

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 19 MORTGAGE LENDING
PART 2 MORTGAGE LOAN ORIGINATOR REQUIREMENTS

12.19.2.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.
[12.19.2.1 NMAC - N, 08/31/09]

12.19.2.2 SCOPE: All mortgage loan originators licensed by the state of New Mexico.
[12.19.2.2 NMAC - N, 08/31/09]

12.19.2.3 STATUTORY AUTHORITY: New Mexico Mortgage Loan Originator Licensing Act, Section 58-21B-19 NMSA 1978.
[12.19.2.3 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.4 DURATION: Permanent.
[12.19.2.4 NMAC - N, 08/31/09]

12.19.2.5 EFFECTIVE DATE: August 31, 2009, unless a later date is cited in the history note at the end of a section.
[12.19.2.5 NMAC - N, 08/31/09]

12.19.2.6 OBJECTIVE: The objective of this part is to effectuate the purposes of the New Mexico Mortgage Loan Originator Licensing Act, Section 58-21B-1 NMSA 1978 et. seq., and to clarify its meaning.
[12.19.2.6 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.7 DEFINITIONS:

A. "Days" means a period of time expressed in calendar days, except when disclosures are required to be given to borrowers, then "days" shall exclude Saturdays, Sundays and legal holidays.

B. "Independent contractor" means any person who processes or underwrites residential mortgage loans and is not a W-2 employee of a licensed mortgage loan company.

C. "Scheduled long-term monthly debt payments" means the monthly payments of all installment debts, revolving charge accounts, open accounts and lines of credit that would be used to determine a borrower's ability to repay per the current underwriting guidelines of the federal housing administration (FHA), the federal national mortgage association (FNMA), the federal home loan mortgage corporation (FHLMC) or the department of veteran's affairs (VA).

D. "Takes a residential mortgage loan application", with respect to Section 58-21B-3(K) NMSA 1978, means:

(1) any communication, regardless of form, from a mortgage loan originator to a borrower soliciting a loan application or requesting information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower; or

(2) any communication, regardless of form, from a borrower to a mortgage loan originator, for an offer or responding to a solicitation for an offer of residential mortgage loan terms or providing information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower.

[12.19.2.7 NMAC - N, 08/31/09; A, 06/01/10; A, 12/31/10]

12.19.2.8 FEES: A mortgage loan originator shall pay the following fees. These fees are non-refundable and are in addition to any fees established and charged by the nationwide mortgage licensing system and registry, any approved educational course provider, any approved educational testing provider, any law enforcement agency for finger prints and background checks or by any credit reporting agency used by the nationwide mortgage licensing system and registry:

A. Mortgage loan originator fees:

(1) application fee: \$200.00;

(2) license fee: \$200.00;

- (3) annual renewal license fee: \$200.00;
- (4) reinstatement fee: \$100.00.

B. Investigation fee: \$75.00 per hour, or any fraction of an hour, per examiner or investigator.
[12.19.2.8 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.9 SURETY BOND: Every surety bond shall provide that no suit or claim shall be maintained to enforce any liability on the bond unless brought within six years after the act upon which the suit or claim is based.
[12.19.2.9 NMAC - N, 08/31/09]

12.19.2.10 HEARING PROCEDURES AND CHALLENGE PROCESS:

A. In reference to Section 58-21B-14 NMSA 1978, hearings requested shall be conducted under the following procedures.

(1) The mortgage loan originator shall request a hearing in writing by certified return receipt letter addressed to the director. The director shall, within 30 days of receipt of the request, notify the mortgage loan originator of the date, time and place of the hearing.

(2) Hearings shall be conducted pursuant to the Administrative Procedures Act, Sections 12-8-10 and 12-8-11 NMSA 1978.

(3) Hearings shall be conducted in Santa Fe county or another county if agreed to by the director and the mortgage loan originator.

(4) All hearings shall be conducted by the director or by a hearing officer designated by the director. A hearing officer shall, within 30 days following the hearing, submit to the director a report setting forth the hearing officer's findings of fact and conclusions of law.

(5) All hearings shall be open to the public. In cases in which the reputation of an applicant or licensee may be damaged or, for good cause shown, the director or hearing officer may hold a closed hearing and must state the reasons for this decision in the record.

(6) A complete record shall be made of all evidence and testimony received during the course of any hearing.

(7) Within sixty (60) days after the hearing, the director shall serve upon the applicant or licensee a copy of the final written order.

B. In reference to Section 58-21B-12 NMSA 1978, the challenge process shall be conducted under the following procedures.

(1) Any person aggrieved by a final order of the director may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

(2) The commencement of the proceedings under Paragraph (1) of Subsection B of this section does not, unless specifically ordered by the court, operate as a stay of the director's order.

[12.19.2.10 NMAC - N, 08/31/09; A, 12/31/10]

12.19.2.11 SUCCESSIVE YEARS FOR CONTINUING EDUCATION COURSES: The New Mexico Mortgage Loan Originator Licensing Act, Section 58-21B-10(E)(2) NMSA 1978, prohibits a licensed mortgage loan originator from taking the same approved continuing education course in the same or successive years to meet the annual continuing education requirements. For purposes of this limitation, the term "successive years" means the two years following the year in which a mortgage loan originator takes an approved course.

[12.19.2.11 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.12 REINSTATEMENT OF LICENSE: The license of a mortgage loan originator that expires for failure to satisfy the minimum standards for renewal may be reinstated if the licensee meets the following requirements:

A. The license must be reinstated between January 1 and February 28 of the year immediately following the year the license expired.

B. All continuing education courses and any other minimum requirements for license renewal for the year in which the license expired must be completed by February 28 of the year immediately following the year the license expired.

C. The licensee must pay the applicable licensing, reinstatement and late fees. If a mortgage loan originator whose license has expired fails to meet the requirements for reinstatement specified in this section, the mortgage loan originator must apply for a license and meet the requirements for licensure in effect at that time.

[12.19.2.12 NMAC - N, 08/31/09]

12.19.2.13 DISCLOSURES: At least two (2) days prior to closing, a mortgage loan originator shall provide to the borrower(s) the following federal disclosures specific to the mortgage loan the borrower(s) is receiving: (1) a good faith estimate and (2) a truth in lending statement. These documents shall be used to comply with Section 58-21B-20(B) NMSA 1978. For the purposes of the act, the yield spread premium or discount points received by the mortgage loan company shall be disclosed as a credit or charge in a dollar amount on all good faith estimates.

[12.19.2.13 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.14 REASONABLE ABILITY TO REPAY: The documentation of “reasonable ability to repay”, in Section 58-21B-13(C)(24) NMSA 1978, will depend upon the totality of facts and circumstances relating to a specific residential mortgage loan transaction and the borrower’s financial condition and circumstances. While the documentation of certain residential mortgage loan transactions may clearly demonstrate the borrower’s reasonable ability to repay, others may require closer scrutiny to determine whether the documentation for a particular residential mortgage loan transaction sufficiently demonstrates ability to repay. The “reasonable ability to repay” standard shall be demonstrated through reasonably reliable documentation. Reasonably reliable documentation means any documentation that is required by a mortgage loan company to satisfy the requirements of a loan product that meets the borrower’s requested terms and qualifications, documents the source of repayment and includes verifiable written documentation obtained from the borrower or a third party. Reasonably reliable documentation may include but may not be limited to verbal verifications.

[12.19.2.14 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.15 AMENDING OR SURRENDERING A LICENSE:

A. A licensed mortgage loan originator shall amend information entered in the nationwide mortgage licensing system and registry for licensure within five days following the change in that information. The information that shall be required to be amended shall include, but not be limited to the following:

- (1) name of mortgage loan originator;
- (2) contact information;
- (3) employment;
- (4) surety bond.

B. A licensed mortgage loan originator shall notify the director of the financial institutions division in writing and amend his or her license information on the nationwide mortgage licensing system and registry within five days following knowledge of any change in his or her credit that involves bankruptcy, foreclosure, judgments, collections, tax liens and other government liens.

C. A licensed mortgage loan originator who has been charged with, convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court shall notify the director of the financial institutions division in writing and amend his or her license information on the nationwide mortgage licensing system and registry within five days of the occurrence.

D. A licensed mortgage loan originator is the only individual that can surrender his or her license. The removal of sponsorship by a mortgage loan company will place the mortgage loan originator license into an “approved - inactive” status.

E. A licensed mortgage loan originator shall immediately surrender his or her license if required to do so by court order, final order, default order, consent order or if the mortgage loan originator no longer meets the minimum requirements for licensure in 58-21B-6 NMSA 1978.

[12.19.2.15 NMAC - N, 06/01/10]

12.19.2.16 CHANGE IN EMPLOYMENT: A licensed mortgage loan originator whose employment with a mortgage loan company is terminated shall not originate new mortgage loans for that mortgage loan company but may receive compensation for those mortgage loans originated by him or her while employed by that mortgage loan company.

[12.19.2.16 NMAC - N, 06/01/10; A, 12/31/10]

12.19.2.17 INDIVIDUALS EXEMPT FROM LICENSING: The exemption in Section 58-21B-4(B)(2) includes an individual who offers or negotiates terms of a residential mortgage loan financed in whole or in part by the individual and secured by the individual’s residence.

[12.19.2.17 NMAC - N, 06/01/10]

12.19.2.18 NINETY (90) DAY TEMPORARY LICENSE: In reference to 58-21B-4(D), a mortgage loan originator may obtain a ninety day temporary license to originate residential mortgage loans in New Mexico while they complete the licensing requirements for a New Mexico mortgage loan originator license. A temporary license shall be issued if the mortgage loan originator meets the following requirements:

- A.** contact the division in writing via mail or email requesting a 90 day temporary license;
- B.** a license status of "Approved" in another state or jurisdiction; if the mortgage loan originator's license status changes during the ninety (90) day period to anything other than "Approved", their temporary license may be rescinded;
- C.** apply and pay for the New Mexico mortgage loan originator license, and
- D.** be sponsored by a mortgage loan company licensed in New Mexico.

[12.19.2.18 NMAC - N, 12/31/10]

HISTORY OF 12.19.2 NMAC: [RESERVED]