

**Vermont Department of Banking, Insurance, Securities
& Health Care Administration (BISHCA)**

H. 171 - An Act Relating to Home Mortgage Protection (SAFE Act)

Summary - As of June 9, 2009

[NOTE - This Summary was prepared by BISHCA as of June 9, 2009. In the event of any conflict between applicable statutes, regulations, or NMLS procedures and this Summary, the applicable statute, regulation, or NMLS procedure will govern. This Summary is not intended as a legal or advisory opinion.]

1. Mortgage Loan Originator.

All mortgage loan originators must be licensed in Vermont. Licensing is done through the Nationwide Mortgage Licensing System and Registry ("NMLS" or "NMLSR")

A mortgage loan originator is an *individual* who: (a) takes a residential mortgage loan application; or (b) offers or negotiates the terms of a residential mortgage loan. 8 VSA §2200(14).

A mortgage loan originator must be actively employed by a Vermont licensed mortgage broker or a Vermont licensed lender, and must be operating under the license of such mortgage broker or licensed lender. Alternatively, a mortgage loan originator may be a sole proprietor who is also licensed as a Vermont lender or mortgage broker.

A *residential mortgage loan* includes any loan secured by a mortgage or equivalent security interest on a *dwelling* as defined in §103(v) of the Truth in Lending Act. The Truth in Lending Act broadly defines *dwelling* and includes cooperative units, condominiums, mobile homes, and trailers, if used as a residence, regardless of whether the dwelling is located on owned or leased real property.

There are very few *exceptions* to the mortgage loan originator licensing requirement and are limited to the following:

- (a) A licensed real estate broker when acting solely in such real estate brokerage activities.
- (b) A person acting solely as a loan processor or underwriter performing only clerical or support duties as an employee under the direction, supervision, and instruction of a licensed person (the permitted "clerical support duties" are limited by statute, see 8 VSA §2200(11)).
- (c) A person involved solely in the extension of credit relating to timeshare plans.
- (d) A loan to an immediate family member.

(e) A seller involved with a loan secured by a mortgage on property that served as the seller's residence.

(f) A licensed attorney who is acting ancillary to the attorney's representation of the client, provided the attorney is not compensated by the lender, mortgage broker, or mortgage loan originator.

2. Bonding.

The bonding requirement is now a graduated dollar amount based upon the amount of loans originated in Vermont. For lenders the amount of the bond ranges from \$50,000.00 to \$150,000.00. For mortgage brokers the amount of the bond ranges from \$25,000.00 to \$100,000.00. Mortgage loan originators may be covered by their own bond or may be covered by their employing lender or mortgage broker's bond.

3. Fingerprints and Criminal Background Checks.

All licensees, and all officers, directors, and control persons of the licensee, must furnish fingerprints to the NMLS for submission to the FBI for a criminal history background check.

Licenses will not be issued to, and must be revoked, if the licensee or any officer, director, or control person:

(a) Has had any felony conviction (or any guilty plea or nolo contendere plea) within the past *seven years*; or

(b) Has *ever* had any felony conviction (or any guilty plea or nolo contendere plea) for a felony that involved fraud, dishonesty, breach of trust, or money laundering.

A felony conviction that has been pardoned is not considered a conviction for purposes of this requirement.

4. Credit Reports - Financial Responsibility, Experience, Character, and General Fitness.

All licensees, and all officers, directors, and control persons of the licensee, must demonstrate that they have the requisite financial responsibility, experience, character, and general fitness to operate as a licensee. To assist the Department in making that determination, personal history and experience information must be submitted to the NMLS. Additionally, the Department may review credit reports and credit scores. Some factors the Department may consider include:

(a) Current and outstanding judgments, other than judgments related solely to medical expenses;

- (b) Currently outstanding tax liens or other government liens and filings;
- (c) Foreclosures within the past three years; and
- (d) A pattern of seriously delinquent accounts within the past three years.

Licenses may be denied or revoked if the licensee or any officer, director, or control person does not demonstrate the requisite financial responsibility, experience, character, or general fitness.

5. License Revocations or Suspensions in Other States.

Licenses shall be denied or revoked if the licensee or any officer, director, or control person has ever had a lender license, mortgage broker license, mortgage loan originator license, or similar license revoked in any jurisdiction. A revocation order that has been formally vacated shall not be deemed a revocation.

6. Pre-License Education - Mortgage Loan Originators.

Each mortgage loan originator must complete at least 20 hours of education before being licensed. The 20 hours of pre-license education must include at least:

- (a) Three hours of federal laws and regulations;
- (b) Three hours of ethics, including instruction on fraud, consumer protection, and fair ending issues; and
- (c) Two hours related to lending standards for the nontraditional mortgage product marketplace.

The pre-licensing education courses must be approved by the NMLS.

7. Pre-License Testing - Mortgage Loan Originators.

Each mortgage loan originator must pass a written national test and a written Vermont state test before being licensed. The test is administered by the NMLS. The test includes:

- (a) Ethics;
- (b) Federal laws and regulations;
- (c) State laws and regulations; and

(d) Federal and state laws and regulations, including fraud, consumer protection, nontraditional mortgages, and fair lending issues.

8. Continuing Education - Mortgage Loan Originators.

All licensed mortgage loan originators must complete at least eight hours of continuing education each year. The annual continuing education must include at least:

- (a) Three hours of federal laws and regulations;
- (b) Two hours of ethics, including fraud, consumer protection, and fair lending issues: and
- (c) Two hours related to lending standards for nontraditional mortgage products

Continuing education courses must be approved by the NMLS.

All continuing education requirements must be completed by December 1 of each year in order to meet the December 1 deadline for license renewal. (Continuing education courses are not required in the year the licensee completes the initial 20 hours of pre-license education, but are required each year thereafter.)

9. Mortgage Loan Originators - Approved Inactive Status.

A mortgage loan originator that has satisfied all of the requirements for a license, other than being employed by a mortgage broker or licensed lender, may have his or her licensed placed in an approved inactive status.

10. License Renewal - Mortgage Loan Originator Automatic License Termination.

All licensees must renew their license by December 1 for the next succeeding calendar year.

Mortgage loan originator licenses automatically terminate on December 31 if the licensee fails to renew his or her license by December 1, including the renewal fee and continuing education requirement.

11. Financial Statements - Lenders, Mortgage Brokers, Sales Finance Companies.

Within 90 days of the licensee's fiscal year end, all licensed lenders, mortgage brokers, and sales finance companies must file financial statements, including a balance sheet and income statement with the Department. Lenders and mortgage brokers must upload the financial statements to the NMLS and the NMLS will forward the information to the Department. Sales finance companies must submit the financial information directly to the Department.

12. Mortgage Call Reports.

Each licensed lender, mortgage broker, and mortgage loan originator must submit reports of condition to the NMLS. The reports will be in such form and contain such information as the NMLS may require.

13. Prohibited Acts and Practices.

A number of specifically prohibited acts and practices are identified, including:

- (a) Defrauding or misleading borrowers, lenders, or any other person;
- (b) Engaging in unfair or deceptive acts or practices;
- (c) Entering into, or soliciting a contract, to earn a fee through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;
- (d) Advertising or entering into a contract for specific rates, points, or other terms if those terms are not actually available at the time of advertising or entering into the contract;
- (e) Failing to make any required disclosure;
- (f) Any kind of false or deceptive statements, representations, or advertising, including bait and switch activities;
- (g) Making any payment, threat, or promise to influence the independent judgment of an appraiser.

14. Unique Identifier.

Each person originating residential mortgage loans must obtain a unique identifier through the NMLS. The unique identifier must be shown on all loan applications, solicitations, and advertisements, including business cards and websites.

15. Transition.

- (a) Current mortgage brokers and loan officers. Current mortgage brokers and loan officers working for licensed lenders or mortgage brokers, and those that start working for a licensed lender or mortgage broker before December 31, 2009, must have a mortgage loan originator license by July 1, 2010.

Warning - Those who wait until the July 1, 2010 deadline may experience significant backlogs and delays in the processing and issuance of a mortgage loan originator license, including a period of time during which the individual is not permitted to engage in mortgage loan originator activities in Vermont. **The Department strongly recommends**

that individuals apply for a mortgage loan originator license well in advance of the July 1, 2010 deadline.

(b) New mortgage brokers and loan officers. Any mortgage broker or loan officer that enters the business on or after January 1, 2010 must obtain a Vermont mortgage loan originator license before acting as a mortgage loan originator.

(c) Mortgage Loan Originator License Applications - Individuals may begin filing mortgage loan originator license applications on or after October 1, 2009. The Department, however, will not actually issue any mortgage loan originator licenses prior to November 1, 2009.

Chapter 73 provides that any license originally issued on or after November 1 of the current year is valid for the rest of the current year and for the next succeeding year. For example, a mortgage loan originator license issued on November 2, 2009 would not have to renew the license until December 1, 2010.

(d) Establish Account and Biographical Information (NMLS Form MU-4) On the NMLS.

Establish your account and submit your MU-4 form to NMLS as soon as possible. *This does not constitute the filing of an application.* Establishing your NMLS account will create your "unique identifier". You will need an NMLS account and your unique identifier to complete your pre-licensing education and to take the pre-license test.

(e) Pre-License Education.

Start taking your 20 hours of pre-license education and make sure the education hours are submitted to the NMLS. It is anticipated that education courses will be available beginning July 31, 2009. Remember, all courses must be approved by the NMLS.

(f) Pre-License Testing.

Take the pre-license test. The test may be taken before completing the 20 hours of pre-license education if you so choose. The test is administered through the NMLS. It is anticipated that the test will be available in Vermont beginning July 31, 2009.

(g) Submit Fingerprints to the NMLS.

Submit your fingerprints to the NMLS. It is anticipated that fingerprints will be submitted through the "Livescan Network". We do not yet have a start date for the submission of fingerprints, but the Department anticipates that licensees will be able to begin submitting fingerprints approximately November 1, 2009.

(h) Bonding.

For existing licensees, the new bonding requirements become effective with the December 1, 2009 license renewal. For all new licensees, the new bonding requirements become effective with the license application.