

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 19 MORTGAGE LENDING
PART 8 MORTGAGE LOAN COMPANY REQUIREMENTS

12.19.8.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department.
[12.19.8.1 NMAC - Rp, 12 NMAC 19.2.8.1, 12/15/08]

12.19.8.2 SCOPE: All mortgage loan companies licensed by the state of New Mexico.
[12.19.8.2 NMAC - Rp, 12 NMAC 19.2.8.2, 12/15/08; A, 08/31/09]

12.19.8.3 STATUTORY AUTHORITY: Mortgage Loan Company Act, Section 58-21-9 NMSA 1978.
[12.19.8.3 NMAC - Rp, 12 NMAC 19.2.8.3, 12/15/08; A, 08/31/09]

12.19.8.4 DURATION: Permanent.
[12.19.8.4 NMAC - Rp, 12 NMAC 19.2.8.4, 12/15/08]

12.19.8.5 EFFECTIVE DATE: December 15, 2008, unless a later date is cited in the history note at the end of a section.
[12.19.8.5 NMAC - Rp, 12 NMAC 19.2.8.5, 12/15/08]

12.19.8.6 OBJECTIVE: The objective of this part is to effectuate the purposes of the Mortgage Loan Company Act.
[12.19.8.6 NMAC - Rp, 12 NMAC 19.2.8.6, 12/15/08; A, 08/31/09]

12.19.8.7 DEFINITIONS:

A. “Applicant” means a person who has applied for a license pursuant to the provisions of the Mortgage Loan Company Act, and includes all directors, officers, employees, trustees and owners of such person.

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

C. “Independent contractor” means any person who originates, processes or underwrites mortgage loans and is not a W-2 employee of a licensed mortgage loan company.

D. “Licensee” means a person who is licensed pursuant to the provisions of the act, and includes all directors, officers, employees, trustees and owners of such person.

E. “Person who controls or is controlled”, with respect to Section 58-21-2(A) NMSA 1978, means a person who is a director or executive officer of a business or organization, who directly or indirectly, or acting in concert with one or more other persons or entities, owns, controls or holds power to vote, or holds proxies representing ten percent (10%) or more of the voting shares or rights of any entity, or the spouse of such person.

F. “Reasonably reliable documentation” means any documentation that is required by a mortgage loan company to satisfy the requirements of a loan product that meets the borrower’s requested terms and qualifications, documents the source of repayment and includes verifiable written documentation obtained from the borrower or a third party. Reasonably reliable documentation may include but may not be limited to verbal verifications.

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

[12.19.8.7 NMAC - Rp, 12 NMAC 19.2.8.7, 12/15/08; A, 08/31/09; A, 06/01/10; A, 12/31/10]

12.19.8.8 APPLICANT AND LICENSEE REQUIREMENTS:

A. Application for licensure: In addition to the information required by Section 58-21-4 NMSA 1978 of the act, each applicant for issuance or renewal of a license shall be subject to the following requirements:

(1) applications for license or renewal of a license shall be made using the nationwide mortgage licensing system and registry;

(2) a mortgage loan company shall obtain and maintain a unique identifier number issued by the nationwide mortgage licensing system and registry for each principal office, divisional office or branch office;

(3) an independent contractor who intends to originate mortgage loans and is not sponsored by a licensed New Mexico mortgage loan company shall, prior to originating mortgage loans, obtain a license under the Mortgage Loan Company Act, Section 58-21-1 NMSA 1978 et.seq.

B. The unique identifier number of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan applications, solicitations, advertisements, including business cards and web sites.

C. Licensees shall keep the following records and make them available upon examination or investigation:

(1) documents related to the withdrawal, denial or settlement of a residential mortgage loan which includes, but are not limited to:

(a) mortgage loan transaction documents: all loan applications, written or electronic, mortgage loan settlement statement, loan transmittal summary, credit report, appraisal, all verifications (mortgage, rent, deposits, employment, income), lender loan approval, clear to close and interest rate lock-in confirmation, title commitment, survey and sales contract (if loan is a purchase);

(b) rate sheet(s) used in the determination of the information used on the initial good faith estimate and loan application and any subsequent good faith estimate and loan application done prior to interest rate lock-in;

(c) rate sheet(s) used for the determination of the interest rate that was locked-in with the lender for the purpose of settlement and funding the loan;

(d) all disclosures required by the Real Estate Settlement Procedures Act, Truth in Lending Act (Regulation Z), the Equal Credit Opportunity Act, the Patriot Act and the Mortgage Loan Company Act;

(e) disclosures that include: borrower's signature, certification and authorization, fair credit reporting, affidavit of occupancy, insurance anti-coercion statement, mortgage loan agreement, privacy policy, loan comparison for adjustable rate mortgages, credit score information;

(f) title documents: note, mortgage or deed of trust (including all riders for the note and mortgage or deed of trust), final signed truth-in-lending disclosure, lender's closing instructions to the title company, closing disbursement sheet and copies of issued checks or direct deposits, initial escrow account statement and right of rescission;

(2) all evidence of payment of commissions, brokers' fees or other forms of compensation for services rendered in connection with a mortgage loan transaction;

(3) all books, records, canceled checks pertaining to, but are not limited to, the mortgage loan transactions and payment of fees; books and records shall include cash receipts and disbursements journals, to be posted daily, and a general ledger, to be posted monthly;

(4) the books of account shall include a funded residential mortgage loan journal showing an entry for each mortgage loan transaction completed;

(5) records covered by 12.19.8 NMAC include electronic records.

D. Licensees' accounts.

(1) Trust accounts: All funds belonging to third party settlement service providers (e.g., appraisal services, credit reporting agencies), borrowers or sellers, shall, upon receipt thereof, be deposited into the licensee's trust account that is set up exclusively for the deposit and disbursement of third party settlement service fees and the borrowers or sellers funds. The trust account shall be established with a depository institution the accounts of which are insured by the federal deposit insurance corporation or the national credit union administration. Deposited funds shall remain in the trust account until disbursed to the third party settlement service providers, used at settlement for the borrowers benefit or returned to the rightful borrowers or sellers. If the trust account is interest-bearing, all interest shall be distributed to the appropriate parties, on a pro rata basis, at the time trust funds are disbursed or returned. All funds received by the licensee must be disbursed within 30 days of the settlement of the residential mortgage loan.

(2) If a licensee requires a deposit in connection with an application for a mortgage loan, there must be an agreement in writing between consumer and licensee, setting forth the disposition of the deposit, whether the loan is finally consummated or not.

(3) Deposit accounts: All deposit accounts maintained by a licensee shall be reconciled within ten (10) business days after receipt of statements; "deposit accounts" includes all accounts maintained with depository institutions.

[12.19.8.8 NMAC - Rp, 12 NMAC 19.2.8.8.1, 5 & 6, 12/15/08; A, 08/31/09; A, 06/01/10; A, 12/31/10]

12.19.8.9 GOOD BUSINESS REPUTATION: Pursuant to Section 58-21-8(A) NMSA 1978 of the act, a licensee or applicant may be deemed to lack a good business reputation if the director finds that the licensee or applicant has done or is doing any of the following, which includes, but is not limited to:

- A. repeatedly issues worthless checks;
- B. has outstanding unsatisfied judgments;
- C. repeatedly fails to meet obligations when due;
- D. fails to pay the examination fee or investigation fee provided by Section 58-21-5 or Section 58-21-12 NMSA 1978;
- E. allows unlicensed independent contractors or mortgage loan originators to originate mortgage loans.

[12.19.8.9 NMAC - Rp, 12 NMAC 19.2.8.8.7, 12/15/08; A, 08/31/09; A,06/01/10]

12.19.8.10 HEARING PROCEDURES: Hearings requested, pursuant to Section 58-21-14 of the act, by applicants or licensees shall be conducted under the following procedures.

- A. Hearings shall be conducted pursuant to Section 12-8-10 NMSA 1978 and Section 12-8-11 NMSA 1978 of the Administrative Procedures Act (12-8-1) NMSA 1978 and any future amendments to this section.
- B. Hearings shall be conducted in Santa Fe county, or upon agreement by the director and an applicant or licensee, a hearing may be conducted in a county other than Santa Fe county or the county in which the apparent violation or violations occurred.
- C. All hearings shall be conducted by the director or by a hearing officer designated by the director. A hearing officer shall, within 30 days following the hearing, submit to the director a report setting forth his findings of fact and conclusions of law.
- D. All hearings shall be open to the public. In cases in which the reputation of an applicant or licensee may be damaged or, for good cause shown, the director or hearing officer may hold a closed hearing and must state the reasons for this decision in the record.
- E. A complete record shall be made of all evidence and testimony received during the course of any hearing.
- F. Within sixty (60) days after the hearing, the director shall serve upon the applicant or licensee a copy of the final written order.

[12.19.8.10 NMAC - Rp, 12 NMAC 19.2.8.8.8, 12/15/08; A, 08/31/09]

12.19.8.11 FEES: A mortgage loan company shall pay the following fees. These fees are non-refundable and are in addition to any fees established and charged by the nationwide mortgage licensing system and registry.

- A. Main office:
 - (1) application fee: \$500.00;
 - (2) license fee: \$500.00;
 - (3) supervisory fee: \$500.00;
 - (4) annual license renewal fee: \$500.00;
 - (5) annual supervisory renewal fee: \$500.00;
 - (6) reinstatement fee: \$250.00;
 - (7) amendment fee: \$50.00.
- B. Branch office:
 - (1) annual branch office fee: \$500.00;
 - (2) reinstatement fee: \$250.00;
 - (3) branch amendment fees: \$50.00.
- C. Investigation fee: \$75.00 per hour, or any fraction of an hour, per examiner or investigator.

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

12.19.8.12 DISCLOSURES:

- A. Mortgage loan companies shall provide rate lock disclosures to and enter into signed lock-in agreements with a borrower(s). The mortgage loan company shall use a rate lock disclosure form of their choosing. The rate lock disclosure shall include the following information: (1) a rate float option, (2) the lock-in loan interest

rate, (3) loan pricing for the lock-in interest rate, (4) loan terms, (5) loan lock-in period and (6) any fees required for an extension of the lock-in period. For the purposes of act, the term “pricing” means the yield spread premium or discounts points disclosed as a credit or charge in dollars to the borrower(s) for the loan interest rate.

B. At least two (2) days prior to closing, a mortgage loan company shall provide to the borrower(s) the following federal disclosures specific to the mortgage loan the borrower(s) is receiving: (1) a good faith estimate and (2) a truth in lending statement. These documents shall be used to comply with Section 58-21-31 (D) and (E) NMSA 1978. For the purposes of the act, the yield spread premium or discount points received by the mortgage loan company shall be disclosed as a credit or charge in a dollar amount on all good faith estimates.

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

12.19.8.13 QUALIFIED MANAGER:

A. A qualified manager shall provide the director with the following documentation of his or her lending experience for verification purposes:

- (1) income tax returns;
- (2) W-2 and/or 1099 forms.

B. Documentation may also include previous business licenses and other state mortgage licenses.

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

12.19.8.14 SURETY BOND: Every surety bond shall provide that no suit or claim shall be maintained to enforce any liability on the bond unless brought within six years after the act upon which the suit or claim is based.

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

12.19.8.15 REASONABLE ABILITY TO REPAY: The documentation of “reasonable ability to repay” in Section 58-21-8 (N) NMSA 1978, will depend upon the totality of facts and circumstances relating to a specific residential mortgage loan transaction and the borrower’s financial condition and circumstances. While the documentation of certain residential mortgage loan transactions may clearly demonstrate the borrower’s reasonable ability to repay, others may require closer scrutiny to determine whether the documentation for a particular residential mortgage loan transaction sufficiently demonstrates ability to repay. The “reasonable ability to repay” standard shall be demonstrated through reasonably reliable documentation.

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

12.19.8.16 AMENDING OR SURRENDERING A LICENSE:

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

- (1) company name;
- (2) company address;
- (3) company legal status;
- (4) ownership;
- (5) control persons;
- (6) qualified manager;
- (7) surety bond;
- (8) branch name or location;
- (9) branch manager.

B. A licensed mortgage loan company that has any owner, control person or qualified manager who has been charged with, convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court shall notify the director of the financial institutions division in writing and amend the company’s license information on the nationwide mortgage licensing system and registry within five days of the occurrence.

C. A licensed mortgage loan company shall immediately surrender the company’s license if required to do so by court order, final order, default order, consent order or if the mortgage loan company no longer meets the minimum requirements for licensure in 58-21-3 and 58-21-4 NMSA 1978.

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

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

12.19.8.17 MORTGAGE LOAN ORIGINATOR SPONSORSHIP: A licensed mortgage loan originator whose employment with a mortgage loan company is terminated shall not originate new mortgage loans for that mortgage loan company but may receive compensation for those mortgage loans originated by him or her while employed by that mortgage loan company.
[12.19.8.17 NMAC - N, 06/01/10]

HISTORY OF 12.19.8 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. 86-1, Mortgage Loan Company and Loan Broker Regulations, filed 1/29/86.

History of Repealed Material:

12 NMAC 19.2.8.8.3.1 through 12 NMAC 19.2.8.8.3.6 (including subparagraphs), repealed 10/15/99.
12 NMAC 19.2.8, Mortgage Loan Company and Loan Broker Regulations, Licensing and Registration Requirements (filed 09/17/1997) repealed 12/15/08.

Other History:

FID Regulation No. 86-1, Mortgage Loan Company and Loan Broker Regulations (filed 1/29/86) was renumbered and reformatted to 12 NMAC 19.2.8, Mortgage Loan Company and Loan Broker Regulations, Licensing and Registration Requirements, effective 09/30/1997.
12 NMAC 19.2.8, Mortgage Loan Company and Loan Broker Regulations, Licensing and Registration Requirements (filed 09/17/1997) was renumbered, reformatted and replaced by 12.19.8 NMAC, Mortgage Loan Company and Loan Broker Requirements, effective 12/15/08.