# LAWS OF ALASKA

# 2010

**Source**
HCS CSSB 279(FIN)

**Chapter No.**
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**AN ACT**

Relating to regulation of residential mortgage lending, including the licensing of mortgage lenders, mortgage brokers, and mortgage loan originators, and compliance with certain federal laws relating to residential mortgage lending; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

**AN ACT**

Relating to regulation of residential mortgage lending, including the licensing of mortgage lenders, mortgage brokers, and mortgage loan originators, and compliance with certain federal laws relating to residential mortgage lending; and providing for an effective date.

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*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT FOR AMENDMENT OF AS 45.50.471(b)(52). With regard to the amendment of AS 45.50.471(b)(52) by sec. 86 of this Act, it is the intent of the legislature that the amendment not affect the right of a person to bring an action under AS 45.50.471 - 45.50.561 for a violation of AS 06.60.340, as amended by sec. 48 of this Act, for conduct that is also described under another provision of AS 06.60.320 - 06.60.380.

*** Sec. 2.** AS 06.01.050(3) is amended to read:

(3) "financial institution" means an institution subject to the regulation

of the department under this title; in this paragraph, "institution" includes a commercial bank, savings bank, credit union, premium finance company, small loan company, bank holding company, financial holding company, trust company, savings and loan association, deferred deposit advance licensee under AS 06.50, **and** a licensee under AS 06.60 [, A SMALL MORTGAGE LENDER UNDER AS 06.60, AND AN ORIGINATOR UNDER AS 06.60 WHO IS EMPLOYED BY OR WORKS UNDER EXCLUSIVE CONTRACT FOR A SMALL MORTGAGE LENDER; IN THIS PARAGRAPH,

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

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

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

*** Sec. 3.** AS 06.60.010 is repealed and reenacted to read:

**Sec. 06.60.010. Mortgage lender or mortgage broker license required.** (a) Unless exempt under AS 06.60.015, a person may not operate in the state as a mortgage lender or mortgage broker with respect to a dwelling located in the state unless the person is licensed as a mortgage lender or mortgage broker under this chapter.

(b) A mortgage lender or mortgage broker required to be licensed under this chapter shall register with the registry and maintain a valid unique identifier issued by the registry.

(c) A mortgage license may cover more than one location of a mortgage licensee.

(d) A person who operates as both a mortgage lender and a mortgage broker is only required to obtain one mortgage license.

*** Sec. 4.** AS 06.60 is amended by adding new sections to read:

**Sec. 06.60.012. Mortgage loan originator license required.** (a) Unless exempt under AS 06.60.015, an individual may not operate in the state as a mortgage

loan originator with respect to a dwelling located in the state unless the individual is licensed as a mortgage loan originator under this chapter.

(b) An individual required to be licensed as a mortgage loan originator shall

(1) register with the registry and maintain a valid unique identifier issued by the registry;

(2) work under exclusive contract for, or as an employee of, a mortgage licensee; and

(3) be sponsored in the registry by a mortgage licensee under a sponsorship approved in the registry by the department; in this paragraph, "sponsored" means authorized to conduct business as a mortgage loan originator under the supervision of a mortgage licensee.

**Sec. 06.60.013. Loan processors or underwriters.** (a) A loan processor or underwriter who is an independent contractor may not operate as a loan processor or underwriter unless the independent contractor loan processor or underwriter is licensed as a mortgage loan originator under this chapter. An independent contractor loan processor or underwriter licensed as a mortgage loan originator shall register with the registry and maintain a valid unique identifier issued by the registry.

(b) An individual engaged solely in loan processor or underwriter activities who is not an independent contractor is not required to be licensed as a mortgage loan originator under this chapter if the individual does not represent to the public, through advertising or other means of communicating or providing information, including the use of the Internet, business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

*** Sec. 5.** AS 06.60.015 is repealed and reenacted to read:

**Sec. 06.60.015. Exemptions.** (a) The following persons are exempt from the mortgage lender or mortgage broker licensing requirements of this chapter:

(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 Farm Credit Administration.

(b) The following individuals are exempt from the mortgage loan originator licensing requirements of this chapter:

(1) a registered mortgage loan originator, when acting for an entity described in (a)(1), (2), or (3) of this section;

(2) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual; in this paragraph, "immediate family member" means a spouse, child, stepchild, sibling, stepsibling, parent, stepparent, grandparent, or grandchild;

(3) an individual seller who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves 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 another mortgage loan originator or by an agent of a lender, a mortgage broker, or another mortgage loan originator.

*** Sec. 6.** AS 06.60 is amended by adding a new section to read:

**Sec. 06.60.016. Registry.** (a) The department may participate in the registry and pay the fees required for participation in the registry.

(b) The department

(1) may establish relationships or contracts with the registry or other entities designated by the registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter;

(2) shall require mortgage licensees and mortgage loan originators to register with the registry; and

(3) shall establish by regulation a process that allows mortgage licensees and mortgage loan originators to challenge information entered into the registry by the department.

(c) The department may adopt emergency regulations under AS 44.62 (Administrative Procedure Act) to implement this section, including emergency

regulations for the assessment of fees.

*** Sec. 7.** AS 06.60.020 is repealed and reenacted to read:

**Sec. 06.60.020. Application for license.** (a) An application for a license under this chapter must

(1) be on the form prescribed by the department and the registry;

(2) contain complete information regarding the applicant;

(3) include fingerprints of the applicant, as needed to conduct a background check; and

(4) contain other information or supporting material that the department may require concerning the applicant, including the organization and operations of an applicant for a mortgage license and the financial responsibility, background, experience, and activities of the applicant.

(b) In this section, "applicant" includes a control person of an applicant for a mortgage license.

*** Sec. 8.** AS 06.60.026 is amended to read:

**Sec. 06.60.026. Transfer of <u>mortgage loan</u> originator license.** A person who holds **<u>a mortgage loan</u>** [AN] originator license may not transfer or assign the **<u>mortgage loan</u>** originator license.

*** Sec. 9.** AS 06.60.027 is repealed and reenacted to read:

**Sec. 06.60.027. Background checks.** (a) To apply for a mortgage loan originator license or a mortgage license, the applicant shall, at a minimum, furnish information concerning the applicant's identity to the registry or the department, including

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

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

(A) an independent credit report from a consumer reporting agency; and

(B) information related to administrative, civil, or criminal

findings by a governmental jurisdiction.

(b) For the purposes of this section, the department may use the registry as an agent for requesting information from and distributing information to the United States Department of Justice, another governmental agency, or another source directed by the department.

(c) As part of the investigation of an application for a license under this chapter, the department or the registry shall

(1) submit fingerprints of the applicant and a control person of the applicant to the governmental agency or entity authorized to receive the fingerprints for a state, national, or international criminal history background check under (a)(1) of this section; and

(2) obtain an independent credit report and other information related to administrative, civil, or criminal findings regarding the applicant and each control person of the applicant under (a)(2) of this section.

*** Sec. 10.** AS 06.60.035(a) is amended to read:

(a) **When** [EXCEPT AS PROVIDED BY (c) OF THIS SECTION, WHEN] an applicant submits an application for a license under this chapter to the department, the applicant shall pay to the department

(1) **an** [A NONREFUNDABLE] application fee [OF $250] in partial payment of those investigation expenses incurred by the department; and

(2) **an annual** [A BIENNIAL] license fee [OF $500] for the period that terminates **on December 31** [TWO YEARS] after the date the license is issued; after this payment, the **annual** [BIENNIAL] license fee is due every **year, subject to renewal by the department** [TWO YEARS ON THE ANNIVERSARY DATE OF THE ORIGINAL ISSUANCE OF THE LICENSE].

*** Sec. 11.** AS 06.60.035(c) is repealed and reenacted to read:

(c) The fees imposed by this section are in addition to the fees charged by the registry and the business license fees assessed under AS 43.70 (Alaska Business License Act).

*** Sec. 12.** AS 06.60.035 is amended by adding a new subsection to read:

(d) The department may establish by regulation the amount and manner of

payment of application fees, examination fees, license fees, permit fees, investigation fees, and all administrative or other fees or penalties under this chapter. The fees established under this chapter are nonrefundable.

*** Sec. 13.** AS 06.60 is amended by adding a new section to read:

**Sec. 06.60.038. Prelicensing and relicensing education of mortgage loan originators**. (a) Before being licensed as a mortgage loan originator, an individual shall complete at least 20 hours of education approved under (b) of this section. At a minimum, the education must include

(1) three hours of instruction in federal statutes and regulations relating to mortgage origination, fraud prevention, consumer protection, the nontraditional mortgage marketplace, and fair lending;

(2) three hours of instruction in ethics, including instruction on issues related to fraud prevention, consumer protection, and fair lending; and

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

(b) For the purposes of (a) of this section, a prelicensing education course must be approved under 12 U.S.C. 5104(c)(2) (Secure and Fair Enforcement for Mortgage Licensing Act of 2008). Review and approval of a prelicensing education course includes review and approval of the course provider.

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

(d) Prelicensing education may be offered in a classroom, on-line, or by other means approved under 12 U.S.C. 5104(c)(2) (Secure and Fair Enforcement for Mortgage Licensing Act of 2008).

*** Sec. 14.** AS 06.60.040 is repealed and reenacted to read:

**Sec. 06.60.040. Testing of mortgage loan originators.** (a) Before being licensed as a mortgage loan originator, an individual shall pass, under the standards established by this section, a qualified written test on appropriate subject areas, including federal and state law, under 12 U.S.C. 5104(d) (Secure and Fair

Enforcement for Mortgage Licensing Act of 2008).

(b) The department shall treat a written test as a qualified written test for purposes of (a) of this section if the department finds that the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including

(1) ethics; and

(2) federal and state statutes and regulations relating to mortgage origination, fraud prevention, consumer protection, the nontraditional mortgage marketplace, and fair lending.

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

(d) To pass a qualified written test, an applicant must answer at least 75 percent of the questions correctly.

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

(f) After failing three consecutive takings of the same test, an individual shall wait at least six months before retaking the test.

(g) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test. The period without a valid license under this subsection does not include the time the individual is a registered mortgage loan originator.

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

*** Sec. 15.** AS 06.60.045(a) is amended to read:

(a) An applicant for a mortgage license shall file with the application submitted to the department under AS 06.60.020 a bond with one or more sureties**. The department shall establish by regulation the amount of the required bond and the standards and procedures for recovery on the bond** [IN THE AMOUNT OF $25,000 UNDER WHICH THE APPLICANT IS THE OBLIGOR]. The bond

must be satisfactory to the department.

*** Sec. 16.** AS 06.60.045(d) is amended to read:

(d) The bond required under (a) of this section must be continuous until **<u>three years after</u>** the department revokes or otherwise terminates the license.

*** Sec. 17.** AS 06.60.050(a) is amended to read:

(a) Within 30 days after the date the department determines that it has received a complete application under **<u>AS 06.60.020</u>** [AS 06.60.020 OR 06.60.025], the required bond if the application is for a mortgage license, and any required fees and investigative costs, the department shall either grant or deny the license.

*** Sec. 18.** AS 06.60.060 is repealed and reenacted to read:

**Sec. 06.60.060. Determinations before licensing.** Before granting a license under this chapter, the department shall determine, at a minimum, that

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

(2) the applicant, including a control person of the applicant, has

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

(i) a control person of an applicant for a mortgage license includes an entity over which the control person exercised control at the time of the revocation; and

(ii) an applicant for a mortgage loan originator license includes an entity over which the applicant exercised control at the time of the revocation;

(B) not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application, or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering; however, if the applicant has been pardoned for the conviction, the conviction is not considered a conviction under this

subparagraph;

(C) demonstrated financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, and efficiently within the purposes of this chapter; under this subparagraph,

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

(ii) a determination that an applicant has not shown financial responsibility may include current outstanding judgments against the applicant, except judgments related solely to a claim related to medical expenses; current outstanding tax liens or other government liens and filings against the applicant; foreclosures of the applicant's property within the three years preceding the date of the application; and a pattern by the applicant of seriously delinquent accounts within the three years preceding the date of the application;

(3) the applicant for a mortgage loan originator license

(A) has completed the prelicensing education requirement described in AS 06.60.038;

(B) has passed a test that meets the requirements described in AS 06.60.040; and

(C) has paid the fund fee as required by AS 06.60.550; and

(4) the applicant for a mortgage license has provided a bond as required by AS 06.60.045.

*** Sec. 19.** AS 06.60 is amended by adding a new section to article 1 to read:

**Sec. 06.60.077. Authority to issue provisional license.** (a) Subject to (b) of this section, the department may issue a provisional license to an applicant for a mortgage license if the department has made all determinations under AS 06.60.060 necessary for licensure except those determinations based on the criminal history background check required by AS 06.60.027.

(b) A provisional license may be granted under this section if the

(1) receipt by the department of the results of the criminal history background check is delayed more than 60 days after the date the fingerprints are submitted to the governmental agency that conducts the criminal history background check; and

(2) delay described in (1) of this subsection is not caused by the applicant.

(c) The duration of a provisional license issued under this section may not exceed 90 days.

*** Sec. 20.** AS 06.60.080 is amended to read:

**Sec. 06.60.080. Duration of license. Except for a provisional license issued under AS 06.60.077, a** [A] license issued under this chapter remains in effect **until December 31 of the year in which** [FOR TWO YEARS AFTER] the license is issued**,** unless **the license is** revoked, **is** suspended, **is** surrendered, or **becomes** [BECOMING] inactive under this chapter.

*** Sec. 21.** AS 06.60.085 is repealed and reenacted to read:

**Sec. 06.60.085. Renewal of license.** (a) If a licensee intends to renew a license, the licensee shall submit to the department

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

(2) the annual license fee;

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

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

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

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

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

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

(C) certificates or other documents showing the mortgage loan

originator has satisfied the annual continuing education requirements of AS 06.60.160; and

(D) the fund fee required by AS 06.60.550; and

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

(b) The department may adopt by regulation procedures and deadlines regarding the filing of an application for renewal of a license and the assessment of a penalty or other consequence for late filing, consistent with the requirements of the registry.

(c) The department shall approve or deny the application for renewal of a license not later than 60 days after the renewal application is filed.

*** Sec. 22.** AS 06.60 is amended by adding a new section to read:

**Sec. 06.60.087. Standards for license renewal.** (a) After a licensee complies with AS 06.60.085, the department may renew the licensee's license if

(1) the licensee continues to meet the standards for license issuance under AS 06.60.060;

(2) in the case of a mortgage loan originator license, the mortgage loan originator licensee has satisfied the annual continuing education requirements of AS 06.60.160;

(3) the licensee has paid all required fees for renewal of the license; and

(4) the licensee is in compliance with the requirements of this chapter and regulations adopted and orders issued under this chapter.

(b) If a licensee fails to satisfy (a) of this section, the license expires at the end of the period for which the license was issued. The department may adopt by regulation procedures for the reinstatement of expired licenses. The procedures must be consistent with the standards established by the registry.

*** Sec. 23.** AS 06.60.090(c) is amended to read:

(c) For a license to become inactive, a licensee shall provide the department with a written request that the license become inactive [AND RETURN THE LICENSE CERTIFICATE TO THE DEPARTMENT]. The request must include the licensee's name, **<u>the licensee's</u>** address, and other information [THAT] the department

requires to process the request**. If the request is made by mortgage licensee, the request must include** [AND] a statement by the **mortgage** licensee that all mortgage loans of the **mortgage** licensee have been paid in full or sold.

*** Sec. 24.** AS 06.60.090(e) is amended to read:

(e) If a person holds a license that becomes inactive under this section, the person may not operate as a mortgage lender, mortgage broker, or **mortgage loan** originator under the license in this state until the license is reactivated.

*** Sec. 25.** AS 06.60.090(f) is amended to read:

(f) If a license becomes inactive under this section, the license remains inactive until the license expires, the person surrenders the license, or the **department approves the reactivation of the license, whichever event occurs first** [PERSON WHO HOLDS THE INACTIVE LICENSE PROVIDES THE DEPARTMENT WITH A WRITTEN REQUEST THAT THE LICENSE BE REACTIVATED]. The **licensee's** request **for reactivation** must include the information that the department requires to process the request.

*** Sec. 26.** AS 06.60.090(g) is repealed and reenacted to read:

(g) While a license is inactive under this section, the person holding the inactive license shall

(1) pay the annual license fee as required by AS 06.60.035;

(2) inform the department of any change that occurs in the name and address of the person, the location of the person's business, or the business operations or control of the person;

(3) maintain the bond required by AS 06.60.045; and

(4) file the annual report required by AS 06.60.100(a).

*** Sec. 27.** AS 06.60.095 is repealed and reenacted to read:

**Sec. 06.60.095. Reactivation of inactive license.** (a) A person who has an inactive license certificate under AS 06.60.090 may apply to the department for an active license and pay the required fees. To be eligible for license reactivation, the applicant shall comply with all requirements for licensure in effect at the time of reactivation.

(b) If the department reactivates a license under this section, the license

expires on December 31 of the year in which it is issued.

*** Sec. 28.** AS 06.60.100(a) is amended to read:

(a) **Annually, on** [ON] or before **a** [MARCH 15, OR ON ANOTHER] date established by the department by regulation, [OF EACH YEAR] a mortgage licensee shall file a report with the department **providing** [GIVING] relevant information that the department requires concerning the business and operations of [EACH LOCATION IN THIS STATE WHERE] the mortgage licensee [CONDUCTS BUSINESS IN THIS STATE DURING THE PRECEDING CALENDAR YEAR]. The mortgage licensee shall make the report under oath or on affirmation. The content and form of the report shall be established by the department by regulation.

*** Sec. 29.** AS 06.60.100 is amended by adding a new subsection to read:

(c) A mortgage licensee shall submit to the registry, as required by the registry, reports of the condition of the licensee, which must be in the form and contain the information that the registry may require.

*** Sec. 30.** AS 06.60 is amended by adding a new section to read:

**Sec. 06.60.112. Branch office application.** A mortgage licensee shall submit an application to register a branch office to the department through the registry. The department may adopt by regulation procedures and fees for the submission of an application to register a branch office, consistent with the requirements of the registry. The department may adopt by regulation fees and other requirements for renewal of a branch office registration that are consistent with the requirements of the registry.

*** Sec. 31.** AS 06.60.130(a) is amended to read:

(a) The prior [WRITTEN] approval of the department **that is made in a record** is required for the continued operation of a mortgage licensee's business when a change in control of the mortgage licensee is proposed. The department may require the information it considers necessary to determine whether a new application is required. The mortgage licensee requesting approval of the change in control shall pay all reasonable expenses incurred by the department to investigate and approve or deny the change in control. **The department may establish by regulation the fees and other requirements for requesting approval of a change in control that are consistent with the requirements of the registry.**

*** Sec. 32.** AS 06.60.140 is amended to read:

**Sec. 06.60.140. Availability of out-of-state records.** A mortgage licensee who operates an office or other place of business outside this state shall, at the request of the department,

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

(2) reimburse the department its reasonable costs, as provided in **AS 06.60.250(k)** [AS 06.60.250(f)], that are incurred by the department in conjunction with an investigation or examination conducted at the office or place of business.

*** Sec. 33.** AS 06.60.155 is amended to read:

**Sec. 06.60.155. Restriction on mortgage loan originator licensee's [LICENSEE] work. A mortgage loan** [AN] originator licensee may only work as **a mortgage loan** [AN] originator licensee under contract for, or as an employee of, one mortgage licensee.

*** Sec. 34.** AS 06.60.157 is amended to read:

**Sec. 06.60.157. Restrictions [MORTGAGE LICENSEE RESTRICTIONS] on mortgage licensee's performance of mortgage loan originator activities.** A mortgage licensee may not perform **mortgage loan** originator activities except through a licensed **mortgage loan** originator who is an employee of or under exclusive contract with a mortgage licensee.

*** Sec. 35.** AS 06.60.159 is amended to read:

**Sec. 06.60.159. Mortgage licensee's [LICENSEE] employment of, contract with, and liability for mortgage loan originator.** (a) A mortgage licensee may not employ or enter into a contract with a person who acts as **a mortgage loan** [AN] originator for the mortgage licensee unless the person has **a mortgage loan** [AN] originator license.

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

*** Sec. 36.** AS 06.60.160 is repealed and reenacted to read:

**Sec. 06.60.160. Continuing education requirements for mortgage loan originators.** (a) Each calendar year, a licensed mortgage loan originator shall complete at least eight hours of education approved under (b) of this section. At a minimum, these hours must include

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

(2) two hours of instruction in ethics, including instruction on issues related to fraud prevention, consumer protection, and fair lending; and

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

(b) For the purposes of (a) of this section, a continuing education course must be approved under 12 U.S.C. 5105(b)(2) (Secure and Fair Enforcement for Mortgage Licensing Act of 2008). Review and approval of a continuing education course includes review and approval of the course provider.

(c) Nothing in this section precludes a continuing education course that is approved under (b) of this section and that is provided by the employer of the applicant, an entity affiliated with the applicant, or a subsidiary or affiliate of an employer or entity affiliated with the applicant.

(d) Continuing education may be offered in a classroom, on-line, or by other means approved under 12 U.S.C. 5105(b)(2) (Secure and Fair Enforcement for Mortgage Licensing Act of 2008).

(e) A licensed mortgage loan originator

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

(2) may not retake an approved course in the same or successive calendar years if the mortgage loan originator has previously taken the course to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an approved 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 two hours of credit for each one hour taught.

(g) Successful completion of a continuing education course approved for

another state by the registry shall be accepted as credit toward completion of continuing education requirements in this state.

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

(i) A person meeting the requirements of AS 06.60.087, other than the continuing education requirement of AS 06.60.087(a)(2), may make up a deficiency in continuing education in a manner established by regulation.

*** Sec. 37.** AS 06.60.200 is repealed and reenacted to read:

**Sec. 06.60.200. Disciplinary action.** (a) In addition to other disciplinary action allowed under this chapter or under AS 06.01, the department may deny, suspend, revoke, condition, or decline to renew a license or take other disciplinary action against a person subject to this chapter, including action under a regulation adopted under this chapter, if the department finds that the person

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

(2) fails to meet the minimum standards for issuance or renewal of a license; or

(3) knowingly withholds material information or negligently makes a material misstatement in an application for or renewal of a license.

(b) The department may

(1) order a person subject to this chapter to cease and desist from conducting business, including an immediate temporary order to cease and desist;

(2) order a person subject to this chapter to cease and desist from violating this chapter, including an immediate temporary order to cease and desist;

(3) impose a fine on a person subject to this chapter under AS 06.60.420;

(4) issue an order of rescission, restitution, or disgorgement directed to

a person subject to this chapter for a violation of this chapter;

(5) order other affirmative action that the department considers necessary, including an accounting, an asset freeze, or the appointment of a receiver.

(c) A disciplinary action under this section may be taken by itself or in conjunction with one or more other disciplinary actions under this chapter or under AS 06.01.

*** Sec. 38.** AS 06.60.210 is amended to read:

**Sec. 06.60.210. Suspension, [OR] revocation, or renewal related to fund.** (a) When an award is made from the fund, the department may suspend, [OR] revoke, **or decline to renew** the license of the **mortgage loan** originator licensee whose actions formed the basis of the award.

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

*** Sec. 39.** AS 06.60.230 is amended to read:

**Sec. 06.60.230. Divestment.** If the department revokes a mortgage license [OR A REGISTRATION OF A SMALL MORTGAGE LENDER], the mortgage licensee [OR THE SMALL MORTGAGE LENDER] shall divest itself of all outstanding loans that were issued under this chapter by selling or assigning them to another mortgage licensee [OR SMALL MORTGAGE LENDER]. Divestment under this section must be approved by the department.

*** Sec. 40.** AS 06.60.240 is amended to read:

**Sec. 06.60.240. Reinstatement.** The department may reinstate a **suspended** [REVOKED] license [OR REGISTRATION UNDER AS 06.60.017] if the licensee [OR SMALL MORTGAGE LENDER] complies with this chapter or with a demand, ruling, or requirement made by the department under this chapter. Before reinstatement of a license [OR REGISTRATION UNDER AS 06.60.017], the licensee [OR SMALL MORTGAGE LENDER] shall pay any fees, restitution, and civil

penalties owing under this chapter.

*** Sec. 41.** AS 06.60.250 is repealed and reenacted to read:

**Sec. 06.60.250. Investigation and examination authority.** (a) For the purpose of initial licensing, license renewal, license suspension, license conditioning, license revocation, license termination, or general or specific inquiry or investigation to determine compliance with this chapter, the department may access, receive, use, and copy any books, accounts, records, files, documents, information, or evidence, including

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

(2) personal history and experience information, including independent credit reports obtained from a consumer reporting agency; and

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

(b) Notwithstanding AS 06.01.015, for the purpose of investigating violations or complaints arising under this chapter, or for the purpose of examination, the department may review, investigate, or examine an applicant, licensee, or another person subject to this chapter as often as necessary to carry out the purposes of this chapter. The department may conduct an examination without prior notice to the licensee.

(c) A licensee or other person subject to this chapter shall make available to the department, on request, the place of business, books, records, accounts, safes, and vaults relating to the operations of the licensee or other person subject to this chapter. The department may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee or other person subject to this chapter concerning the licensee's or other person's business.

(d) For the purpose of hearings, investigations, or other proceedings under this chapter, the department or an officer designated by the department may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take

evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the department considers relevant or material to the matter.

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

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

(1) accounting compilations;

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

(3) other information considered necessary to carry out the purposes of this chapter.

(g) In making an examination or investigation authorized by this chapter, the department may control access to documents and records of the licensee or other person under examination or investigation. The department 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, a person may not remove or attempt to remove any of the documents and records except under a court order or with the consent of the department. In this subsection, "control" does not have the meaning given in AS 06.60.990.

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

(1) retain attorneys, accountants, or other professionals and specialists, including examiners, auditors, or investigators, to conduct or assist in the conduct of examinations or investigations;

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

(3) use, hire, contract, or employ public or privately available analytical systems, methods, or electronic software to examine or investigate the licensee, individual, or other person subject to this chapter;

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

(5) share information received or collected during an examination, investigation, or other proceeding with other law enforcement agencies; or

(6) accept an audit report prepared by an independent certified public accountant for the licensee or other person subject to this chapter and may incorporate an audit report in the report of the examination or other writing of the department.

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

(j) A licensee or other 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.

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

*** Sec. 42.** AS 06.60.260 is amended to read:

**Sec. 06.60.260. Revocation, removal, or suspension of <u>mortgage loan</u> originator licensee.** If the department finds that **<u>a mortgage loan</u>** [AN] originator licensee is dishonest, reckless, or incompetent when operating as **<u>a mortgage loan</u>** [AN] originator or fails to comply with applicable law, with regulations or orders of the department, or with written requirements or instructions of the department relating to the **<u>mortgage loan</u>** originator license, the department may revoke or suspend the **<u>mortgage loan</u>** originator license, remove the **<u>mortgage loan</u>** originator licensee from

operating as **a mortgage loan** [AN] originator in the state, or order a person licensed under this title to remove the **mortgage loan** originator licensee from operating as **a mortgage loan** [AN] originator for the person.

*** Sec. 43.** AS 06.60.270 is amended to read:

**Sec. 06.60.270. Removal by entity.** A mortgage licensee shall remove **a mortgage loan** [AN] originator licensee from acting as **a mortgage loan** [AN] originator for the mortgage licensee if the department directs the mortgage licensee to remove the **mortgage loan** originator licensee under AS 06.60.260.

*** Sec. 44.** AS 06.60 is amended by adding a new section to article 4 to read:

**Sec. 06.60.290. Report to the registry.** Notwithstanding AS 06.01.025, the department shall regularly report violations of this chapter, as well as enforcement actions and other relevant information, to the registry, subject to provisions established by the department by regulation.

*** Sec. 45.** AS 06.60.320 is amended to read:

**Sec. 06.60.320. False, misleading, or deceptive advertising prohibited.** A person [, INCLUDING A SMALL MORTGAGE LENDER,] may not advertise, print, display, publish, distribute, broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner a statement or representation with regard to the rates, terms, or conditions for a mortgage loan that is false, misleading, or deceptive.

*** Sec. 46.** AS 06.60 is amended by adding a new section to read:

**Sec. 06.60.325. Display of unique identifier.** A person operating as a mortgage lender, mortgage broker, or mortgage loan originator shall clearly display the unique identifier assigned to the person by the registry on all residential mortgage loan application forms, solicitations, and advertisements, including business cards or websites, and any other documents as established by regulation or order of the department.

*** Sec. 47.** AS 06.60.330 is amended to read:

**Sec. 06.60.330. Compliance with federal requirements.** A person [, INCLUDING A SMALL MORTGAGE LENDER,] subject to this chapter shall conduct the person's mortgage loan activities in compliance with [12 CFR PART 226

AND OTHER REGULATIONS ADOPTED BY THE FEDERAL GOVERNMENT UNDER]

(1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of 1974);

(2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);

(3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);

(4) **12 U.S.C. 5101 - 5116 (Secure and Fair Enforcement for Mortgage Licensing Act of 2008);**

**(5)** 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit Protection Act);

**(6)** [(5)] 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968);

**(7)** [AND (6)] any other federal **statute the purpose of which is to regulate residential mortgage lending; and**

**(8) regulations adopted under the statutes identified in (1) - (7) of this section** [LAW OR REGULATION].

*** Sec. 48.** AS 06.60.340 is repealed and reenacted to read:

**Sec. 06.60.340. Prohibited activities.** A person who is required to be licensed under this chapter and a person who is licensed under AS 06.20 may not, in connection with a mortgage loan transaction,

(1) misrepresent or conceal a material fact or make a false promise likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower to enter into a mortgage loan transaction;

(2) pursue a course of misrepresentation through an agent;

(3) directly or indirectly employ any scheme, device, or artifice to defraud or mislead a borrower or lender or to defraud a person;

(4) engage in any unfair or deceptive act or practice toward any person;

(5) obtain property by fraud or misrepresentation;

(6) solicit or enter into a contract with a borrower that provides, in substance, that the person subject to this chapter may earn a fee or commission through using the person's best efforts to obtain a loan, even though a loan is not

actually obtained for the borrower;

(7) 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;

(8) conduct a business covered by this chapter without holding a valid license as required under this chapter, or assist a person in the conduct of business under this chapter without a valid license as required under this chapter;

(9) fail to make disclosures as required by this chapter or by another applicable state or federal statute, including regulations adopted under the statute;

(10) fail to comply with this chapter or regulations adopted under this chapter or fail to comply with another state or federal statute, including regulations adopted under the statute, applicable to a business authorized or conducted under this chapter;

(11) make, in any manner, false or deceptive statements or representations, including statements or representations about rates, points, or other financing terms or conditions, or engage in bait and switch advertising;

(12) negligently make a false statement or knowingly omit a material fact in connection with information or reports filed with the department or the registry or in connection with an investigation conducted by the department;

(13) make a payment, threat, or promise, directly or indirectly, to a person for the purposes of influencing the independent judgment of the person in connection with a mortgage loan, or make a payment, threat, or promise, directly or indirectly, to an appraiser of a property, for the purpose of influencing the independent judgment of the appraiser with respect to the value of the property;

(14) collect, charge, attempt to collect, attempt to charge, or use or propose an agreement purporting to collect or charge a fee prohibited by this chapter;

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

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

(17) fail to account for or deliver to a person money, a document, or

another thing of value obtained in connection with a mortgage loan, including money provided for a real estate appraisal or a credit report, if the person is not entitled to retain the money under the circumstances;

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

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

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

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

(A) consider additional appropriate property information;

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

(C) correct errors in the appraisal report;

(22) make a false or misleading statement in a mortgage loan commitment or prequalification letter, or omit material information necessary to make the statements made not misleading, if the person knew or reasonably should have known the statement was false or misleading or the omission consisted of material information necessary to make the statements made not misleading;

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

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

(B) new or changed information from the borrower makes it

necessary to change the loan program offered to the borrower;

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

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

(26) authorize, direct, plan, or aid in the publishing, distribution, or circulation of a materially false statement or a material misrepresentation concerning the licensee's business or concerning mortgage loans originated in the course of the licensee's business in this or another state.

*** Sec. 49.** AS 06.60.360 is amended by adding a new subsection to read:

(f) In this section, "escrow account" means an account

(1) to which a borrower makes payments for obligations related to the real property that is the subject of a residential mortgage loan of the borrower;

(2) held by a third person; and

(3) from which the third person identified in (2) of this subsection disburses money in accordance with a written agreement to pay obligations related to the real property that is the subject of a residential mortgage loan of the borrower.

*** Sec. 50.** AS 06.60.370 is amended to read:

**Sec. 06.60.370. Criminal <u>penalties</u> [LIABILITY OF LICENSEE OR SMALL MORTGAGE LENDER].** (a) The department may report **<u>a violation</u>** [VIOLATIONS] of (b) - (e) of this section to the attorney general, who may institute the proper proceedings to enforce the criminal penalties provided in (b) - (e) of this section.

(b) A person [, INCLUDING A SMALL MORTGAGE LENDER,] who knowingly provides false or misleading information to the department that is material under this chapter is guilty of a class A misdemeanor.

(c) A [LICENSEE, PERSON WHO IS A SMALL MORTGAGE LENDER, OR] person [WHO IS EXEMPT UNDER AS 06.60.015] who knowingly fails to account for or deliver to a person money, deposits, or checks or other forms of negotiable instruments in violation of the provisions of this chapter is guilty of a class A misdemeanor.

(d) A licensee [OR A SMALL MORTGAGE LENDER] who knowingly fails to disburse money belonging to the borrower without just cause is guilty of a class A misdemeanor.

(e) **Unless the person is exempt from licensing under this chapter, a person** [A MORTGAGE LENDER, MORTGAGE BROKER, OR ORIGINATOR] who knowingly operates **in this state as a mortgage lender, mortgage broker, or mortgage loan originator** without a license **issued under this chapter** [OR WITHOUT BEING REGISTERED UNDER AS 06.60.017 AND IS NOT EXEMPT UNDER AS 06.60.015] is guilty of a class A misdemeanor.

*** Sec. 51.** AS 06.60.400 is repealed and reenacted to read:

**Sec. 06.60.400. Cease and desist proceedings**. (a) Notwithstanding AS 06.01.030(d) and (e), if the department finds, after notice and opportunity for a hearing, that a person has violated, is violating, or is about to violate any provision of this chapter, a regulation adopted under this chapter, or an order issued under this chapter, the department may publish findings and enter an order requiring the person to cease and desist from committing or causing the violation and any future violation of the same provision or regulation. An order may, in addition to requiring a person to cease and desist from committing or causing a violation, require the person to comply, or to take steps to effect compliance, with a provision or regulation, on terms and conditions and within a time, as the department may specify in the order. An order may require future compliance or steps to result in future compliance, either permanently or for a period of time, as the department may specify.

(b) Notwithstanding AS 06.01.030(d) and (e), if the department determines that the alleged violation or threatened violation is likely to result in significant dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest before the completion of cease and desist proceedings, the department may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest as the department determines appropriate pending completion of the proceedings. A temporary order

may be entered only after notice and opportunity for a hearing, unless the department determines that notice and hearing before entry would be impracticable or contrary to the public interest. A temporary order becomes effective on service on the respondent and, unless set aside, limited, or suspended by the department or a court of competent jurisdiction, remains effective and enforceable pending the completion of the cease and desist proceedings.

*** Sec. 52.** AS 06.60 is amended by adding a new section to read:

**Sec. 06.60.405. Review of temporary cease and desist orders.** (a) At any time after the respondent has been served with a temporary cease and desist order under AS 06.60.400(b), the respondent may apply to the department to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease and desist order entered without a prior hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on the application, and the office of administrative hearings shall hold a hearing and render a decision on the application under AS 44.64.060. A respondent served with a temporary cease and desist order entered without a prior hearing may not apply to the court except after hearing and decision by the department on the respondent's application under this subsection.

(b) The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the department's order.

(c) In a cease and desist proceeding under this section, the department may issue an order to prohibit, conditionally or unconditionally, permanently or for a period of time the department determines, a person who has violated this chapter from operating as a mortgage lender, mortgage broker, or mortgage loan originator if the conduct of that person demonstrates unfitness to operate as a mortgage lender, mortgage broker, or mortgage loan originator.

*** Sec. 53.** AS 06.60.410 is amended to read:

**Sec. 06.60.410. Censure, suspension, or bar.** (a) In addition to any other remedy provided under this chapter, the department may, by order after appropriate notice and opportunity for a hearing, censure a person, suspend the license of a person for a period not to exceed 12 months, [SUSPEND THE REGISTRATION OF A

SMALL MORTGAGE LENDER FOR A PERIOD NOT TO EXCEED 12 MONTHS,] or bar a person from a position of employment, management, or control of a licensee [OR A SMALL MORTGAGE LENDER] if the department finds that

(1) the censure, suspension, or bar is in the public interest;

(2) the person has knowingly committed or caused a violation of this chapter or a regulation adopted under this chapter; and

(3) the violation has caused material damage to the licensee [, TO THE SMALL MORTGAGE LENDER,] or to the public.

(b) When a person who is the subject of a proposed order under this section receives a notice of the department's intention to issue an order under this section, the person is immediately prohibited from engaging in any activities for which a license [OR REGISTRATION AS A SMALL MORTGAGE LENDER] is required under this chapter.

(c) A person who is suspended or barred under this section is prohibited from participating in a business activity of a licensee [OR A SMALL MORTGAGE LENDER] and from engaging in a business activity on the premises where a licensee [OR SMALL MORTGAGE LENDER] is conducting the licensee's [OR SMALL MORTGAGE LENDER'S] business. This subsection may not be construed to prohibit a suspended or barred person from having the person's personal transactions processed by a licensee [OR A SMALL MORTGAGE LENDER].

*** Sec. 54.** AS 06.60.420 is amended to read:

**Sec. 06.60.420. Civil penalty for violations.** (a) **Notwithstanding AS 06.01.035, a** [A] person [, INCLUDING A SMALL MORTGAGE LENDER,] who violates a provision of this chapter**,** or a regulation adopted **or an order issued** under this chapter**,** is liable for a civil penalty not to exceed $10,000 for each violation.

(b) The remedies provided by this section and by other sections of this chapter are not exclusive and may be **sought** [APPLIED] in combination with other remedies to enforce the provisions of this chapter.

*** Sec. 55.** AS 06.60.430(a) is amended to read:

(a) The department may treat a licensee [OR A SMALL MORTGAGE LENDER] as a financial institution under AS 06.01 when applying the enforcement

provisions of AS 06.01.

*** Sec. 56.** AS 06.60.430(c) is amended to read:

(c) If the department determines that a licensee [, A SMALL MORTGAGE LENDER,] or a person acting on behalf of the licensee [OR SMALL MORTGAGE LENDER] is in violation of, or has violated, a provision of this chapter, the department may refer the information to the attorney general and request that the attorney general investigate the violation under AS 45.50.495. The attorney general may enjoin a violation of this chapter and may seek restitution, rescission, and other relief as allowed by law.

*** Sec. 57.** AS 06.60.500 is amended to read:

**Sec. 06.60.500. Mortgage loan originator [ORIGINATOR] surety fund.** The **mortgage loan** originator surety fund is established as a separate account in the general fund. **The purpose of the fund is to pay fund claims against mortgage loan originator licensees.**

*** Sec. 58.** AS 06.60.510 is amended to read:

**Sec. 06.60.510. Composition of fund.** The fund consists of **appropriations of** payments made by **mortgage loan** originator licensees under AS 06.60.550, filing fees **for fund claims** retained under AS 06.60.620, income earned on the investment of the money in the fund, and money deposited in the fund by the department under AS 06.60.740.

*** Sec. 59.** AS 06.60.550(a) is amended to read:

(a) A person who applies for or renews **a mortgage loan** [AN] originator license shall pay to the department, in addition to the fees required by AS 06.60.035, a fund fee **established by the department** [NOT TO EXCEED $150].

*** Sec. 60.** AS 06.60.550(d) is amended to read:

(d) Notwithstanding (a) of this section, **a mortgage loan** [AN] originator licensee who obtains an initial **mortgage loan** originator license when the department has reduced the fund fee to nothing shall nonetheless pay **the** [A] fund fee **established by regulation** [OF $150] to the department for the first year of the **mortgage loan** originator license [OR, FOR A MORTGAGE LICENSEE, OF OPERATING AS AN ORIGINATOR].

*** Sec. 61.** AS 06.60.560 is amended to read:

**Sec. 06.60.560. Claim for reimbursement.** In addition to any other remedies available to the person, a person may seek reimbursement for a loss suffered in a mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the wrongful conversion of money by **a mortgage loan** [AN] originator licensee and is eligible to be reimbursed under AS 06.60.500 - 06.60.750 for the loss from money appropriated for that purpose.

*** Sec. 62.** AS 06.60.580 is amended to read:

**Sec. 06.60.580. Form and contents of fund claim.** The form for a fund claim shall be executed under penalty of unsworn falsification **in the second degree** and must include

(1) the name and address of each **mortgage loan** originator licensee involved;

(2) the amount of the alleged loss;

(3) the date or period of time during which the alleged loss occurred;

(4) the date when the alleged loss was discovered;

(5) the name and address of the claimant; and

(6) a general statement of the facts related to the fund claim.

*** Sec. 63.** AS 06.60.600 is amended to read:

**Sec. 06.60.600. Filing and distribution of claim.** At least 20 days before a hearing is held on the fund claim by the office of administrative hearings (AS 44.64.010), the department shall send a copy of the claim filed with the department to

(1) each **mortgage loan** originator licensee alleged to have committed the misconduct resulting in the alleged loss;

(2) the employer of the **mortgage loan** originator licensee described in (1) of this section; and

(3) any other parties involved in the mortgage loan transaction that is the subject of the fund claim.

*** Sec. 64.** AS 06.60.610(a) is amended to read:

(a) Within **30** [SEVEN] days after receiving a copy of a fund claim under

AS 06.60.600, **a mortgage loan** [EACH] originator licensee against whom **a** [THE] claim is made may elect to defend the fund claim as a small claims action in district court under District Court Rules of Civil Procedure if the claim does not exceed the small claims jurisdictional limit.

*** Sec. 65.** AS 06.60.610(b) is amended to read:

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

*** Sec. 66.** AS 06.60.640 is amended to read:

**Sec. 06.60.640. Defense of claim.** When the department receives a fund claim, the department shall allow each **mortgage loan** originator licensee against whom the claim is made an opportunity to file with the department, within seven days after receipt of notification of the fund claim under AS 06.60.600, a written statement in opposition to the fund claim and a request for a hearing.

*** Sec. 67.** AS 06.60.650 is amended to read:

**Sec. 06.60.650. Standard of proof.** A person who submits a fund claim under AS 06.60.570 bears the burden of establishing by a preponderance of the evidence that the person suffered a loss in a mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds by **a mortgage loan** [AN] originator licensee and the extent of those losses.

*** Sec. 68.** AS 06.60.680(b) is amended to read:

(b) If the department determines that the claimant has suffered a loss in a mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the wrongful conversion of money by **a mortgage loan** [AN] originator licensee, the department may award the person who filed the fund claim reimbursement from money appropriated to the fund.

*** Sec. 69.** AS 06.60.690 is amended to read:

**Sec. 06.60.690. Fund operations.** The department shall deposit into the fund money that the department recovers from **a mortgage loan** [AN] originator licensee under AS 06.60.745. The department may not consider amounts paid from the fund for hearing or legal expenses when determining the maximum reimbursement to be

awarded under AS 06.60.710 or the maximum liability for fund claims under AS 06.60.710.

*** Sec. 70.** AS 06.60.700(a) is amended to read:

(a) If a fund claim dismissed under AS 06.60.610 results in a monetary award against **a mortgage loan** [AN] originator licensee, the department may pay, subject to AS 06.60.710 and 06.60.720, any outstanding portion of the small claims judgment from money appropriated to the department for the purpose.

*** Sec. 71.** AS 06.60.700(b) is amended to read:

(b) Before making payment under (a) of this section, the person who received the award shall file with the department a copy of the final judgment and an affidavit stating that more than 30 days have elapsed since the judgment became final and that the judgment has not yet been satisfied by the **mortgage loan** originator licensee against whom the award was made.

*** Sec. 72.** AS 06.60.710(b) is amended to read:

(b) The maximum liability for fund claims against one **mortgage loan** originator licensee may not exceed $50,000.

*** Sec. 73.** AS 06.60.710(c) is amended to read:

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

*** Sec. 74.** AS 06.60 is amended by adding a new section to read:

**Sec. 06.60.715. Other rights of claimant.** The rights granted to a claimant under AS 06.60.500 - 06.60.750 do not limit any other cause of action the claimant may have against a mortgage loan originator.

*** Sec. 75.** AS 06.60.745 is amended to read:

**Sec. 06.60.745. Reimbursement for expenses.** If the department pays all or a portion of a fund claim against **a mortgage loan** [AN] originator licensee under

AS 06.60.680 or 06.60.700, the department may recover from the **mortgage loan** originator licensee, in addition to the payment of the fund claim, the expenses incurred by the department to process and otherwise handle the fund claim.

*** Sec. 76.** AS 06.60.750 is amended to read:

**Sec. 06.60.750. Disciplinary action against a mortgage loan [AN] originator licensee.** Repayment in full of all obligations to the fund does not nullify or modify the effect of disciplinary proceedings brought against **a mortgage loan** [AN] originator licensee under this chapter.

*** Sec. 77.** AS 06.60.800 is amended by adding a new subsection to read:

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

*** Sec. 78.** AS 06.60.850 is amended to read:

**Sec. 06.60.850. Publication of disciplinary action.** The department may release**, through the Internet, the registry, or other** [FOR] publication**,** [IN A NEWSPAPER OF GENERAL CIRCULATION IN THE LOCALE OF A LICENSEE'S PRINCIPAL OFFICE] notice of disciplinary action taken by the department against **a person required to be licensed under this chapter** [THE LICENSEE].

*** Sec. 79.** AS 06.60.890 is amended to read:

**Sec. 06.60.890. Application to Internet activities.** This chapter applies to a person [, INCLUDING A SMALL MORTGAGE LENDER TO THE EXTENT THIS CHAPTER APPLIES TO A SMALL MORTGAGE LENDER,] even if the person is engaging in the activities regulated by this chapter by using an Internet website from within or outside the state.

*** Sec. 80.** AS 06.60.900 is amended to read:

**Sec. 06.60.900. Applicability of administrative procedures. Notwithstanding AS 06.01.030(f), the** [THE] provisions of AS 44.62 (Administrative Procedure Act) apply to an action of the department to deny, revoke, or suspend a license under this chapter, to censure, suspend, or bar a person under AS 06.60.410, to take other disciplinary action under this chapter, to hold **disciplinary** hearings, and to

issue **disciplinary** orders.

*** Sec. 81.** AS 06.60.905 is amended to read:

**Sec. 06.60.905. Untrue, misleading, or false statements.** A person [, INCLUDING A SMALL MORTGAGE LENDER,] may not, in a document filed with the department or in an examination, an investigation, a hearing, or another proceeding under this chapter, make or cause to be made an untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading or false.

*** Sec. 82.** AS 06.60.990 is repealed and reenacted to read:

**Sec. 06.60.990. Definitions.** In this chapter, unless the context otherwise requires,

(1) "borrower" means an individual who receives a mortgage loan;

(2) "consumer reporting agency" means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis; in this paragraph, "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" has the meaning given in 15 U.S.C. 1681a(p) (Fair Credit Reporting Act);

(3) "control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise; an individual is presumed to control a company if the individual

(A) is a director, general partner, or executive officer, including chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief credit officer, or chief compliance officer, or occupies a similar position or performs a similar function;

(B) directly or indirectly, has the right to vote 10 percent or more of a class of voting security or has the power to sell or direct the sale of 10 percent or more of a class of voting securities;

(C) in the case of a limited liability company,

(i) is a managing member;

(ii) is a member who has the right to receive on

dissolution, or has contributed, 10 percent or more of the capital of the limited liability company; or

(iii) if the limited liability company is managed by elected or appointed managers, is an elected or appointed manager; or

(D) in the case of a partnership, has the right to receive on dissolution, or has contributed, 10 percent or more of the capital;

(4) "control person" means an individual described in the uniform mortgage lender and mortgage broker application form of the registry who directly or indirectly exercises control over the applicant;

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

(6) "depository institution" has the meaning given in 12 U.S.C. 1813 (Federal Deposit Insurance Act) and includes a credit union;

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

(8) "federal banking agency" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation;

(9) "fund" means the mortgage loan originator surety fund established under AS 06.60.500;

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

(11) "fund fee" means the fee required to be paid by AS 06.60.550;

(12) "individual" means a natural person;

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

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

(15) "licensed mortgage loan originator" means a person who holds a mortgage loan originator license issued under this chapter;

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

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

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

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

(18) "mortgage broker" means a person who, for compensation or gain, or in the expectation of compensation or gain, directly or indirectly, by telephone, by electronic means, by mail, through the Internet, in person, or by the person itself or a mortgage loan originator,

(A) arranges with a variety of lending sources, including private lenders, institutional investors, or wholesale lenders, to provide financing for mortgage loans; or

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

(19) "mortgage lender"

(A) means a person who consummates and funds a mortgage loan and who is named as the payee in the promissory note and as the beneficiary of the deed of trust;

(B) does not include a subsequent purchaser of a mortgage loan or an interest in a mortgage loan that is originated by a licensee under this chapter;

(20) "mortgage license" means a license issued under this chapter to operate as a mortgage lender or a mortgage broker;

(21) "mortgage licensee" means a person who holds a mortgage

license;

(22) "mortgage loan" means a residential mortgage loan;

(23) "mortgage loan originator"

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

(i) takes a mortgage loan application; or

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

(B) does not include an individual who is not otherwise described in (A) of this paragraph and who is engaged solely as a loan processor or underwriter on behalf of a person described in (A) of this paragraph, except as provided in AS 06.60.013;

(C) does not include an individual who only performs real estate brokerage activities and is licensed or registered under applicable state law, unless the individual is compensated by a lender, a mortgage broker, or another mortgage loan originator, or by an agent of the lender, mortgage broker, or other mortgage loan originator; in this subparagraph, "real estate brokerage activity" means an activity that involves offering or providing real estate brokerage services to the public, including

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

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

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

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

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

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

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

(25) "Nationwide Mortgage Licensing System and Registry" has the meaning given in 12 U.S.C. 5102 (Secure and Fair Enforcement for Mortgage Licensing Act of 2008);

(26) "nontraditional mortgage product" means a mortgage product other than a 30-year fixed-rate mortgage;

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

(28) "operate in the state" includes operating in the state from a location outside the state or from an Internet website that originates inside or outside the state;

(29) "program administration fee" means the fee described under AS 06.60.800(a);

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

(31) "registered mortgage loan originator" means an individual who

(A) is a mortgage loan originator and is an employee of

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(B) is registered with the registry and maintains a unique identifier with the registry;

(32) "registry" means the Nationwide Mortgage Licensing System and Registry;

(33) "residential mortgage loan" means a loan that is primarily for personal, family, or household use and that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate located in the state; in this paragraph, "residential real estate" means real property on which a dwelling is constructed or intended to be constructed;

(34) "unique identifier" means a number or other identifier assigned to a licensee by protocols established by the registry.

*** Sec. 83.** AS 06.60.995 is amended to read:

**Sec. 06.60.995. Short title.** This chapter may be known as the **Alaska Secure and Fair Enforcement for Mortgage Licensing Act of 2010** [MORTGAGE LENDING REGULATION ACT].

*** Sec. 84.** AS 12.62.400 is amended to read:

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

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

(2) licensure as a mortgage lender, a mortgage broker, or **a mortgage loan** [AN] originator under AS 06.60;

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

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

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

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

(7) a position involving supervisory or disciplinary power over a minor or dependent adult for which criminal justice information may be released under AS 12.62.160(b)(9);

(8) a teacher certificate under AS 14.20;

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

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

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

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

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

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

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

*** Sec. 85.** AS 12.62.400 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, an applicant for a license under AS 06.60 may submit the applicant's fingerprints to the Nationwide Mortgage Licensing System and Registry. In this subsection, "Nationwide Mortgage Licensing System and Registry" has the meaning given in 12 U.S.C. 5102.

*** Sec. 86.** AS 45.50.471(b)(52) is amended to read:

(52) violating **<u>AS 06.60.340</u>** [AS 06.60.010 - 06.60.380] (mortgage lending regulation);

*** Sec. 87.** AS 06.60.017, 06.60.025, 06.60.065, 06.60.070, 06.60.075, 06.60.090(i), 06.60.097(b), 06.60.105, 06.60.145, 06.60.150, 06.60.440, 06.60.540, 06.60.810, and 06.60.870 are repealed.

*** Sec. 88.** The uncodified law of the State of Alaska is amended by adding a new section to

read:

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

(b) A person who is not licensed under former AS 06.60 before July 1, 2010, and files an application for licensing under this Act on or after July 1, 2010, shall comply with the requirements of this Act to receive a license under this Act.

(c) AS 06.60.027, as repealed and reenacted by sec. 9 of this Act, does not apply to the renewal of a mortgage license valid on July 1, 2010, except for a mortgage license application amendment submitted on or after July 1, 2010, requesting approval of a change of a control person. In this subsection, "control person" and "mortgage license" have the meanings given in AS 06.60.990.

*** Sec. 89.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: TEMPORARY FEES AND BOND AMOUNT. (a) If the regulations adopted by the Department of Commerce, Community, and Economic Development under sec. 90 of this Act do not take effect July 1, 2010, then, during the period of July 1, 2010, until the effective date of the regulations adopted under sec. 90 of this Act,

(1) notwithstanding AS 06.60.035(a), as amended by sec. 10 of this Act, the application fee under AS 06.60.035(a)(1), as amended by sec. 10 of this Act, shall be $250, and the license fee under AS 06.60.035(a)(2), as amended by sec. 10 of this Act, shall be $500;

(2) notwithstanding AS 06.60.045(a), as amended by sec. 15 of this Act, the amount of the bond under AS 06.60.045(a), as amended by sec. 15 of this Act, shall be $25,000;

(3) notwithstanding AS 06.60.550(a), as amended by sec. 59 of this Act, the amount of the fund fee under AS 06.60.550(a), as amended by sec. 59 of this Act, shall be $150; and

(4) notwithstanding AS 06.60.550(d), as amended by sec. 60 of this Act, the amount of the fund fee under AS 06.60.550(d), as amended by sec. 60 of this Act, shall be $150.

*** Sec. 90.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. (a) The Department of Commerce, Community, and Economic Development may adopt regulations necessary to implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1, 2010.

(b) The department shall notify the revisor of statutes of the date on which the regulations take effect.

*** Sec. 91.** Section 90 of this Act takes effect immediately under AS 01.10.070(c).

*** Sec. 92.** Except as provided in sec. 91 of this Act, this Act takes effect July 1, 2010.