BISHCA Docket No. 11-25-B

CONSENT AGREEMENT AND ORDER
MORTGAGE ACCESS CORP. D/B/A WEICHERT FINANCIAL SERVICES

WHEREAS, MORTGAGE ACCESS CORP. D/B/A WEICHERT FINANCIAL SERVICES ("MAC" or the "Corporation"), a corporation organized under the laws of, and headquartered in, Morris Plains, New Jersey with full knowledge of its rights to notice and hearing pursuant to the laws of the States of Connecticut, Louisiana, New Jersey, New York, North Carolina and Vermont and the Commonwealths of Kentucky, Massachusetts, Pennsylvania and Virginia (collectively, the "States") and having waived those rights, enters into this Consent Agreement and Order ("Order"), dated May 27, 2011, with representatives of the Connecticut Department of Banking; the Kentucky Department of Financial Institutions; the Louisiana Office of Financial Institutions; the Massachusetts Division of Banks; the New Jersey Department of Banking and Insurance; the State of New York Banking Department; the North Carolina Office of the Commissioner of Banks; the Pennsylvania Department of Banking; the Vermont Department of Banking, Insurance, Securities and Health Care Administration; and the Virginia Bureau of Financial Institutions (hereafter the "State Mortgage Regulators") solely for the purpose of resolving this matter in its entirety and without admitting any allegations or implications of fact or any violation of laws, regulations and rules governing the conduct and operation of MAC's mortgage business in each. MAC and the States are collectively referred to as the "Parties."

WHEREAS, on September 13, 2010, the State Mortgage Regulators commenced a limited scope multi-state examination (the "Multi-State Examination") of MAC in order to determine whether MAC was engaged in the practice of soliciting and originating residential

mortgage loans utilizing individuals unlicensed in particular states from the period July 1, 2008 to September 9, 2010.

WHEREAS, each State Mortgage Regulator conducted the Multi-State Examination pursuant to its statutory authority as well as protocols established by the CSBS/AARMR Nationwide Cooperative Protocol for Mortgage Supervision as well as the Nationwide Cooperative Agreement for Mortgage Supervision.

WHEREAS, MAC is licensed under the laws of the States and has its corporate headquarters located at 225 Littleton Road, Morris Plains, New Jersey and maintains various licensed branch offices in the States.

WHEREAS, MAC cooperated with the State Mortgage Regulators during the course of the Multi-State Examination by: voluntarily providing documentation, including evidence of its efforts to comply with applicable laws, rules and regulations, access to its employees, systems and facilities and responding to inquiries, both verbally and in writing.

WHEREAS, the confidential findings of the Multi-Sate Examination and related State Specific Reports of Examination (collectively referred to as the "Examination"), which were prepared by the State Mortgage Regulators and issued to MAC on November 29, 2010, identified compliance violations in the States with applicable laws, regulations, and rules governing MAC's mortgage business.

WHEREAS, on December 30, 2010, MAC provided a response to the findings and violations contained in the Multi-State Report of Examination to the State Mortgage Regulators whereby MAC contested the findings and compliance violations contained therein.

WHEREAS, after negotiation and solely for the purpose of resolving all compliance violations found by the State Mortgage Regulators, and without MAC admitting wrongdoing, the

Parties seek to resolve by mutual agreement and without protracted administrative proceedings and judicial review all compliance violations identified below pursuant to each State Mortgage Regulator's statutory authority. MAC hereby waives its right to the hearing processes relative to such proceedings in each individual State and affirms that MAC desires to employ corrective procedures and is willing to take remedial action as set forth in this Order.

MULTI-STATE EXAMINATION FINDINGS

WHEREAS, the Multi-State Examination revealed that MAC implemented and maintained a formal, written policy that permitted individuals unlicensed in particular states to originate a loan within that state and submit the information to a centralized lending area referred to as the "Interstate Lending Desk" ("ILD") which was staffed by mortgage loan originators ("MLOs") who were licensed in multiple states.

WHEREAS, the Multi-State Examination revealed that MAC, through its written policy, permitted individuals to: negotiate loan rates and terms with the applicant, complete a Uniform Residential Loan Application ("1003 Form"); obtain a credit bureau report on the applicant; submit the 1003 Form to the Decision Underwriter system to determine the applicant's eligibility; and lock the loan rate for applicants, in particular states in which the individuals did not hold a license.

WHEREAS, the Multi-State Examination revealed that at times during the examination period, MAC's written policy permitted individuals unlicensed in particular states, to complete a worksheet developed by MAC which, when completed by the unlicensed individual, was transferred to the ILD and forwarded to a licensed MLO for signature on the 1003, in violation of the States' mortgage originator licensing requirements.

WHEREAS, the Multi-State Examination revealed that MAC tracked the identity of the individual unlicensed in particular states for compensation purposes, and further, that MAC compensated the unlicensed individuals for the loan origination.

WHEREAS, the Multi-State Examination revealed that MAC violated certain State reporting requirements.

WHEREAS, the Multi-State Examination revealed that MAC failed to adequately supervise mortgage loan solicitation and origination activities.

WHEREAS, the Multi-State Examination revealed that MAC lacked the proper internal controls necessary to oversee its mortgage origination operations.

WHEREAS, the Multi-State Examination revealed that MAC failed to maintain supervision and control over mortgage originators and failed to keep adequate records of the unlicensed individual's original documents, files and records.

WHEREAS, the Multi-State Examination revealed that MAC engaged in prohibited business practices by originating loans through the unlicensed individuals.

WHEREAS, the Multi-State Examination alleged that MAC displayed negligence and incompetence in the mortgage business by originating loans through individuals who did not hold a license.

WHEREAS, the Multi-State Examination revealed that MAC violated the statutory sections of the State Mortgage Regulators summarized in Appendix A.

WHEREAS, the Parties now seek to resolve by mutual agreement all issues raised during the Multi-State Examination.

AGREEMENT

1. Compliance. Upon the Effective Date of this Order, MAC shall:

   a. Ensure that: (i) all mortgage loans are originated by MLOs who are properly licensed in the state in which the MLO conducts business; and (ii) all mortgage applications are taken and signed by the licensed MLO conducting the application interview;

   b. Ensure that all policies, procedures and controls permit only licensed individuals to engage in mortgage origination activities. MAC assures the State Mortgage Regulators that this is the case and that its ILD no longer exists;

   c. Ensure that its record-keeping complies with the laws in the State Mortgage Regulators' jurisdictions;

   d. Ensure that all mortgage applications are taken and signed by a licensed MLO conducting the application interview; and

   e. Ensure that all records originated by MAC in the course of business are preserved and retained in a manner as prescribed by applicable State and Federal laws.

2. Internal Control Plan. Within ninety (90) days of the Effective Date of this Order, MAC shall submit an acceptable internal control plan (the "Plan") to the State Mortgage Regulators which sets forth at a minimum policies and procedures to:

   a. Ensure that MAC's compliance department is managed by qualified managers who shall have responsibility for all consumer compliance and related matters, including, but not limited to, monitoring the Corporation's compliance and

ensuring that corrective action is taken to address all compliance violations relating to and/or set forth in the Report;

b. Provide for adequate training to applicable staff persons, conducted by qualified and trained personnel, which includes, but is not limited to, proper instruction, adequate supervision and ongoing training to ensure proper implementation and execution of the revised policies and procedures implemented pursuant to this Order;

c. Identify the type and number of senior management and officer personnel necessary to manage adequately and supervise properly the Corporation's mortgage business activity and the compliance department; ensure that each individual identified possesses the ability, experience, and other qualifications necessary to competently perform present and anticipated duties, to follow and enforce MAC's revised policies and procedures and Plan adopted pursuant to this Order; and confirm the level of staffing needed to conduct competently the Corporation's operations affecting the States' consumers;

d. Develop, implement and maintain technology to prevent unlicensed individuals from submitting any consumer information including but not limited to: 1003 Forms; obtaining a credit bureau report on applicants; submitting the 1003 Form to the Decision Underwriter system to determine the applicants' eligibility; and locking the loan rate for applicants;

e. Ensure an effective system of preventing unlicensed individuals from soliciting, originating and receiving compensation for unlicensed activity;

f. Investigate complaints and other reports from employees, consumers, State or Federal agencies or other individuals alleging that MAC has employees acting in the capacity of an unlicensed mortgage loan originator; and

g. Develop and implement additional internal controls over its mortgage loan origination activities, including revising its policies and procedures to comply with applicable state and federal laws, regulations, and regulatory bulletins.

The State Mortgage Regulators shall make a good faith effort to review the Plan and approve or refuse to approve the Plan within thirty (30) days of the submission of the Plan. If the State Mortgage Regulators do not approve the Plan, the State Mortgage Regulators shall provide comments in a coordinated response on why the Plan is unacceptable and give MAC the opportunity to resubmit the Plan with the appropriate changes. The submission process shall continue unless and until such time as the State Mortgage Regulators approve a Plan. Once approved, MAC shall swiftly implement and comport with the approved Plan, provided that nothing in this Order shall prohibit MAC from adopting such additional procedures and safeguards above and beyond those required by the approved Plan, nor shall subsequent compliance with the approved Plan relieve MAC or its owners, officers, and/or directors from their lawful obligations under state or Federal law or to shield them from liability for subsequent violations of law which may be perpetrated by themselves, their agents, or employees.

3. Fine/Civil Money Penalties. MAC shall pay a civil money penalty in the amount of three million dollars ($3,000,000) which shall be apportioned among the State Mortgage Regulators in equal shares. Payment shall be made as follows:

a. The civil money penalty shall be due in equal monthly installments on or before the last day of each month for a period of twelve (12) months until the

civil money penalty is satisfied in full. The first payment shall be due upon execution of this Order, and the second payment shall be due on or before June 30, 2011.

b. The payments submitted pursuant to Paragraph 3(a) of this Order must be submitted in accordance with the payment instructions provided by each of the States.

c. In the event that MAC fails to submit any payment(s) set forth in this Order, in the amounts specified herein and in accordance with the applicable deadlines, MAC agrees that the Corporation will not object to the State(s) submitting a claim(s), nor attempt to defend or defeat such authorized claim(s), for any unpaid amount(s) against any surety bond(s) that MAC may maintain in such State(s) as a condition of maintaining the Corporation's mortgage license(s).

4. External Audit. Within thirty (30) days of the Effective Date of this Order MAC shall identify an independent auditing firm ("Auditing Firm") to, at MAC's expense, conduct a review of all mortgage loan applications taken from September 1, 2010 through March 31, 2011. MAC shall obtain the prior written approval from the State Mortgage Regulators of the Auditing Firm proposed by MAC (the "Approval Date") before such engagement and review is initiated. Within thirty (30) days of the Approval Date, MAC shall engage the Auditing Firm and the Auditing Firm's engagement and review shall commence.

a. The scope of the Auditing Firm's review shall address and include, but shall not be limited to, the following: assess compliance with state mortgage licensing laws and rules, including application completion procedures;

verification and due diligence procedures; internal policies and quality control procedures; books and records retention, and document destruction procedures, all relative to unlicensed loan activity.

b. The Auditing Firm shall prepare and submit to the State Mortgage Regulators and MAC a written report detailing the auditor's findings (the "Audit Report") within ninety (90) days of the Approval Date.

c. The Auditing Firm shall continue to review loan transactions for a period of time of eighteen (18) months from the date that the Auditing Firm begins its review. The Auditing Firm's engagement letter shall set forth a reasonable and acceptable sampling procedure which will be applied to complete the review for the referenced review period. It being understood that the Auditing Firm shall agree to prepare and submit a monthly report to the State Mortgage Regulators and MAC describing any violations of law observed during the preceding month so that the States may respond to any such conditions in a timely manner.

d. All reports prepared by the Auditing Firm pursuant the provisions of this Paragraph shall be delivered to each State Mortgage Regulator's designee as identified in a cover letter issued to MAC and shall be considered part of the Examination-related material and considered confidential.

e. MAC may submit a written request to the State Mortgage Regulators to amend the provisions of paragraph 4(c) of this Order based on the findings of the Audit Report completed pursuant to the provisions of paragraph 4(b) or on the findings of any report provided pursuant to paragraph 4(c). The State

Mortgage Regulators shall have sole discretion, based on their review of such request, to determine whether to modify the review provided for in paragraph 4(c) in whole or in part.

5. Refunds to Borrowers. Within ninety (90) days of the Effective Date of this Order, to the extent not already completed to the satisfaction of the New York Banking Department, MAC shall refund the following fees collected on transactions originated by unlicensed individuals: application fees, commitment fees, processing fees, underwriting fees, bona fide origination and discount points, and yield spread premiums to borrowers residing in New York. Further, MAC shall provide evidence of refunds made to New York borrowers that is satisfactory to the New York State Banking Department. MAC shall refund all fees charged on transactions originated by unlicensed individuals and identified in the Audit Report within ninety (90) days after issuance of the Audit Report.

6. General Compliance: Upon the Effective Date of this Order, MAC shall establish, implement and maintain procedures to ensure that the Corporation has complied with all regulatory requirements imposed by each individual State Mortgage Regulator pursuant to the provisions of the Multi-State Examination.

GENERAL PROVISIONS

7. Effectiveness. This Order shall become effective immediately upon the date of its execution by the State Mortgage Regulators ("Effective Date").

8. Consent. MAC hereby knowingly, willingly, voluntarily and irrevocably consents to the execution of this Order (without any admission of liability) pursuant to the authority of the State Mortgage Regulators in each State and agrees that it understands all of the terms and

conditions contained herein. MAC by voluntarily entering into this Order waives any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

9. Public Record. The provisions of this Order shall become public upon the Effective Date of this Order.

10. Entire Agreement. This Order contains the whole agreement between the Parties. There are no other terms, obligations, covenants, representations, statements, conditions or otherwise, of any kind whatsoever concerning this Order.

11. Binding Nature. The terms of this Order shall be legally binding upon MAC's officers, owners, directors, employees, heirs, successors and assigns. The provisions of this Order shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this Order shall have been modified, terminated, suspended, or set aside, in writing by mutual agreement of the State Mortgage Regulators collectively and MAC.

12. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

13. Privilege. None of the Parties hereto waives or intends to waive any applicable attorney-client, work product privilege, confidentiality, or any other protection applicable to any negotiations, statements, production of records, information or proceedings relative to this Order. This provision shall survive termination of this Order.

14. Limited Release. This Order is the complete document representing the resolution of only the matters and violations noted in the Multi-State Examination and the Multi-State Report of Examination. It is the express purpose and intention of the parties that MAC will not be subject to any related examination or enforcement, claims or actions by the State Mortgage Regulators arising out of any mortgage loan activities that fall within the scope and

time period covered by the Multi-State Examination excepting only the matter of any potential refunds that may be sought by the State Mortgage Regulators on behalf of consumers or as a result of the audit process described above in Paragraph 4 of this Order. It being understood that the State Mortgage Regulators reserve all of their rights, duties, and authority to enforce all statutes, rules and regulations under their jurisdictions, against MAC regarding any mortgage loan activities falling beyond either the subject matter scope of the Multi-State Examination or outside the time period covered by the Multi-State Examination.

15. Other Enforcement Action.

a. Notwithstanding any other relief to the contrary, if MAC fails to comply with the terms and conditions of this Order the State Mortgage Regulators may pursue any action allowed by law concerning the conduct and violations stated in this Order, including, but not limited to, revocation of any license of MAC, imposition of any fine against MAC, or any other remedy allowed by law.

b. MAC acknowledges and agrees that this Order is only binding on the State Mortgage Regulators and not any other local, state or federal agency, department or office regarding matters within this Order.

16. Authorization. The Parties below are authorized to execute this Order and legally bind their respective parties.

17. Counterparts. This Order may be executed in separate counterparts, by facsimile or by PDF. A copy of the signed Order will be given the same effect as an originally signed Order.

18. Titles. The titles used to identify the paragraphs of this Order are for the convenience of reference only and do not control the interpretation of this Order.

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the State Mortgage Regulators and MAC intending to be legally bound do hereby execute this Consent Agreement and Order.

FOR MORTGAGE ACCESS CORP. D/B/A WEICHERT FINANCIAL SERVICES

(Officer Signature)

Carolee Boles
(Print Officer Name)

Secretary / VP Compliance
(Title)

Date: 5/27/11

[THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

FOR THE CONNECTICUT DEPARTMENT OF BANKING

(Signature)

Howard B. Pitkin

(Print Name)

Commissioner

(Title)

Date: May 27, 2011

[THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

FOR THE KENTUCKY DEPARTMENT OF FINANCIAL INSTITUTIONS

_____
(Signature)

Charles A. Vice
(Print Name)

Commissioner
(Title)

Date: 05/27/2011

[THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

FOR THE LOUISIANA OFFICE OF FINANCIAL INSTITUTIONS

(Signature)

John Ducrest
(Print Name)

Commissioner of Financial Institutions
(Title)

Date: 5/27/11

[THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

FOR THE MASSACHUSETTS DIVISION OF BANKS

(Signature)

David J. Cotney
(Print Name)

Commissioner of Banks
(Title)

Date: 5/27/11

[THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

FOR THE NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE

Thomas B. Considine, Commissioner

Date: May 27, 2011

[THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

FOR THE STATE OF NEW YORK BANKING DEPARTMENT

Regina A. Stone
(Signature)

Regina A. Stone
(Print Name)

Acting Superintendent of Banks
(Title)

Date: 5/27/11

[THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

FOR THE NORTH CAROLINA OFFICE OF THE COMMISSIONER OF BANKS

(Signature)

Ray Grace
(Print Name)

Chief Deputy Commissioner of Banks
(Title)

Date: May 27, 2011

[THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

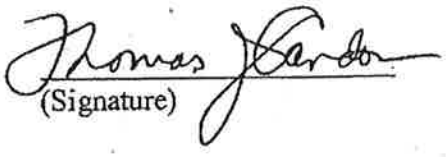
FOR THE PENNSYLVANIA DEPARTMENT OF BANKING

Brian Crossland
Chief, Compliance Division

Date: 5/27/11

[THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

FOR THE VERMONT DEPARTMENT OF BANKING, INSURANCE, SECURITIES AND HEALTH CARE ADMINISTRATION



(Signature)

Thomas J. Candon

(Print Name)

Acting Commissioner of Banking, Insurance, Securities and Health Care Administration
Deputy Commissioner of Banking and Securities

(Title)

Effective Date: May 25, 2011

[THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

FOR THE VIRGINIA BUREAU OF FINANCIAL INSTITUTIONS

(Signature)

E.J. Face, Jr.

(Print Name)

Commissioner

(Title)

Date: May 27, 2011

[THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

CONNECTICUT

CT Gen. Stat. § 36a-486(b)(1)

No person licensed as a mortgage lender, mortgage correspondent lender or mortgage broker shall engage the services of a mortgage loan originator unless such mortgage loan originator is licensed under section 36a-489. An individual, unless specifically exempted under subdivision (2) of this subsection, shall not engage in the business of a mortgage loan originator with respect to any dwelling, as defined in Section 103 of the Consumer Credit Protection Act, 15 USC 1602, located in this state without first obtaining and maintaining annually a license as a mortgage loan originator under section 36a-489. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the system. No individual may act as a mortgage loan originator for more than one person at the same time. The license of a mortgage loan originator is not effective during any period when such mortgage loan originator is not sponsored by a licensed mortgage lender, mortgage correspondent lender or mortgage broker, or during any period in which the license of the mortgage lender, mortgage correspondent lender or mortgage broker with whom such originator is associated has been suspended. Either the mortgage loan originator or the mortgage lender, mortgage correspondent lender or mortgage broker may file a notification of the termination of sponsorship of a mortgage loan originator with the system.

COMMONWEALTH OF KENTUCKY

Kentucky Revised Statutes (KRS) related to the mortgage loan origination process by utilizing mortgage loan originators and/or mortgage loan processors that were not registered with the state of Kentucky during the origination period. Therefore, Mortgage Access Corporation is cited as in violation of KRS 286.8-030(1)(d) , which reads as follows: "It is unlawful for any mortgage loan company or mortgage loan broker to employ or use a mortgage loan originator or a mortgage loan processor if the mortgage loan originator or mortgage loan processor is not registered in accordance with KRS 286.8-255 or otherwise exempted." Furthermore, KRS 286.8-255(1) reads as follows: "No natural person shall transact business in Kentucky, either directly or indirectly, as a mortgage loan originator or mortgage loan processor unless such mortgage loan originator or mortgage loan processor is registered with the department and has been issued a current certificate of registration by the department, complies with all applicable requirements of this subtitle, and maintains a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry. ..."

The Department's ability to levy fines is stated in KRS 286.8-046(1) and reads as follows: "The commissioner may levy a civil penalty against any person who violates any provision of or any administrative regulation promulgated under this subtitle or order issued by the commissioner under this subtitle. The civil penalty shall be not less than one thousand dollars ($1,000) nor more than twenty-five thousand dollars ($25,000) per violation, plus the state's costs and expenses for the examination, investigation, and prosecution of the matter, including reasonable attorney's fees and court costs."

LOUISIANA

LSA-R.S. 6:1083(10) - "Mortgage loan originator" means an individual who for compensation or gain or with the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.

LSA-R.S. 6:1086(A) - Except as otherwise provided in Subsection B of this Section, beginning on July 31, 2009, and unless otherwise exempt pursuant to this Chapter, no person shall engage in any residential mortgage lending activity in this state without first obtaining and maintaining annually the following:

(1) A license and registration as a mortgage loan originator, or a license as a mortgage lender or broker.

(2) A unique identifier.

COMMONWEALTH OF MASSACHUSETTS

Massachusetts General Laws chapter 255E.
Massachusetts General Laws chapter 255F.

Massachusetts General Laws chapter 255F, section 2(a), states, "No individual shall act as a mortgage loan originator with respect to any dwelling unless such person has first obtained a mortgage loan originator license from the commissioner. . . No person shall knowingly employ or retain a mortgage loan originator unless the mortgage loan originator is licensed under this chapter."

Massachusetts General Laws chapter 255F, section 11 (b), states: "The commissioner may impose a civil assessment on a person subject to this chapter, if the commissioner finds, on the record after notice and opportunity for a hearing, that such person has violated or failed to comply with any requirement of this chapter or any regulation promulgated or order issued by the commissioner." Furthermore, Massachusetts General Laws chapter 255F section 11 (1) adds: "Nothing in this chapter shall preclude the prosecution of a criminal action arising from an act or omission for which a civil assessment has been imposed."

NEW JERSEY

NJ"s enabling law for this examination period was the NJ Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq., enacted in 1997, including provisions therein governing examination, at N.J.S.A. 17:11C-42, recodified in pertinent part in the NJ Residential Mortgage Lending Act of 2009 at N.J.S.A. 17:11C-84.

NEW YORK

New York Banking Law, Article 12-D § 596 For the purpose of discovering violations of this article or securing information lawfully required by him hereunder, the superintendent may at any time, and as often as he or she may determine, either personally or by a person duly designated by him, investigate the business and examine the books, accounts, records, and files used therein of every licensee, servicer and registrant. For that purpose the superintendent and his or her duly designated representative shall have free access to the offices and places of business, books, accounts, papers, records, files, safes and vaults of all such licensees, servicers and registrants. The superintendent and any person duly designated by him or her shall have authority to require the attendance of and to examine under oath all persons whose testimony he or she may require relative to such business.

New York Banking Law, Article 2 § 44.1(a) Without limiting any power granted to the superintendent under any other provision of this chapter, the superintendent may, in a proceeding after notice and a hearing, require any ... licensed mortgage banker, registered mortgage broker, licensed mortgage loan originator, registered mortgage loan servicer ... to pay to the people of this state a penalty for any violation of this chapter, any regulation promulgated there under, any final or temporary order issued pursuant to section thirty-nine of this article, any condition imposed in writing by the superintendent or banking board in connection with the grant of any application or request, or any written agreement entered into with the superintendent. (b) The penalty for each violation prescribed in paragraph (a) of this subdivision shall not exceed two thousand five hundred dollars for each day during which such violation continues. (c) Notwithstanding paragraph (b) of this subdivision, if the superintendent determines (i) that any such licensee, registrant or safe deposit company has committed a violation as described in paragraph (a) of this subdivision, or has recklessly engaged in any unsafe and unsound practice and (ii) that such violation or practice is part of a pattern of misconduct, results or is likely to result in more than minimal loss to such licensee, registrant ... or results in pecuniary gain or other benefit to such licensee, registrant ... then the penalty shall not exceed fifteen thousand dollars for each day during which such violation or practice continues.

§ For all loans originated on or before July 31, 2009.

a) New York Banking Law, Article 12-E § 599 c. 1 Authorization and application. No person shall, on or after January first, two thousand eight, engage in mortgage loan origination without first being authorized by the superintendent as an MLO pursuant to this article, unless otherwise exempt pursuant to section five hundred ninety-nine-e of this article or regulations of the superintendent.

b) Superintendent's Regulations Part 420.20(b)(3), Prohibited conduct - was not in effect prior to July 31, 2009.

c) Superintendent's Regulations Part 410 § 410.7(a). Each mortgage banker and mortgage broker shall keep its books and records in a manner that will allow the superintendent to determine whether the mortgage banker or mortgage broker is complying with article 12-D of

the Banking Law. Every mortgage banker and mortgage broker shall preserve its books and records for inspection for a minimum of three years.

d) General Regulations of the Banking Board, Part 38 § 38.8(b)(2)(iv) Every written application taken by a mortgage banker or exempt organization shall be signed by the employee taking such application, and shall include the name and/or title of such employee.

§ For all loans originated on or After July 31, 2009.

a) New York Banking Law, Article 12-E_§ 599 c License required. No individual, unless specifically exempt pursuant to subdivision three of this section shall engage in the business of a mortgage loan originator with respect to any dwelling or residential real property in this state without first 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 NMLSR.

b) Superintendent's Regulations Part 420, Prohibited conduct § 420.20(b)(3) No originating entity or exempt organization shall: pay compensation for mortgage loan originating activities to an individual who is then required to be licensed as an MLO but has not received such license, or, except as required by law or court order, pay the compensation of a MLO to a individual; other than the individual on the MLO license;

c) Superintendent's Regulations Part 410 § 410.7(a). Each mortgage banker and mortgage broker shall keep its books and records in a manner that will allow the superintendent to determine whether the mortgage banker or mortgage broker is complying with article 12-D of the Banking Law. Every mortgage banker and mortgage broker shall preserve its books and records for inspection for a minimum of three years.

d) General Regulations of the Banking Board, Part 38 § 38.8(b)(2)(iv) Every written application taken by a mortgage banker or exempt organization shall be signed by the employee taking such application, and shall include the name and/or title of such employee.

NORTH CAROLINA

Enabling Statutes for the three violations cited in North Carolina:

- **Simultaneously Employment:**

(b) The license of a mortgage loan originator is not effective during any period when that person is not employed by a mortgage lender, mortgage broker, or mortgage servicer licensed under this Article. When a mortgage loan originator ceases to be employed by a mortgage lender, mortgage broker, or mortgage servicer licensed under this Article, the mortgage loan originator, and the mortgage lender, mortgage broker, or mortgage servicer licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. The mortgage lender, mortgage broker, or mortgage servicer shall include a statement of the specific reason for the termination of the mortgage loan originator's employment. A mortgage loan originator shall not be employed simultaneously by more than one mortgage lender, mortgage broker, or mortgage servicer licensed under this Article.

- **Lack of Control and Supervision:**

§ **For all loans originated on or before July 31, 2009, NC Gen. Stat. § 53-243.08.**

Each mortgage broker or mortgage banker or mortgage servicer licensed under this Article shall have a qualifying individual who operates the business under that person's full charge, control, and supervision. Mortgage bankers and mortgage brokers, other than exclusive mortgage brokers, may operate branch offices subject to the requirements of this Article. Each principal and branch office of a mortgage broker or mortgage banker licensed under this Article, shall have a branch manager who meets the experience requirements under G.S. 53-243.05(c)(1); provided, that an affiliated mortgage banker may designate a branch manager who does not meet the experience requirements so long as at or before the designation, it certifies that the person has been employed by the affiliated mortgage banker for at least one year as a loan officer, limited loan officer, or in a comparable position in another state. The qualifying individual for a licensee's business may also serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage banker licensed under this Article shall file a form as prescribed by the Commissioner indicating the business's designation of qualifying individual and branch manager for each branch and each individual's acceptance of the responsibility. Each mortgage broker or mortgage banker licensed under this Article shall notify the Commissioner of any change in its qualifying individual or branch manager designated for each branch. Each mortgage servicer licensed under this Article shall file a form prescribed by the Commissioner indicating the business's designation of its qualifying individual and shall notify the Commissioner of any change in its qualifying individual. Any licensee who does not comply with this provision shall have the licensee's license suspended pursuant to G.S. 53-243.12 until the licensee complies with this section. Any individual licensee who operates as a sole proprietorship shall be considered a qualifying individual for the purposes of this Article."

§ **For all loans originated after July 31, 2009, NC Gen. Stat. § 53-244.040(e).**

(e) Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article shall have a qualifying individual who operates the business under that person's full charge, control, and supervision. Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article shall file through the Nationwide Mortgage Licensing System and Registry a form acceptable to the Commissioner indicating the licensee's designation of qualifying individual and each qualifying individual's acceptance of the responsibility. Each mortgage broker, mortgage lender, or mortgage servicer licensed under this Article shall notify the Commissioner within 15 days of any change in its designated qualifying individual. Any individual licensee who operates as a sole proprietorship shall qualify as and be considered the qualifying individual for the purposes of this subsection.

- **Unlicensed Loan Originations:**

  - **For all loans originated on or before July 31, 2009, NC Gen. Stat. § 53-243.02(a). License required;**

(b) It is unlawful for any natural person to engage in the solicitation and acceptance of applications for mortgage loans without first obtaining a license as a loan officer, mortgage banker, or mortgage broker issued by the Commissioner under the provisions of this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a loan officer unless the loan officer is licensed as a loan officer under this Article. Exempt persons shall not be subject to this subsection.

§ For all loans originated after July 31, 2009, NC Gen. Stat. § 53-244.040. License and registration requirements.

(a) Except as provided in subsection (d) of this section, no person may engage in the mortgage business or act as a mortgage loan originator with respect to any dwelling located in this State without first obtaining and maintaining a license under this Article. It shall be unlawful for any person, other than an exempt person, to act as a mortgage loan originator without a mortgage loan originator license, which authorizes an individual who is employed by a licensee holding a license as provided in subsection (b) of this section to conduct the business of a mortgage loan originator.

COMMONWEALTH OF PENNSYLVANIA

Pennsylvania Department of Banking's enabling statute is the Mortgage Licensing Act, 7 Pa. C.S. § 6101 et seq. ("MLA").

a) Section 6138(a)(4) of the MLA grants the Department broad authority to issue orders for the enforcement of the MLA. 7 Pa. C.S. § 6138(a)(4).

b) Section 6111(a) of the MLA provides that no one can engage in the mortgage loan business in Pennsylvania without first being licensed. *See* 7 Pa. C.S. § 6111(a).

c) Section 6121(13)(i) of the MLA provides that a mortgage lender must maintain supervision and control over its mortgage originators. *See* 7 Pa. C.S. § 6121(13)(i).

d) Section 6135(a)(2) of the MLA provides that a licensee must maintain all instruments, documents, accounts, books and records relating to the mortgage loan business. *See* 7 Pa. C.S. § 6135(a)(2).

e) All costs associated with an examination, which the Department is authorized to conduct, shall be borne by a licensee. *See* 7 Pa. C.S. §§ 6135(a)(2), 6135(a)(4), 6138(a)(1).

f) The Department has the authority to suspend, revoke or refuse to renew MAC's mortgage license if a licensee has (i) violated provisions of the MLA; (ii) engaged in unfair and unethical business practices; (iii) demonstrated negligence or incompetence in the mortgage business, and (iv) conducting business through unlicensed mortgage originators. *See* 7 Pa. C.S. § 6139(a)(2), 6139(a)(3), 6139(a)(10), 6139(a)(14).

g) The Department has the authority to impose any other condition that the Department deems appropriate. *See* 7 Pa. C.S. § 6138(a)(8).

h) The Department has the authority to levy fines in the amount of up to $10,000 for each violation of the MLA. *See* 7 Pa. C.S. § 6140(b).

VERMONT

Title 8: Banking and Insurance

Chapter 73: LICENSED LENDERS

8 V.S.A. § 2201. Licenses required

§ 2201. Licenses required

(a) No person shall without first obtaining a license under this chapter from the commissioner:

(1) engage in the business of making loans of money, credit, goods or things in action and charge, contract for or receive on any such loan interest, a finance charge, discount or consideration therefore;

(2) act as a mortgage broker;

(3) act as a mortgage loan originator; or

(4) act as a sales finance company.

(b) Each licensed mortgage loan originator must register with and maintain a valid unique identifier with the Nationwide Mortgage Licensing System and Registry and must be either:

(1) an employee actively employed at a licensed location of, and supervised and sponsored by, only one licensed lender or licensed mortgage broker operating in this state; or

(2) an individual sole proprietor who is also a licensed lender or licensed mortgage broker.

(c) A person licensed pursuant to subdivision (a)(1) of this section may engage in mortgage brokerage and sales finance if such person informs the commissioner in advance that he or she intends to engage in sales finance and mortgage brokerage. Such person shall inform the commissioner of his or her intention on the original license application under section 2202 of this title, any renewal application under section 2209 of this title, or pursuant to section 2208 of this title, and shall pay the applicable fees required by subsection 2202(b) of this title for a mortgage broker license or sales finance company license.

(d) No lender license, mortgage broker license, or sales finance company license shall be required of:

(1) a state agency, political subdivision, or other public instrumentality of the state;

(2) a federal agency or other public instrumentality of the United States;

(3) a gas or electric utility subject to the jurisdiction of the public service board engaging in energy conservation or safety loans;

(4) a depository institution;

(5) a pawnbroker;

(6) an insurance company;

(7) a seller of goods or services that finances the sale of such goods or services, other than a residential mortgage loan;

(8) any individual who offers or negotiates the terms of a residential mortgage loan secured by a dwelling that served as the individual's residence;

(9) lenders that conduct their lending activities, other than residential mortgage loan activities, through revolving loan funds, that are nonprofit organizations exempt from taxation under Section 501(c) of the Internal Revenue Code, and that register with the commissioner of economic development under 10 V.S.A. § 690a.

(10) persons who loan, other than residential mortgage loans, an aggregate of less than $50,000.00 in any one year at rates of interest of no more than 12 percent per annum;

(11) a seller who, pursuant to 9 V.S.A. § 2355(f)(1)(D), includes the amount paid or to be paid by the seller to discharge a security interest, lien interest, or lease interest on the traded-in motor vehicle in a motor vehicle retail installment sales contract, provided that the contract is purchased, assigned, or otherwise acquired by a sales finance company licensed pursuant to this title to purchase motor vehicle retail installment sales contracts or a depository institution;

(12)(A) a person making an unsecured commercial loan, which loan is expressly subordinate to the prior payment of all senior indebtedness of the commercial borrower regardless of whether such senior indebtedness exists at the time of the loan or arises thereafter. The loan may or may not include the right to convert all or a portion of the amount due on the loan to an equity interest in the commercial borrower;

(B) for purposes of this subdivision (12), "senior indebtedness" means:

(i) all indebtedness of the commercial borrower for money borrowed from depository institutions, trust companies, insurance companies, and licensed lenders, and any guarantee thereof; and

(ii) any other indebtedness of the commercial borrower that the lender and the commercial borrower agree shall constitute senior indebtedness;

Subdivision (d)(13) effective until February 1, 2011; see also subdivision (d)(13) effective February 1, 2011, set out below.

(13) nonprofit organizations established under testamentary instruments, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and which make loans for postsecondary educational costs to students and their parents, provided that the organizations provide annual accountings to the probate court pursuant to 14 V.S.A. § 2324;

Subdivision (d)(13) effective February 1, 2011; see also subdivision (d)(13) effective until February 1, 2011, set out above.

(13) nonprofit organizations established under testamentary instruments, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and which make loans for postsecondary educational costs to students and their parents, provided that the organizations provide annual accountings to the probate division of the superior court pursuant to 14 V.S.A. § 2324;

(14) any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(e) No mortgage loan originator license shall be required of:

(1) Registered mortgage loan originators, when acting for an entity described in subdivision 2200(19) of this chapter.

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(4) 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.

(f) Independent contractor loan processors or underwriters. A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a mortgage loan originator license. 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.

(g) This chapter shall not apply to commercial loans of $1,000,000.00 or more. (Amended 1969, No. 243 (Adj. Sess.), § 1; 1979, No. 173 (Adj. Sess.), § 2, eff. April 30, 1980; 1985, No. 38, § 2; 1991, No. 1, § 1, eff. Feb. 27, 1991; 1995, No. 162 (Adj. Sess.), § 2, eff. Jan. 1, 1997; 1999, No. 153 (Adj. Sess.), § 12, eff. Jan. 1, 2001; 2001, No. 55, § 4, eff. June 12, 2001; 2005, No. 143 (Adj. Sess.), § 2; 2007, No. 159 (Adj. Sess.), § 1, eff. May 20, 2008; 2007, No. 178 (Adj. Sess.), § 1; 2009, No. 29, § 1; 2009, No. 137 (Adj. Sess.), § 1a; No. 154 (Adj. Sess.), § 238a, eff. Feb. 1, 2011.)

COMMONWEALTH OF VIRGINIA

Enabling Statute

Section 6.1-244 *et seq.*, of the Code of Virginia.