and registry. In order to carry out this requirement, the administrator is authorized to participate in the nationwide mortgage licensing system and registry. For this purpose, the administrator may establish, by rule or order, requirements as necessary, including but not limited to:

**1. Background checks.** Background checks for:

A. Criminal history through fingerprint or other databases;

B. Civil or administrative records;

C. Credit history; or

D. Any other information determined necessary by the nationwide mortgage licensing system and registry;

**2. Fees.** The payment of fees to apply for or renew licenses through the nationwide mortgage licensing system and registry;

**3. Dates.** The setting or resetting as necessary of renewal or reporting dates; and

**4. Other requirements.** Other requirements for amending or revoking a license or any other such activities as the administrator considers necessary for participation in the nationwide mortgage licensing system and registry.

### **§ 13-111. Nationwide mortgage licensing system and registry information challenge process**

The administrator shall establish a process by which mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the administrator.

### **§ 13-112. Enforcement authorities, violations and penalties**

**1. Enforcement.** In order to ensure the effective supervision and enforcement of this Article, the administrator may, pursuant to this Title and the Maine Administrative Procedure Act:

- A. Deny, suspend, revoke, condition or decline to renew a license for a violation of this Article or rules issued under this Article or an order or a directive entered under this Article;
- B. Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of section 13-105 or section 13-108, or withholds information or makes a material misstatement in an application for a license or renewal of a license;
- C. Order restitution against persons subject to this Article for violations of this Article;
- D. Impose fines on persons subject to this Article pursuant to subsections 2 to 4; and
- E. Issue orders or directives under this Article as follows:

(1) Order or direct persons subject to this article to cease and desist from conducting business, including immediate temporary orders to cease and desist;

(2) Order or direct persons subject to this article to cease any harmful activities or violations of this article, including immediate temporary orders to cease and desist;

(3) Enter immediate temporary orders to cease business under a license issued pursuant to the authority granted under section 13-103, subsection 4 if the administrator determines that such a license was erroneously granted or the licensee is in violation of this Article; and

(4) Order or direct other affirmative action that the administrator considers necessary.

**2. Penalty.** The administrator may impose a civil fine on a mortgage loan originator or person subject to this Article if the administrator finds on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this Article has violated or failed to comply with any requirement of this Article or any rule prescribed by the administrator under this Article or order issued under authority of this Article.

**3. Maximum fine.** A person who violates this section commits a civil violation for each act or omission described in subsection 2, a fine for which no more than \$25,000 must be adjudged.

**4. Separate violation.** Each violation or failure to comply with any directive or order of the administrator is a separate and distinct violation or failure.

### **§ 13-113. Surety bond or minimum net worth requirements**

Mortgage loan originators must comply with either subsection 1 or subsection 2.

**1. Surety bond.** Unless in compliance with subsection 2, a mortgage loan originator must be covered by a surety bond in accordance with this subsection.

A. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this Article, the surety bond of that person subject to this Article can be used in lieu of the mortgage loan originator's surety bond requirement.

(1) The surety bond must provide coverage for each mortgage loan originator in an amount prescribed in paragraph B.

(2) The surety bond must be in a form prescribed by the administrator.

(3) The administrator may adopt rules with respect to the requirements for surety bonds necessary to accomplish the purposes of this Article.

B. The penal sum of the surety bond must be maintained in an amount established by rule.

C. When an action is commenced on a licensee's bond, the administrator may require the filing of a new bond.

D. Immediately on recovery upon any action on the bond the licensee shall file a new bond.

**2. Minimum net worth.** Unless in compliance with subsection 1, a minimum net worth must be continuously maintained for mortgage loan originators in accordance with this subsection and section 13-105, subsection 6. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this Article, the net worth of that person subject to this Article can be used in lieu of the mortgage loan originator's minimum net worth requirement.

A. Minimum net worth must be maintained in an amount determined by the administrator.

B. The administrator may adopt rules with respect to the requirements for minimum net worth necessary to accomplish the purposes of this Article.

## **§ 13-114. Confidentiality**

**1. Protections.** Notwithstanding any provision of law to the contrary and except as otherwise provided in federal Public Law 110-289, Section 1512, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, continue to apply to that information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. That information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

**2. Agreements and sharing arrangements.** The administrator is authorized to enter agreements or sharing arrangements with other governmental agencies, a national organization dedicated to advancing the state banking system, a national association of residential mortgage regulators or other associations representing governmental agencies as established by rule or order of the administrator.

**3. Nonapplicability of certain requirements.** Information or material that is subject to a privilege or confidentiality under subsection 1 is not subject to:

A. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective state; or

B. Subpoena, discovery or admission into evidence in any private civil action or administrative process, unless with respect to a privilege held by the nationwide mortgage licensing system and registry regarding that information or material, the person to whom such information or material pertains waives, in whole or in part, that privilege.

**4. Public access to information.** This section does not apply to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the nationwide mortgage licensing system and registry for access by the public.

### **§ 13-115. Investigation and examination authority**

In addition to any authority allowed under this Article, the administrator may conduct an investigation and examination as follows.

**1. Authority to access information.** For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination or general or specific inquiry or investigation to determine compliance with this Article, the administrator may access, receive and use any books, accounts, records, files, documents, information or evidence, including but not limited to:

A. Criminal, civil and administrative information, including nonconviction data as defined in Title 16, section 611, subsection 9;

B. Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in the federal Fair Credit Reporting Act, Section 603(p); and

C. Any other documents, information or evidence the administrator determines relevant to the inquiry or investigation regardless of the location, possession, control or custody of those documents, information or evidence.

**2. Investigation, examination and subpoena authority.** For the purposes of investigating violations or complaints arising under this Article or for the purposes of examination the administrator may review, investigate or examine any licensee, individual or person subject to this Article as often as necessary. The administrator may direct, subpoena or order the attendance of and examine

under oath all persons whose testimony may be required about the loans or the business or subject matter of an examination or investigation and may direct, subpoena or order those persons to produce books, accounts, records, files and any other documents the administrator considers relevant to the inquiry.

**3. Availability of books and records.** Each licensee, individual or person subject to this Article shall make available to the administrator upon request the books and records relating to the operations of that licensee, individual or person. The administrator has access to such books and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents and customers of the licensee, individual or person concerning their business.

**4. Reports and other information as directed.** Each licensee, individual or person subject to this Article shall make or compile reports or prepare other information as directed by the administrator in order to carry out the purposes of this section, including but not limited to:

A. Accounting compilations;

B. Information lists and data concerning loan transactions in a format prescribed by the administrator; and

C. Other information considered necessary to carry out the purposes of this section.

**5. Control access to records.** In making any examination or investigation authorized by this Article, the administrator may control access to any documents and records of the licensee or person under examination or investigation. The administrator may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person may remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the administrator. Unless the administrator has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this Article, the licensee or owner of the documents and records may have access to the documents or records as necessary to conduct ordinary business affairs.

**6. Additional authority.** In order to carry out the purposes of this section, the administrator may:

A. Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in examinations or investigations;

B. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures and documents, records, information or evidence obtained pursuant to this section;

C. Use, hire, contract or employ public analytic methods or privately available analytic methods or software to examine or investigate the licensee, individual or person subject to this Article;

D. Accept and rely on examination or investigation reports made by other government officials within or without this State;

E. Accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this Article in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the administrator; or

F. Assess the cost of the services described in paragraph A against the licensee, individual or person subject to this Article.

**7. Effect of authority.** The authority of this section remains in effect, whether such a licensee, individual or person subject to this Article acts or claims to act under any licensing or registration law of this State or claims to act without such authority.

**8. Withhold records.** A licensee, individual or person subject to investigation or examination under this section may not knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

### **§ 13-116. Prohibited acts and practices**

It is a violation of this Article for an individual or a person subject to this Article to:

**1. Defraud; mislead.** Directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud a person;

**2. Unfair or deceptive practice.** Engage in any unfair or deceptive practice toward a person;

**3. Fraud; misrepresentation.** Obtain property by fraud or misrepresentation;

**4. Fee despite absence of loan obtained.** Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this Article may earn a fee or commission through best efforts to obtain a loan even though a loan is not actually obtained for the borrower;

**5. Terms available.** Solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting;

**6. Valid license.** Conduct any business covered by this Article without holding a valid license as required under this Article or assist or aide and abet any person in the conduct of business under this Article without a valid license required under this Article;

**7. Disclosures.** Fail to make disclosures required by this Article and any other applicable state laws or rules or federal laws or regulations;

**8. Compliance.** Fail to comply with this Article or rules adopted under this Article or fail to comply with any other state or federal law, including the rules and regulations applicable to any business authorized or conducted under this Article;

**9. False or deceptive statement.** Make any false or deceptive statement or representation, including with regard to the rates, points or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;

**10. False statement; material omission.** Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a government agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the administrator or another government agency;

**11. Improper influence.** Make any payment, threat or promise directly or indirectly to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise directly or indirectly to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

**12. Prohibited fee.** Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by this Article;

**13. Excessive insurance.** Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

**14. Account.** Fail to truthfully account for money belonging to a party to a residential mortgage loan transaction; or

**15. Good faith and fair dealing.** Fail to comply with the duties of good faith and fair dealing as required in section 10-303-A.

### **§ 13-117. Report to nationwide mortgage licensing system and registry**

The administrator shall regularly report violations of this Article, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry.

### **§ 13-118. Unique identifier shown**

The unique identifier of any person originating a residential mortgage loan must be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or publicly accessible websites and any other documents as established by rule or order of the administrator.

### **§ 13-119. Rulemaking**

Rules adopted pursuant to this Article are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**§ 13-120. Effective date**

This Article takes effect July 31, 2010.

**PART C**

**Sec. C-1. 9-A MRSA §2-509**, as amended by PL 2007, c. 273, Pt. C, §2, is further amended to read:

**§ 2-509. Right to prepay**

Subject to the provisions on rebate upon prepayment, section 2-510, the consumer may prepay, in full or in part, the unpaid balance of a consumer credit transaction at any time without penalty, except for minimum charges as permitted by law. Notwithstanding any other provision of this Title, a reasonable charge may be assessed upon a consumer related to prepayment of a consumer loan made by a supervised financial organization and secured by an interest in land, other than a high-rate, high-fee mortgage, as defined in section 8-103, subsection 1-A, paragraph PQ, if the charge is reasonably calculated to offset the cost of origination of the loan. The administrator shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. C-2. 9-A MRSA §8-105, sub-§6, ¶B**, as amended by PL 2007, c. 273, Pt. C, §4, is further amended to read:

B. For purposes of section 8-204:

(i) If, except as provided in subparagraph (ii), the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to 1/2 of 1% of the total amount of credit extended; or

(ii) In the case of a transaction, other than a high-rate, high-fee mortgage as defined in section 8-103, subsection 1-A, paragraph PQ, that:

(a) Is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction, as defined in section 8-103, subsection 1-A, paragraph W, or is any subsequent refinancing of such a transaction; and

(b) Does not provide any new consolidation or new advance, if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to 1% of the total amount of credit extended.

**Sec. C-3. 9-A MRSA §8-209, sub-§4-A**, as enacted by PL 2007, c. 471, §15 and affected by §18, is amended to read:

**4-A.** Any person who purchases or is otherwise assigned a high-rate, high-fee mortgage is subject to all claims and defenses with respect to that mortgage that the consumer may assert against the creditor of the mortgage to the extent set forth in section ~~8-206-C~~8-206-H, subsection 2.

**Sec. C-4.32 MRSA §6198, sub-§1, ¶E**, as enacted by PL 2007, c. 596, §1, is amended to read:

E. The foreclosure purchaser complies with the requirements for disclosure, loan terms and conduct in Title 9-A, sections 8-206-A, ~~8-206-C~~8-206-I and ~~8-206-D~~8-206-J for any foreclosure reconveyance in which the foreclosed homeowner obtains a vendee interest in a contract for deed, land installment contract or bond for deed, regardless of whether the terms of the contract for deed, land installment contract or bond for deed meet the annual percentage rate or points and fees requirements for a covered loan.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved, except as otherwise indicated.

Effective June 11, 2009, unless otherwise indicated.