

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 19 MORTGAGE LENDING
PART 1 GENERAL PROVISIONS

12.19.1.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.
[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.1 & A, 12/15/08]

12.19.1.2 SCOPE: All mortgage loan companies and mortgage loan originators licensed by the state of New Mexico.
[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.2, 12/15/08; A, 08/31/09]

12.19.1.3 STATUTORY AUTHORITY: Mortgage Loan Company Act, Section 58-21-9 NMSA 1978 and New Mexico Mortgage Loan Originator Licensing Act, Section 58-21B-19 NMSA 1978.
[9/30/97 - Rn, 12 NMAC 19.1.3, 12/15/08; A, 08/31/09; A, 06/01/10]

12.19.1.4 DURATION: Permanent.
[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.4, 12/15/08]

12.19.1.5 EFFECTIVE DATE: May 5, 1986, unless a later date is cited at the end of a section.
[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.5 & A, 12/15/08]

12.19.1.6 OBJECTIVE: The objective of this part is to effectuate the purposes of the Mortgage Loan Company Act, Section 58-21-1 NMSA 1978 et seq., and the New Mexico Mortgage Loan Originator Licensing Act, Section 58-21B -1 NMSA 1978 et seq., and to clarify their meaning.
[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.6 & A, 12/15/08; A, 08/31/09; A, 06/01/10]

12.19.1.7 DEFINITIONS:

A. "Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with another person.

B. "Branch office" means any location, including a divisional office, separate from the principal place of business of the mortgage loan company that is identified by any means to the public or customers as a location at which the licensee holds itself out as a mortgage loan company.

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

- (1) the receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and
- (2) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms;

D. "Closing agent" means a person, including a title insurance agent or title insurance company, that acts in the normal course of business in a fiduciary capacity as a disinterested third party for the seller and buyer of real property for the purpose of consummating a sale of real property, including the performance of the following functions:

- (1) preparation of deeds, mortgages, promissory notes, deeds of trust, real estate contracts, assignments or other documents incidental to the sale as permitted by law;
- (2) calculations and disbursements of prorated taxes, insurance premiums, utility bills and other charges incidental to the sale;
- (3) preparation of sellers' and buyers' closing statements;
- (4) supervision of signing of documents;
- (5) collection and disbursement of down payments, commissions of real estate licensees, fees and other charges pursuant to a sales agreement; and
- (6) recordation of documents;

E. "Depository institution" has the same meaning as the definition of depository institution in Section 3 of the Federal Deposit Insurance Act and includes any credit union.

F. "Division" means the financial institutions division of the regulation and licensing department.

G. **"Director"** means the director of the financial institutions division of the regulation and licensing department.

H. **"Dwelling"** means a residential structure that contains one to four units whether or not that structure is attached to real property. **"Dwelling"** includes an individual condominium unit, an individual cooperative unit, a mobile home and a trailer if used as a residence.

I. **"Federal banking agencies"** 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.

J. **"Immediate family member"** means a spouse, child, sibling, parent, grandparent or grandchild, and **"immediate family member"** includes a stepparent, a stepchild, a stepsibling and an adoptive relationship.

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

L. **"Lender"** means a person or government agency making a mortgage loan.

M. **"License"** means a license issued pursuant to Section 6 of the New Mexico Mortgage Loan Originator Licensing Act.

N. **"Loan processor or underwriter"** means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, pursuant to the Mortgage Loan Company Act.

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

P. **"Mortgage loan company"** means any person who, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:

(1) accepts an application for a mortgage loan; negotiates terms for a mortgage loan; or solicits, processes, originates, brokers or makes mortgage loans for others;

(2) offers to:

(a) accept an application for a mortgage loan;

(b) negotiate terms for a mortgage loan; or

(c) solicit, process, originate, broker or make mortgage loans for others; or

(3) closes mortgage loans that may be in the mortgage loan company's own name with funds provided by others and that are assigned to the mortgage lenders providing the funding of such loans;

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

(1) an individual engaged solely as a loan processor or underwriter except as otherwise provided in Subsection I of this section;

(2) a person that only performs real estate brokerage activities and is licensed or registered in accordance with New Mexico law, unless the person is compensated by a lender, a mortgage loan company or other mortgage loan originator or by any agent of such lender, mortgage loan company or other mortgage loan originator; and

(3) a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11 of the United States Code.

R. **"Nationwide mortgage licensing system and registry"** means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of licensed mortgage loan originators.

S. **"Net loan funds"** means the mortgage loan amounts specified in the note and mortgage less lender-retained fees, as specified in the lender's instruction to the closing agent.

T. **"Nontraditional mortgage product"** means any mortgage product other than a thirty-year fixed rate mortgage.

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

V. **"Qualified manager"** means an individual, designated by a mortgage loan company, responsible for the activities of the licensed mortgage loan company's office, divisional office or branch office in conducting the business of that mortgage loan company's office, divisional office or branch office and who meets requirements as specified by the director.

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

- (1) acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;
- (2) bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;
- (3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property, other than in connection with providing financing with respect to any such transaction;
- (4) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker pursuant to any applicable law; and
- (5) offering to engage in any activity or to act in any capacity described in Paragraphs (1) through (4) of this subsection.

X. "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator, is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry and is an employee of:

- (1) a depository institution;
- (2) a subsidiary that is:
 - (a) owned and controlled by a depository institution; and
 - (b) regulated by a federal banking agency; or
- (3) an institution regulated by the farm credit administration.

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

Z. "Residential real estate" means any real property located in New Mexico upon which is constructed or intended to be constructed a dwelling.

AA. "Servicer" means a person that collects or receives payments, including principal, interest and trust items such as hazard insurance, property taxes and other amounts due, on behalf of a note holder or investor in accordance with the terms of a residential mortgage loan, and includes working with a borrower on behalf of a note holder or investor, when the borrower is in financial hardship or default, to modify either temporarily or permanently the terms of an existing residential mortgage loan.

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

CC. The phrase "**any action or proceeding, civil or criminal, judicial or administrative, completed or in progress**", as used in Section 58-21-4(G) NMSA 1978, shall be exclusive of divorce proceedings and misdemeanor traffic citations.

[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.7 & A, 12/15/08; A, 08/31/09]

HISTORY OF 12.19.1 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:

FID Regulation No. 86-3, Mortgage Loan Company and Loan Broker Regulation, filed 5/6/86.

History of Repealed Material: [RESERVED]

Other History:

FID Regulation No. 86-3, Mortgage Loan Company and Loan Broker Regulation (filed 5/6/86) was renumbered and reformatted into first version of the New Mexico Administrative Code as 12 NMAC 19.1, Mortgage Companies - General Provisions, effective 9/30/97.

12 NMAC 19.1, Mortgage Companies - General Provisions (filed 9/17/97) was renumbered, reformatted, amended and replaced by 12.19.1 NMAC, Mortgage Companies - General Provisions, effective 12/15/08.