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H.171

Introduced by Representatives Kitzmiller of Montpelier, Bissonnette of
Winooski, Botzow of Pownal, Clerkin of Hartford, Dickinson
of St. Albans Town, Lorber of Burlington, Marcotte of
Coventry, Shand of Weathersfield, Smith of Mendon, Turner of
Milton and Wilson of Manchester

Referred to Committee on

Date:

Subject: Banking; SAFE Act; licensed lenders; mortgage loan originators;
foreclosure notice

Statement of purpose: This bill proposes: (1) to amend Vermont law to
incorporate the requirements of the federal SAFE Act, including requirements
for the licensing of mortgage loan originators; and (2) to require notice to the
department of banking, insurance, securities, and health care administration
when foreclosure proceedings are commenced in a Vermont court, for the
purpose of coordinating judicial proceedings with the department's mortgage
assistance program.

18 An act relating to home mortgage protection for Vermonters
19 It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. 8 V.S.A. chapter 73 is amended to read:

2 CHAPTER 73. LICENSED LENDERS

3 § 2200. DEFINITIONS

4 As used in this chapter:

5 (1) ~~“Bank,” shall mean institutions organized and regulated as such~~
6 ~~under the laws of the United States or any state or territory of the United States~~
7 ~~and which are engaged in the business of banking, and shall also include any~~
8 ~~Vermont financial institution as defined in subdivision 11101(65) of this title,~~
9 ~~any insured depository institution as such term is defined by the Federal~~
10 ~~Deposit Insurance Act, 12 U.S.C. § 1813(e)(2), and a bank not organized~~
11 ~~within the United States, or a United States or state branch or agency thereof,~~
12 ~~which is conducting business pursuant to the International Banking Act of~~
13 ~~1978, 12 U.S.C. § 3101 et seq. For purposes of this chapter, “bank “ shall also~~
14 ~~includes any credit unions organized and regulated as such under the laws of~~
15 ~~the United States or any state or territory of the United States.~~

16 (2)(1) “Commercial loan” means any loan or extension of credit that is
17 described in section 46(1), (2) or (4) of Title 9 and that is in excess of
18 \$25,000.00. The term does not include a loan or extension of credit for the
19 purpose of farming, as defined in ~~section~~ subdivision 6001(22) of Title 10 and
20 does not include a loan or extension of credit for the purpose of financing an
21 owner occupied one- to four-unit dwellings.

1 ~~(3)~~(2) “Commissioner” means the commissioner of banking, insurance,
2 securities, and health care administration.

3 ~~(4)~~(3) “Control” means the possession, direct or indirect, of the power to
4 direct or cause the direction of the management or policies of a person,
5 whether through the ownership of voting securities, by contract other than a
6 commercial contract for goods or nonmanagement services, or otherwise,
7 unless the power is the result of an official position with or corporate office
8 held by the person. Control shall be presumed to exist if any person, directly
9 or indirectly, owns, controls, holds with the power to vote, or holds proxies
10 representing, ten percent or more of the voting securities or other interest of
11 any other person.

12 (4) “Depository institution” has the same meaning as in Section 3 of the
13 Federal Deposit Insurance Act, 12 U.S.C. § 1813(c), which includes any bank
14 and any savings association as defined in Section 3 of the Federal Deposit
15 Insurance Act. For purposes of this chapter, “depository institution” also
16 includes any credit union organized and regulated as such under the laws of the
17 United States or any state or territory of the United States.

18 (5) “Federal banking agencies” means the Board of Governors of the
19 Federal Reserve System, the Comptroller of the Currency, the Office of Thrift
20 Supervision, the National Credit Union Administration, and the Federal
21 Deposit Insurance Corporation or any successor of any of these.

1 (6) “Holder” shall have the meaning set forth in section 1-201(20) of
2 Title 9A.

3 (7) “Immediate family member” means a spouse, child, sibling, parent,
4 grandparent, or grandchild, including stepparents, stepchildren, stepsiblings,
5 and adoptive relationships.

6 (8) “Individual” means a natural person.

7 ~~(6)~~(9) “Insurance company” shall mean an institution organized and
8 regulated as such under the laws of the state of Vermont or any state or
9 territory of the United States.

10 ~~(7)~~(10) “Licensee” means any person subject to the provisions of section
11 2201 of this title.

12 (11) “Loan processor or underwriter” means an individual who performs
13 clerical or support duties as an employee at the direction of and subject to the
14 supervision and instruction of a person licensed, or exempt from licensing,
15 under this chapter.

16 (A) For purposes of this subdivision (11), the term “clerical or
17 support duties” may include, subsequent to the receipt of a loan application:

18 (i) The receipt, collection, distribution, and analysis of information
19 common for the processing or underwriting of a residential mortgage loan; and

20 (ii) Communicating with a consumer to obtain the information
21 necessary for the processing or underwriting of a loan, to the extent that such

1 communication does not include offering or negotiating loan rates or terms, or
2 counseling consumers about residential mortgage loan rates or terms.

3 (B) An individual engaging solely in loan processor or underwriter
4 activities shall not represent to the public, through advertising or other means
5 of communicating or providing information, including the use of business
6 cards, stationery, brochures, signs, rate lists, or other promotional items, that
7 such individual can or will perform any of the activities of a mortgage loan
8 originator.

9 ~~(8)~~(12) “Mortgage broker” means any person who for compensation or
10 gain, or in the expectation of compensation or gain, directly or indirectly
11 negotiates, places, assists in placement, finds or offers to negotiate, place,
12 assist in placement or find mortgage loans, other than commercial loans, on
13 real property for others. The term shall not include real estate brokers or
14 salespersons, as defined in section 2211 of Title 26, who in connection with
15 services performed in a prospective real estate transaction, provide mortgage
16 information or assistance to a buyer, if such real estate broker or real estate
17 salesperson is not compensated for providing such mortgage information or
18 assistance in addition to the compensation received from the seller or buyer for
19 such real estate ~~services~~ brokerage activity. The term shall not include
20 attorneys licensed to practice law in this state acting in their professional
21 capacity. The term shall not include persons engaged in the foregoing

1 activities solely in connection with the sale, assignment, or other transfer of
2 one or more previously originated loans.

3 ~~(9)~~(13) “Mortgage loan” means a loan secured primarily by a lien
4 against real estate.

5 (14) “Mortgage loan originator”:

6 (A) Means an individual who for compensation or gain or in the
7 expectation of compensation or gain:

8 (i) Takes a residential mortgage loan application; or

9 (ii) Offers or negotiates terms of a residential mortgage loan;

10 (B) Does not include:

11 (i) an individual engaged solely as a loan processor or underwriter,
12 except as otherwise provided in subsection 2201(f) of this chapter;

13 (ii) a person or entity that only performs real estate brokerage
14 activities and is licensed or registered in accordance with Vermont law, unless
15 the person or entity is compensated by a buyer or a seller in addition to the
16 compensation received for such real estate brokerage activity or is
17 compensated by a lender, a mortgage broker, or other mortgage loan originator
18 or by any agent of such lender, mortgage broker, or other mortgage loan
19 originator; and

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

4 (15) “Nationwide Mortgage Licensing System and Registry” means a
5 mortgage licensing system developed and maintained by the Conference of
6 State Bank Supervisors and the American Association of Residential Mortgage
7 Regulators for the licensing and registration of licensed mortgage loan
8 originators, or any successor to the Nationwide Mortgage Licensing System
9 and Registry.

10 (16) “Nontraditional mortgage product” means any mortgage product
11 other than a 30-year fixed rate mortgage.

12 ~~(10)~~(17) “Person” shall have the meaning set forth in section 128 of
13 Title 1 and includes a natural person, corporation, company, limited liability
14 company, partnership, or association.

15 (18) “Real estate brokerage activity” means any activity that involves
16 offering or providing real estate brokerage services to the public, including:

17 (A) Acting as a real estate agent or real estate broker for a buyer,
18 seller, lessor, or lessee of real property;

19 (B) Bringing together parties interested in the sale, purchase, lease,
20 rental, or exchange of real property;

1 (C) Negotiating, on behalf of any party, any portion of a contract
2 relating to the sale, purchase, lease, rental, or exchange of real property (other
3 than in connection with providing financing with respect to any such
4 transaction);

5 (D) Engaging in any activity for which a person engaged in the
6 activity is required to be registered or licensed as a real estate agent or real
7 estate broker under any applicable law; and

8 (E) Offering to engage in any activity or act in any capacity described
9 in subdivision (A), (B), (C), or (D) of this subdivision (18).

10 (19) “Registered mortgage loan originator” means any individual who:

11 (A) meets the definition of mortgage loan originator and is an
12 employee of:

13 (i) A depository institution;

14 (ii) A subsidiary that is:

15 (I) Owned and controlled by a depository institution, as
16 determined by a federal banking agency; and

17 (II) Regulated by a federal banking agency; or

18 (iii) An institution regulated by the Farm Credit Administration;

19 and

20 (B) is registered with, and maintains a unique identifier through, the
21 Nationwide Mortgage Licensing System and Registry.

1 (20) “Residential mortgage loan” means any loan primarily for personal,
2 family, or household use that is secured by a mortgage, deed of trust, or other
3 equivalent consensual security interest on a dwelling (as defined in section
4 103(v) of the Truth in Lending Act) or residential real estate upon which is
5 constructed or intended to be constructed a dwelling (as so defined).

6 (21) “Residential real estate” means any real property located in
7 Vermont, upon which is constructed or intended to be constructed a dwelling.

8 ~~(11)~~(22) “Sales finance company” means any person who has purchased
9 one or more retail installment contracts, as defined in sections 2351(5) and
10 2401(7) of Title 9, from one or more retail sellers located in this state. Taking
11 one or more retail installment contracts as security for a loan or loans shall not
12 be construed as purchasing for purposes of this definition.

13 (23) “Unique identifier” means a number or other identifier assigned by
14 protocols established by the Nationwide Mortgage Licensing System and
15 Registry.

16 § 2201. LICENSES REQUIRED

17 (a) No person shall without first obtaining a license under this chapter from
18 the commissioner:

19 (1) engage in the business of making loans of money, credit, goods or
20 things in action and charge, contract for or receive on any such loan interest, a
21 finance charge, discount or consideration therefore;

1 (2) act as a mortgage broker;

2 (3) act as a mortgage loan originator; or

3 (4) act as a sales finance company.

4 (b) Each licensed mortgage loan originator must register with and maintain
5 a valid unique identifier with the Nationwide Mortgage Licensing System and
6 Registry and must be a W-2 employee actively employed at a licensed location
7 of, and supervised and sponsored by, only one licensed lender or licensed
8 mortgage broker operating in this state.

9 (c) A person licensed pursuant to subdivision (a)(1) of this section may
10 engage in mortgage brokerage and sales finance if such person informs the
11 commissioner in advance that he or she intends to engage in sales finance and
12 mortgage brokerage. Such person shall inform the commissioner of his or her
13 intention on the original license application under section 2202 of this title, any
14 renewal application under section 2209 of this title, or pursuant to section 2208
15 of this title.

16 ~~(e)~~(d) No lender license, mortgage broker license, or sales finance company
17 license shall be required of:

18 (1) a state agency, political subdivision, or other public instrumentality
19 of the state;

20 (2) a federal agency or other public instrumentality of the United States;

1 (3) a gas or electric utility subject to the jurisdiction of the public service
2 board engaging in energy conservation or safety loans;

3 (4) a ~~bank~~ depository institution;

4 (5) a pawnbroker;

5 (6) an insurance company;

6 (7) a seller of goods or services that finances the sale of such goods or
7 services, other than a residential mortgage loan;

8 (8) any individual who offers or negotiates the terms of a residential
9 mortgage loan secured by a dwelling that served as the individual's residence.

10 (9) lenders that conduct their lending activities, other than residential
11 mortgage loan activities, through revolving loan funds, that are nonprofit
12 organizations exempt from taxation under section 501(c) of the Internal
13 Revenue Code, and that register with the commissioner of economic
14 development under section 690a of Title 10;

15 ~~(9) lenders making only commercial loans of \$1,000,000.00 or more;~~

16 (10) persons who loan, other than residential mortgage loans, an
17 aggregate of less than \$50,000.00 in any one year at rates of interest of no
18 more than 12 percent per annum;

19 ~~(11) nonprofit institutions of higher education, exempt from taxation~~
20 ~~under Section 501(c)(3) of the Internal Revenue Code, that make residential~~
21 ~~mortgage loans to their employees from their own funds;~~

1 ~~(12)~~ a seller who, pursuant to subdivision 2355(f)(1)(D) of Title 9,
2 includes the amount paid or to be paid by the seller to discharge a security
3 interest, lien interest, or lease interest on the traded-in motor vehicle in a motor
4 vehicle retail installment sales contract, provided that the contract is purchased,
5 assigned, or otherwise acquired by a sales finance company licensed pursuant
6 to this title to purchase motor vehicle retail installment sales contracts or a
7 ~~bank~~ depository institution;

8 ~~(13)~~(12)(A) a person making an unsecured commercial loan, which loan
9 is expressly subordinate to the prior payment of all senior indebtedness of the
10 commercial borrower regardless of whether such senior indebtedness exists at
11 the time of the loan or arises thereafter. The loan may or may not include the
12 right to convert all or a portion of the amount due on the loan to an equity
13 interest in the commercial borrower;

14 (B) for purposes of this subdivision ~~(13)~~(12), “senior indebtedness”
15 means:

16 (i) all indebtedness of the commercial borrower for money
17 borrowed from ~~banks~~ depository institutions, trust companies, ~~credit unions~~,
18 insurance companies, and licensed lenders, and any guarantee thereof; and

19 (ii) any other indebtedness of the commercial borrower that the
20 lender and the commercial borrower agree shall constitute senior indebtedness;

1 ~~(14)~~(13) nonprofit organizations established under testamentary
2 instruments, exempt from taxation under Section 501(c)(3) of the Internal
3 Revenue Code, 26 U.S.C. § 501(c)(3), and which make loans for
4 postsecondary educational costs to students and their parents, provided that the
5 organizations provide annual accountings to the probate court pursuant to
6 14 V.S.A. § 2324;

7 (14) any individual who offers or negotiates terms of a residential
8 mortgage loan with or on behalf of an immediate family member of the
9 individual.

10 (e) No mortgage loan originator license shall be required of:

11 (1) Registered mortgage loan originators, when acting for an entity
12 described in subdivision 2200(19) of this chapter.

13 (2) Any individual who offers or negotiates terms of a residential
14 mortgage loan with or on behalf of an immediate family member of the
15 individual.

16 (3) Any individual who offers or negotiates terms of a residential
17 mortgage loan secured by a dwelling that served as the individual's residence.

18 (4) A licensed attorney who negotiates the terms of a residential
19 mortgage loan on behalf of a client as an ancillary matter to the attorney's
20 representation of the client, unless the attorney is compensated by a lender, a

1 mortgage broker, or other mortgage loan originator or by any agent of such
2 lender, mortgage broker, or other mortgage loan originator.

3 (f) Independent contractor loan processors or underwriters. A loan
4 processor or underwriter who is an independent contractor may not engage in
5 the activities of a loan processor or underwriter unless such independent
6 contractor loan processor or underwriter obtains and maintains a mortgage loan
7 originator license. Each independent contractor loan processor or underwriter
8 licensed as a mortgage loan originator must have and maintain a valid unique
9 identifier issued by the Nationwide Mortgage Licensing System and Registry.

10 (g) This chapter shall not apply to commercial loans of \$1,000,000.00 or
11 more.

12 § 2202. APPLICATION FOR LICENSE; LICENSE AND INVESTIGATION
13 FEES

14 (a) Application for a license shall be in writing, under oath, and in the form
15 prescribed by the commissioner, and shall contain the name and the address of
16 the residence and place of business of the applicant, and if the applicant is a
17 partnership or association, of every member thereof, and if a corporation, of
18 each officer and director thereof; also the county and municipality with street
19 and number, if any, where the business is to be conducted and such further
20 information as the commissioner may require.

1 (b)(4) At the time of making application, the applicant shall pay to the
2 commissioner a fee for investigating the application and a license fee for a
3 period terminating on the last day of the current calendar year. The following
4 fees are imposed on applicants:

5 ~~(A)~~(1) For an applicant for a lender's license, \$1,000.00 as a license
6 fee, and \$1,000.00 as an application and investigation fee for the initial license.
7 ~~An additional license fee of \$100.00 shall be required of any applicant for a~~
8 ~~lender's license who also intends to engage in mortgage brokerage. An~~
9 ~~additional license fee of \$100.00 shall be required for any applicant for a~~
10 ~~lender's license who also intends to engage in sales finance.~~

11 ~~(B)~~ For an applicant for a mortgage broker's license, \$250.00 as a
12 license fee, and \$250.00 as an application and investigation fee.

13 ~~(C)~~ For an applicant for a sales finance company's license, \$300.00
14 as a license fee, and \$250.00 as an application and investigation fee. For each
15 additional lender license from the same applicant, \$500.00 as a license fee and
16 \$500.00 as an application and investigation fee.

17 (2) For an applicant for a mortgage broker's license, ~~\$350.00~~ \$500.00 as
18 a license fee, and ~~\$350.00~~ \$500.00 as an application and investigation fee.

19 (3) For an applicant for a mortgage loan originator license, \$50.00 as a
20 license fee, and \$50.00 as an application and investigation fee.

1 (4) For an applicant for a sales finance company's license, \$350.00 as a
2 license fee, and \$350.00 as an application and investigation fee.

3 ~~(4) The license fee for an application submitted after September 30 of~~
4 ~~any year shall be prorated.~~

5 (c) In connection with an application for a license, the applicant and each
6 officer, director, and control person of the applicant shall furnish to the
7 Nationwide Mortgage Licensing System and Registry information concerning
8 the applicant's identity, including:

9 (1) Fingerprints for submission to the Federal Bureau of Investigation,
10 and any governmental agency or entity authorized to receive such information
11 for a state, national, and international criminal history background check.

12 (2) Personal history and experience in a form prescribed by the
13 Nationwide Mortgage Licensing System and Registry, including the
14 submission of authorization for the Nationwide Mortgage Licensing System
15 and Registry and the commissioner to obtain:

16 (A) An independent credit report and credit score obtained from a
17 consumer reporting agency described in section 603(p) of the Fair Credit
18 Reporting Act for the purpose of evaluating the applicant's financial
19 responsibility at the time of application and may obtain additional credit
20 reports and credit scores to confirm the licensee's continued compliance with
21 the financial responsibility requirements of this chapter; and

1 (B) Information related to any administrative, civil, or criminal
2 findings by any governmental jurisdiction.

3 (3) Any other information required by the Nationwide Mortgage
4 Licensing System and Registry or the commissioner.

5 § 2203. BOND; LIQUID ASSETS REQUIRED

6 (a) Prior to issuance of a license, the applicant shall file with the
7 commissioner, and shall keep in force thereafter for as long as the license
8 remains in effect, a bond in a form and substance to be approved by the
9 commissioner in which the applicant shall be the obligor, in such sum as the
10 commissioner may require. The aggregate liability for any and all claims on
11 any bond shall in no event exceed the sum thereof. No surety obligation on a
12 bond shall be terminated unless at least 60 days' prior written notice is given
13 by the surety to the obligor and the commissioner. When one person is issued
14 licenses to conduct the licensed activity at more than one office, the
15 commissioner may accept a single bond covering all such offices. The bond
16 shall run to the state for the use of the state and of any person or persons who
17 may have cause of action against the obligor of such bond under the provisions
18 of this chapter. Such bond shall be conditioned that the obligor will faithfully
19 conform to and abide by the provisions of this chapter and of all rules and
20 regulations lawfully made by the commissioner hereunder, and will pay to the
21 state and to any such person or persons any and all moneys that may become

1 due or owing to the state or to such person or persons from such obligor under
2 and by virtue of the provisions of this chapter. The commissioner shall require
3 that the amount of the bonds shall be based upon the dollar amount of loans
4 originated in Vermont and, at a minimum:

5 ~~(1) For an applicant for a lender's license, a surety bond of \$50,000.00;~~

6 ~~(2) For an applicant for a mortgage broker's license, a surety bond of~~
7 ~~\$25,000.00;~~

8 (1) For licensed lenders:

9 (A) who annually originate \$0.00 to \$1,000,000.00 in loans, a surety
10 bond not less than \$50,000.00;

11 (B) who annually originate \$1,000,000.01 to \$15,000,000.00 in
12 loans, a surety bond not less than \$100,000.00;

13 (C) who annually originate \$15,000,000.01 or more in loans, a surety
14 bond not less than \$150,000.00.

15 (2) For mortgage brokers:

16 (A) who annually originate \$0.00 to \$2,000,000.00 in mortgage
17 loans, a surety bond not less than \$25,000.00;

18 (B) who annually originate \$2,000,000.01 to \$5,000,000.00 in
19 mortgage loans, a surety bond not less than \$50,000.00;

20 (C) who annually originate \$5,000,000.01 to \$15,000,000.00 in
21 mortgage loans, a surety bond not less than \$75,000.00;

1 (D) who annually originate \$15,000,000.01 or more in mortgage
2 loans, a surety bond not less than \$100,000.00.

3 ~~(3) For an applicant for a lender's license engaged in commercial~~
4 ~~lending, a surety bond of \$100,000.00.~~

5 (3) The commissioner may adopt regulations modifying the minimum
6 bond requirements set forth in this subsection.

7 (b) Each mortgage loan originator shall be covered by a surety bond in
8 accordance with this section. In the event that the mortgage loan originator is
9 an employee of a person subject to this chapter, the surety bond of such
10 licensed lender or licensed mortgage broker can be used in lieu of the mortgage
11 loan originator's surety bond requirement, provided that the surety bond shall
12 provide coverage for each mortgage loan originator in an amount as prescribed
13 in this section.

14 (c) When an action is commenced on a licensee's bond, the commissioner
15 may require the filing of a new bond. Immediately upon recovery upon any
16 action on the bond, the licensee shall file a new bond.

17 (d) Every applicant for a lender's license shall also prove, in form
18 satisfactory to the commissioner, that the applicant has liquid assets of
19 \$25,000.00, or such greater amount as the commissioner may require, available
20 for the operation of such business at the location specified in the application.
21 Every applicant wishing to make commercial loans shall prove liquid assets in

1 an amount of \$50,000.00 or such greater amount as the commissioner may
2 require.

3 ~~(e)~~(e) Notwithstanding subsections (a) and ~~(b)~~, (d) of this section, the
4 commissioner may waive or modify the requirement for or amount of a bond
5 or liquid asset set forth in this section, or accept other appropriate means of
6 assuring the financial responsibility of a licensee.

7 § 2204. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

8 (a) Upon the filing of the application, payment of the required fees,
9 approval of the bond, and satisfactory proof of liquid assets, the commissioner
10 shall issue and deliver a license to the applicant upon findings by the
11 commissioner as follows:

12 (1)(A) That the financial responsibility, experience, character, and
13 general fitness of the applicant are such as to command the confidence of the
14 community and to warrant belief that the business will be operated honestly,
15 fairly, and efficiently within the purposes of this chapter. If the applicant is a
16 partnership or association, such findings are required with respect to each
17 partner, member, and control person. If the applicant is a corporation, such
18 findings are required with respect to each officer, ~~and~~ director, and control
19 person.

20 (B) For purposes of this subsection, a person has shown that he or she
21 is not financially responsible when he or she has shown a disregard in the

1 management of his or her own financial condition. A determination that an
2 individual has not shown financial responsibility may include:

3 (i) Current outstanding judgments, except judgments solely as a
4 result of medical expenses;

5 (ii) Current outstanding tax liens or other government liens and
6 filings;

7 (iii) Foreclosures within the past three years;

8 (iv) A pattern of seriously delinquent accounts within the past
9 three years.

10 (2) That allowing the applicant to engage in business will promote
11 the convenience and advantage of the community in which the business of the
12 applicant is to be conducted.

13 (3) That the applicant is licensed to engage in such business in its
14 state of domicile and is in good standing in its state of domicile with its
15 banking regulator or equivalent financial industry regulator.

16 (4) That the applicant, and each officer, director, and control person
17 of the applicant, has never had a lender license, mortgage broker license,
18 mortgage loan originator license, or similar license revoked in any
19 governmental jurisdiction, except that a subsequent formal vacation of such
20 revocation shall not be deemed a revocation.

1 (5) The applicant, and each officer and director of the applicant, has
2 not been convicted of, or pled guilty or nolo contendere to, a felony in a
3 domestic, foreign, or military court:

4 (A) During the seven-year period preceding the date of the
5 application for licensing and registration; or

6 (B) At any time preceding such date of application, if such felony
7 involved an act of fraud, dishonesty, or a breach of trust, or money laundering;

8 (C) Provided that any pardon of a conviction shall not be a
9 conviction for purposes of this subsection.

10 (6) That the applicant has satisfied the surety bond and liquid asset
11 requirement of section 2203 of this chapter.

12 (7) For an application for a mortgage loan originator license, the
13 applicant has satisfied the prelicense education requirement of section 2204a of
14 this chapter and the prelicense testing requirement of section 2204b of this
15 chapter.

16 (b) If the commissioner does not find as set forth in subsection (a) of this
17 section, the commissioner shall not issue a license. Within 60 days of filing of
18 the completed application, the commissioner shall notify the applicant of the
19 denial, stating the reason or reasons therefore. If after the allowable period, no
20 request for reconsideration under ~~section~~ subsection 2205(a) of this title is
21 received from the applicant, the commissioner shall return to the applicant the

1 bond and the sum paid by the applicant as a license fee, retaining the
2 investigation fee to cover the costs of investigating the application.

3 (c) If the commissioner makes findings as set forth in subsection (a) of this
4 section, he or she shall issue the license within 60 days of filing the completed
5 application. Except as provided in subsection 2209(c) of this chapter with
6 respect to a mortgage loan originator license, the license shall be in full force
7 and effect until surrendered by the licensee, or revocation, suspension, or
8 refusal to renew by the commissioner.

9 § 2204a. MORTGAGE LOAN ORIGINATOR PRELICENSING AND
10 RELICENSING EDUCATION REQUIREMENT

11 (a) In order to meet the prelicensing education requirement for a mortgage
12 loan originator, a person shall complete at least 20 hours of education approved
13 in accordance with subsection (b) of this section, which shall include at least:

14 (1) Three hours of federal law and regulations;

15 (2) Three hours of ethics, which shall include instruction on fraud,
16 consumer protection, and fair lending issues; and

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

19 (b) For purposes of subsection (a) of this section, prelicensing education
20 courses shall be reviewed and approved by the Nationwide Mortgage
21 Licensing System and Registry based upon reasonable standards. Review and

1 approval of a prelicensing education course shall include review and approval
2 of the course provider.

3 (c) Nothing in this section shall preclude any prelicensing education
4 course, as approved by the Nationwide Mortgage Licensing System and
5 Registry, that is provided by the employer of the applicant or an entity which is
6 affiliated with the applicant by an agency contract, or any subsidiary or
7 affiliate of such employer or entity.

8 (d) Prelicensing education may be offered either in a classroom, online, or
9 by any other means approved by the Nationwide Mortgage Licensing System
10 and Registry.

11 (e) The prelicensing education requirements approved by the Nationwide
12 Mortgage Licensing System and Registry in subdivisions (a)(1), (2), and (3) of
13 this section for any state shall be accepted as credit toward completion of
14 prelicensing education requirements in Vermont.

15 (f) A person previously licensed as a mortgage loan originator under this
16 chapter applying to be licensed again must prove that he or she has completed
17 all of the continuing education requirements for the year in which the license
18 was last held.

19 § 2204b. TESTING OF MORTGAGE LOAN ORIGINATORS

20 (a) In order to meet the written test requirement referred to in subdivision
21 2204(a)(6) of this chapter, an individual applying for a mortgage loan

1 originator license shall pass, in accordance with the standards established
2 under this section, a qualified written test developed by the Nationwide
3 Mortgage Licensing System and Registry and administered by a test provider
4 approved by the Nationwide Mortgage Licensing System and Registry based
5 upon reasonable standards.

6 (b) A written test shall not be treated as a qualified written test for purposes
7 of subsection (a) of this section unless the test adequately measures the
8 applicant's knowledge and comprehension in appropriate subject areas,
9 including:

10 (1) Ethics;

11 (2) Federal law and regulation pertaining to mortgage origination;

12 (3) State law and regulation pertaining to mortgage origination;

13 (4) Federal and state law and regulation, including instruction on fraud,
14 consumer protection, the nontraditional mortgage marketplace, and fair lending
15 issues.

16 (c) Nothing in this section shall prohibit a test provider approved by the
17 Nationwide Mortgage Licensing System and Registry from providing a test at
18 the location of the employer of the applicant or the location of any subsidiary
19 or affiliate of the employer of the applicant.

20 (d) An individual shall not be considered to have passed a qualified written
21 test unless the individual achieves a test score of not less than 75 percent

1 correct answers to questions.

2 (e) An individual may retake a test three consecutive times with each
3 consecutive taking occurring at least 30 days after the preceding test. After
4 failing three consecutive tests, an individual shall wait at least six months
5 before taking the test again.

6 (f) A licensed mortgage loan originator who fails to maintain a valid
7 license for a period of five years or longer shall retake the test, not taking into
8 account any time during which such individual is a registered mortgage loan
9 originator.

10 § 2205. REVIEW OF DENIAL OF APPLICATION

11 (a) If the application is denied, the applicant may request that the
12 commissioner reconsider the application by making such request in writing,
13 within 15 days of the denial, responding specifically to the commissioner's
14 stated reason or reasons for denial. The commissioner shall then reconsider the
15 application in light of the response stated in the request for reconsideration.
16 Within 60 days of filing the request, upon findings as set forth in section
17 ~~2204(a)~~ 2204 of this title, the commissioner shall issue the license.

18 (b) If the commissioner is unable to make findings as set forth in section
19 ~~2204(a)~~ 2204 of this title, the commissioner shall not issue a license. Within
20 60 days of filing of the request for reconsideration, the commissioner shall
21 notify the applicant of the denial, and return to the applicant the bond and the

1 sum paid by the applicant as a license fee, retaining the investigation fee to
2 cover the costs of investigating the application. The applicant may request
3 review by the superior court in Washington ~~county~~ County upon action
4 brought in the usual form by an aggrieved party, within 15 days after written
5 notice of the denial of the request for reconsideration.

6 § 2206. CONTENTS OF LICENSE; NONTRANSFERABILITY; INACTIVE
7 STATUS

8 (a) The license shall state the address at which the business is to be
9 conducted and shall state fully the name of the licensee, and if the licensee is a
10 ~~partnership or association, the names of the members thereof, and if a~~
11 ~~corporation, of~~ other than an individual, the date and place of its organization
12 or incorporation. The commissioner may issue an electronic license. The
13 license or a copy of the electronic license shall be kept conspicuously posted in
14 the place of business of the licensee and shall not be transferable or assignable.

15 (b) The mortgage loan originator license shall fully state the name of the
16 individual and the individual's place of residence. The commissioner may
17 issue an electronic license. The mortgage loan originator license shall not be
18 transferable or assignable.

19 (c) The license of a mortgage loan originator that has satisfied all of the
20 requirements of licensure, other than being employed by a licensed lender or
21 licensed mortgage broker, may be placed in an approved inactive status.

1 § 2207. ADDITIONAL BOND; LIQUID ASSETS TO BE MAINTAINED

2 (a) If the commissioner finds at any time that a licensee's bond is insecure,
3 exhausted, insufficient, or otherwise doubtful, the commissioner shall require
4 one or more additional bonds meeting the standards set forth in section 2203 of
5 this title. The licensee shall file the bond within ten days of the
6 commissioner's written demand to do so.

7 (b) Every licensee, except as set forth in subsection (c) of this section, shall
8 maintain at all times assets in amounts as set forth in section 2203 of this title,
9 or in such greater amount deemed necessary by the commissioner. Assets
10 must be either in liquid form available for the operation of or actually used in
11 the conduct of such business at the location specified in the license.

12 (c) Every licensee making commercial loans shall maintain liquid assets in
13 an amount deemed necessary by the commissioner, but in no event less than
14 \$50,000.00.

15 § 2208. ADDITIONAL PLACES OF BUSINESS; CHANGE OF PLACE OF
16 BUSINESS; CHANGE OF MANAGEMENT OR CONTROL

17 (a) Not more than one place of business shall be maintained under the same
18 license, but the commissioner may issue more than one license to the same
19 lender, mortgage broker, or sales finance company licensee upon compliance
20 with all the provisions of this chapter governing an original issuance of a
21 license.

1 (b) Any change of location or closing of a place of business of the licensee
2 shall require 30 days' prior written notice thereof to the commissioner. ~~Any~~
3 ~~licensed lender wishing to engage in mortgage brokerage or sales finance,~~
4 ~~when such was not disclosed to the commissioner in the original application~~
5 ~~for a license to lend or in any renewal application, shall provide the~~
6 ~~commissioner 30 days' prior written notice thereof.~~ Notice of such change of
7 location ~~or such change in activities~~ shall be accompanied by a fee of \$100.00.
8 Upon receipt of notice and fee, the commissioner shall attach to the license in
9 writing the commissioner's record of the change and the date thereof, which
10 shall be authority for the operation of such business under such license at such
11 new location ~~or, as the case may be, authority for the licensed lender to engage~~
12 ~~in mortgage brokerage or sales finance. No change in the place of business of~~
13 ~~a licensee to a location outside of the original state shall be permitted under the~~
14 ~~same license.~~

15 (c) The licensee shall notify the commissioner of any change in control of
16 the licensee, and of every change in senior management personnel, and of
17 every change in membership of the board of directors or control persons of the
18 licensee within 30 days of such change.

19 § 2209. RENEWAL OF LICENSE

20 (a) On or before December 1 of each year, every licensee shall renew its
21 license for the next succeeding calendar year and shall pay to the

1 commissioner a renewal of license fee ~~for the next succeeding calendar year,~~
2 ~~and shall at.~~ At a minimum, the licensee shall continue to meet the standards
3 for license issuance under section 2204 of this title. At the same time file, the
4 licensee shall maintain with the commissioner a bond in the ~~same~~ amount and
5 of the ~~same~~ character as required by section 2203 of this title or as required by
6 the commissioner under section 2207 of this title. The license renewal fee
7 shall be:

8 (1) For the renewal of lender's license, \$1,200.00. ~~For a person with ten~~
9 ~~or more licensed locations, the renewal fee under this subdivision shall be no~~
10 ~~more than \$12,000.00;~~

11 (2) For the renewal of a mortgage broker's license, ~~\$350.00;~~ \$500.00.

12 (3) For the renewal of a sales finance company's license, \$350.00.

13 (4) For renewal of a mortgage loan originator license, \$100.00.

14 (b) Any license originally issued on or after November 1 of the current year
15 shall be valid for the next succeeding year.

16 (c) An individual holding a mortgage loan originator license must also
17 satisfy the annual continuing education requirement of section 2209a of this
18 title. The license of any mortgage loan originator who fails to pay the annual
19 renewal fee or fails to satisfy all of the minimum license renewal standards by
20 December 1 shall automatically expire on December 31.

1 § 2209a. CONTINUING EDUCATION FOR MORTGAGE LOAN

2 ORIGINATORS

3 (a) In order to meet the annual continuing education requirements, a
4 licensed mortgage loan originator shall complete at least eight hours of
5 education approved in accordance with subsection (b) of this section, which
6 shall include at least:

7 (1) three hours of federal law and regulations;

8 (2) two hours of ethics, which shall include instruction on fraud,
9 consumer protection, and fair lending issues; and

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

12 (b) For purposes of subsection (a) of this section, continuing education
13 courses shall be reviewed and approved by the Nationwide Mortgage
14 Licensing System and Registry based upon reasonable standards. Review and
15 approval of a continuing education course shall include review and approval of
16 the course provider.

17 (c) Nothing in this section shall preclude any education course, as approved
18 by the Nationwide Mortgage Licensing System and Registry, that is provided
19 by the employer of the mortgage loan originator or an entity which is affiliated
20 with the mortgage loan originator, or any subsidiary or affiliate of the
21 employer.

1 (d) Continuing education may be offered either in a classroom, online, or
2 by any other means approved by the Nationwide Mortgage Licensing System
3 and Registry.

4 (e) A licensed mortgage loan originator:

5 (1) Except for section 2212 of this title and subsection (i) of this section,
6 may only receive credit for a continuing education course in the year in which
7 the course is taken; and

8 (2) May not take the same approved course in the same or successive
9 years to meet the annual requirements for continuing education.

10 (f) A licensed mortgage loan originator who is an approved instructor of an
11 approved continuing education course may receive credit for the licensed
12 mortgage loan originator's own annual continuing education requirement at the
13 rate of two hours of credit for every one hour taught.

14 (g) A person having successfully completed the education requirements
15 approved by the Nationwide Mortgage Licensing System and Registry in
16 subdivisions (a)(1), (2), and (3) of this section for any state shall be accepted as
17 credit toward completion of continuing education requirements in Vermont.

18 (h) A licensed mortgage loan originator who subsequently becomes
19 unlicensed must complete the continuing education requirements for the last
20 year in which the license was held prior to issuance of a new or renewed
21 license.

1 (i) A person who otherwise meets the requirements of section 2209 of this
2 title may make up any deficiency in continuing education as established by
3 order, rule, or regulation of the commissioner.

4 § 2210. REVOCATION, SUSPENSION OR NONRENEWAL OF LICENSE;

5 CEASE AND DESIST ORDERS

6 (a) The commissioner may deny, suspend, revoke, condition, or refuse to
7 renew a license, or order that ~~a~~ any person or licensee cease and desist in any
8 specified conduct if the commissioner finds that:

9 (1) The licensee has failed to pay the renewal of license fee, or an
10 examination fee as provided in section 2222 of this title, or to maintain in
11 effect the required liquid assets or the bond or bonds required under the
12 provisions of this chapter, or to file any annual report or other report, or to
13 comply with any lawful demand, ruling, or requirement of the commissioner;
14 or

15 (2) The licensee has violated any provisions of this chapter, sections
16 10403 and 10404 of this title or ~~chapters~~ chapter 4, 59, or 61 of Title 9, where
17 applicable, or any rule, order, directive, or regulation lawfully made
18 thereunder; or

19 (3) The licensee fails to meet the requirements of section 2204 or 2209
20 of this title, or withholds information, or fails to cooperate with an
21 examination, or makes a material misstatement in a license application, license

1 renewal, or any document submitted to the commissioner or to the National
2 Mortgage Licensing System and Registry.

3 (4) Any cause for which issuance of the license could have been refused
4 had it then existed and been known to the commissioner at the time of
5 issuance, including unconscionable conduct which takes advantage of a
6 borrower's lack of bargaining power or lack of understanding of the terms or
7 consequences of the transaction.

8 (b) The commissioner may issue orders or directives to any person:

9 (1) To cease and desist from conducting business;

10 (2) To cease any harmful activities or violations of this chapter, sections
11 10403 and 10404 of this title, chapter 4, 59, or 61 of Title 9, where applicable,
12 or any order, directive, rule, or regulation lawfully made thereunder;

13 (3) To cease business under a license or any conditional license if the
14 commissioner determines that such license was erroneously granted or the
15 licensee is currently in violation of this chapter, sections 10403 and 10404 of
16 this title, chapter 4, 59, or 61 of Title 9, where applicable, or any order,
17 directive, rule, or regulation lawfully made thereunder;

18 (4) Enjoining or prohibiting any person from engaging in the financial
19 services industry in this state;

20 (5) To remove any officer, director, employee, or control person;

1 (6) Regarding any other action or remedy as the commissioner deems
2 necessary to carry out the purposes of this chapter.

3 ~~(b)~~(c) The licensee shall receive 15 days' notice and an opportunity to be
4 heard before such order shall be issued. Mailing notice to the licensee's
5 current address as stated on the license shall be presumptive evidence of its
6 receipt by the licensee. However, if the commissioner finds that the public
7 safety or welfare imperatively requires emergency action, action with no prior
8 notice or prior opportunity to be heard may be taken, pending proceedings for
9 revocation or other action.

10 § 2211. REVOCATION, SUSPENSION, OR NONRENEWAL WHERE
11 MORE THAN ONE PLACE OF BUSINESS

12 The commissioner may revoke, suspend, or refuse to renew only the
13 particular license with respect to which grounds for revocation, suspension, or
14 refusal to renew may occur or exist, or, if the commissioner shall find that such
15 grounds for revocation, suspension, or refusal to renew are of general
16 application to all offices, or to more than one office, operated by such licensee,
17 the commissioner shall revoke, suspend, or refuse to renew all of the licenses
18 issued to the licensee or such licenses as such grounds apply to, as the case
19 may be.

1 § 2212. SURRENDER OF LICENSE, NO EFFECT ON LIABILITY;

2 REINSTATEMENT

3 (a) Any licensee may surrender any license by delivering to the
4 commissioner the license and notice that the licensee thereby surrenders such
5 license.

6 (b) Surrender shall not affect the licensee's administrative, civil, or
7 criminal liability for acts committed prior to surrender. No revocation,
8 suspension, refusal to renew, or surrender of any license shall impair or affect
9 the obligation of any preexisting lawful contract between the licensee and any
10 borrower.

11 (c) The commissioner shall have authority to reinstate revoked, suspended,
12 expired, inactive, or nonrenewed licenses or to issue new licenses to a licensee
13 whose license or licenses shall have been revoked, suspended, expired,
14 inactive, or nonrenewed if no fact or condition then exists which clearly would
15 have warranted the commissioner in refusing originally to issue such license
16 under this chapter.

17 § 2213. REVIEW OF SUSPENSION, REVOCATION, OR ORDER

18 The commissioner's findings and order of suspension, revocation, or to
19 cease and desist in specified conduct shall be served on the licensee. Mailing
20 to the licensee's current address as stated on the license shall constitute such
21 service and shall be presumptive evidence of its receipt by the licensee.

1 Within ~~fifteen~~ 15 days of service the licensee may appeal the commissioner's
2 decision to the superior court in Washington ~~county~~ County.

3 § 2214. REGULATIONS

4 The commissioner is hereby authorized and empowered to make such
5 general rules, orders, and regulations and such specific rulings, demands, and
6 findings as may be necessary for the proper conduct of such business and the
7 enforcement of this chapter, in addition hereto and not inconsistent herewith.

8 § 2215. PENALTIES

9 (a) The commissioner may:

10 (1) Impose an administrative penalty of not more than ~~\$1,000.00~~
11 \$10,000.00 for each violation upon any person who violates or participates in
12 the violation of this chapter, sections 10403 and 10404 of this title or ~~chapters~~
13 chapter 4, 59, or 61 of Title 9, or any lawful regulation, directive, or order
14 issued thereunder; and

15 (2) Order any person to make restitution to any person ~~injured as a result~~
16 of a for any violation of this chapter, sections 10403 and 10404 of this title, or
17 ~~chapters~~ chapter 4, 59, or 61 of Title 9.

18 (b) Each violation, or failure to comply with any directive or order of the
19 commissioner, is a separate and distinct violation.

20 (c) It shall be a criminal offense, punishable by a fine of not more than
21 ~~\$1,000.00~~ \$100,000.00, or not more than a year in prison, or both, for any

1 person, after receipt of an order directing the licensee to cease exercising any
2 duties and powers of a licensee, and assessing an administrative penalty under
3 the authority of this chapter, to perform such duties or exercise such powers of
4 any licensee until the penalty has been satisfied, or otherwise satisfactorily
5 resolved between the parties, or the order is vacated by the commissioner or by
6 a court of competent jurisdiction.

7 ~~(e)~~(d)(1) Any contract of loan made in knowing and willful violation of
8 section 2201(a)(1) of this title, shall be void and the lender shall have no right
9 to collect or receive any principal, interest, or charges whatsoever; provided,
10 however, in the case of loans made in violation of section 2201(a)(1) of this
11 title, where no finding of a knowing and willful violation is made, the lender
12 shall have no right to collect or receive any interest or charges whatsoever, but
13 shall have a right to collect and receive principal.

14 (2) In the case of any person who, after receipt of an order directing
15 such person to cease exercising any duties and powers of a licensee, and
16 assessing an administrative penalty under the authority of this chapter,
17 continues to perform such duties or exercise such powers of any licensee
18 without satisfying the penalty, or otherwise reaching a satisfactory resolution
19 between the parties, or securing a decision vacating the order by the
20 commissioner or by a court of competent jurisdiction, any contract of loan
21 made by such person after receipt of such order shall be void and the lender

1 shall have no right to collect or receive any principal, interest, or charges
2 whatsoever.

3 ~~(d)~~(e) The powers vested in the commissioner by this chapter shall be in
4 addition to any other powers to enforce any penalties, fines or forfeitures
5 authorized by law with respect to the requirements set forth herein.

6 § 2216. MORTGAGE LENDING; SPECIFIC REQUIREMENTS;

7 EXCEPTIONS

8 Every licensee engaging in the making of loans secured by a lien against
9 real estate located in this state, whether conducting its affairs as an agent or
10 principal and whether operating from facilities within the state or by mail,
11 telephone or by electronic means, shall comply with the general provisions of
12 this chapter unless exempted herein. A licensee making such loans through a
13 third person, shall only make loans through a person licensed as a mortgage
14 broker and as a mortgage loan originator under this chapter, unless such third
15 person is exempt from such licensing provisions. Any lender who makes such
16 loans through a third person required to be licensed and not so licensed, in
17 addition to being subject to all applicable penalties under Vermont law, shall
18 be responsible for the acts or omissions of the third person as a principal is
19 responsible for the acts and omissions of its agent. Every licensee making
20 loans secured by a lien against real estate shall comply with sections 10403 and

1 10404, and subchapter 2 of chapter 200 of this title, and shall also be subject to
2 the following specific limitations:

3 (1) For loans secured by a first lien, the term shall not exceed 480
4 months, and the licensees may not exceed the interest rate permitted by ~~section~~
5 subdivision 41a(b)(8) of Title 9. All such lien documents shall include a
6 power of sale pursuant to section 4531a et seq. of Title 12. The limitations on
7 permitted charges contained in sections 2231 and 2233 of this title and sections
8 42, 44₂ and 46 of Title 9 shall not apply to any loan within the scope of 12
9 U.S.C. § 1735f-7a. Permitted charges shall be as specified in sections 42, 44₂,
10 and 46 of Title 9 for any loan secured by a first lien on real estate that is not
11 included within the scope of 12 U.S.C. § 1735f-7a, instead of sections 2231
12 and 2233 of this title.

13 (2) For loans secured by a subordinate lien, the term shall not exceed
14 360 months, and the licensees may not exceed the interest rate permitted by
15 chapter 4 of Title 9. All such lien documents shall include a power of sale
16 pursuant to section 4531a et seq. of Title 12. Permitted charges for loans
17 secured by a subordinate lien shall be as specified in sections 42, 44₂ and 46 of
18 Title 9, instead of sections 2231 and 2233 of this title.

19 (3) No licensee shall take a lien upon real estate as security for any loan
20 made under this chapter, except such lien as is created by law upon the

1 recording of a judgment or such lien as secures a loan in principal amount in
2 excess of \$3,000.00 at the time of making.

3 (4) Interest shall be computed by the actuarial method in accordance
4 with ~~section~~ subsection 41a(d) of Title 9.

5 (5) Any loan secured by a lien on real estate, except a commercial loan,
6 which does not contain a fixed rate or substantially equal payments for full
7 amortization within the repayment period shall conform to federal regulations
8 on alternative mortgages where applicable by reason of federal law or action of
9 the commissioner.

10 (6) This section shall not apply to commercial loans.

11 § 2217. MORTGAGE BROKERS

12 (a) No licensee or other person shall act as a mortgage broker in any
13 transaction in which the licensee or such other person is acting as a mortgage
14 lender.

15 (b) Each mortgage broker required to be licensed under this chapter shall
16 retain for a minimum of six years after a contract is executed pursuant to
17 section 2219 of this title, the original contract between the mortgage broker
18 and the prospective borrower, a copy of the settlement statement, an account of
19 fees received in connection with the loan, correspondence, papers or records
20 relating to the loan and such other documents as the commissioner may
21 require.

1 (c) A mortgage broker and a mortgage loan originator shall only negotiate,
2 place, or assist in placement of Vermont mortgage loans with lenders licensed
3 pursuant to this chapter, or with ~~bank, savings and loan associations, credit~~
4 ~~unions, or insurance companies~~ depository institutions authorized to do such
5 business in Vermont.

6 § 2218. SEGREGATED ACCOUNTS

7 (a) All permitted charges paid by loan applicants or borrowers to a lender
8 or a mortgage broker subject to this chapter shall be deposited in one or more
9 accounts maintained at a bank approved by the commissioner, and with respect
10 to such funds the lender or mortgage broker shall act as a fiduciary. Such
11 account or accounts shall be segregated from all other accounts of the lender or
12 broker. No permitted charges shall be used in the conduct of a lender's or a
13 broker's personal affairs, nor in a lender's or a broker's business affairs not
14 specifically related to the applicant or borrower.

15 (b) Such lender or mortgage broker may withdraw funds from the
16 segregated account for payment directly to third parties for authorized fees.

17 (c) Such lender or mortgage broker may withdraw funds from the
18 segregated account for commissions to which it is entitled for services actually
19 performed. Services are deemed to have been performed when a loan has
20 closed, the loan applicant has withdrawn the loan application in writing, or

1 such mortgage broker or lender has provided to the loan applicant or borrower
2 written notice that the loan has been denied.

3 (d) Such lender or mortgage broker may return funds from the segregated
4 account to the borrower if not prohibited by the application or contract.

5 (e) Such lender or mortgage broker shall maintain complete and accurate
6 account records, including, at a minimum, the source of all deposits, the nature
7 of all disbursements, the date and amount of each transaction and the name of
8 the loan applicant or borrower. All documents pertaining to account activity
9 shall be produced upon request of the commissioner.

10 § 2219. CONTRACT REQUIRED OF MORTGAGE BROKER

11 In advance of taking any fee or collecting any charges, or at the time the
12 prospective borrower submits a signed application, a written agreement in a
13 form approved by the commissioner shall be prepared by the mortgage broker,
14 and shall be signed by both the mortgage broker and the prospective borrower.
15 The agreement shall set forth the particulars of the service to be performed by
16 the mortgage broker, including specifics as to what shall constitute reasonable
17 efforts on the part of the mortgage broker to perform the agreed upon services,
18 shall state clearly that the mortgage broker shall represent the interests of the
19 prospective borrower rather than those of any lender, and shall state the fee for
20 the services.

1 § 2220. DISCLOSURE REQUIRED BY MORTGAGE LENDER

2 In advance of taking any fee or collecting any charges for a mortgage loan,
3 or at the time the prospective borrower submits a signed application, a written
4 disclosure shall be provided by the lender to the prospective borrower setting
5 forth all provisions relating to interest rates applicable to the loan, and specific
6 disclosure regarding any possibility that the lender may change its role to that
7 of a mortgage broker. This section shall not apply to commercial loans.

8 § 2221. OUT-OF-STATE MORTGAGE LOANS

9 A mortgage loan made outside of Vermont for use outside of Vermont shall
10 be deemed to be made outside the state of Vermont and shall not be subject to
11 this chapter except upon written agreement of the borrower and the licensee.

12 § 2222. EXAMINATIONS ~~BY THE COMMISSIONER~~ AND
13 INVESTIGATIONS; EXAMINATION FEES

14 (a) ~~For the purpose of discovering violations of this chapter, subchapter 2~~
15 ~~of chapter 200 and sections 10403 and 10404 of this title, or chapters 4, 59 or~~
16 ~~61 of Title 9, or securing information lawfully required thereunder, the~~
17 ~~commissioner may at any time, either personally or by a person or persons~~
18 ~~duly designated by him or her, investigate the loans and business and examine~~
19 ~~the books, accounts, records and files used therein, of every licensee and of~~
20 ~~every person whom the commissioner believes to be engaged in the business~~

1 ~~described in section 2201 of this title, whether such person shall act or claim to~~
2 ~~act as principal or agent, or under or without the authority of this chapter.~~

3 (b) ~~For that purpose the commissioner and his or her duly designated~~
4 ~~representatives shall have free access to the offices and places of business,~~
5 ~~books, accounts, papers, records, files, safes, and vaults of all such persons.~~
6 ~~The commissioner and all persons duly designated by him or her shall have~~
7 ~~authority to issue subpoenas to require the attendance of and to examine under~~
8 ~~oath all persons whomsoever whose testimony he or she may require relative~~
9 ~~to such loans or such business.~~

10 In addition to any authority allowed under this chapter or elsewhere, and for
11 the purpose of examination, or discovering or investigating violations or
12 complaints, of or arising under this chapter, subchapter 2 of chapter 200, and
13 sections 10403 and 10404 of this title, or chapter 4, 59, or 61 of Title 9, or any
14 rule, order, directive, or regulation lawfully made thereunder, or securing any
15 information required or useful thereunder, and for purposes of initial licensing,
16 license renewal, license suspension, license conditioning, license revocation or
17 termination, or general or specific inquiry or investigation, the commissioner
18 or his or her duly designated representative shall have the authority to:

19 (1) Conduct investigations and examinations:

20 (2) Access, receive, and use any books, accounts, records, files,
21 documents, information, or evidence including:

1 (A) Criminal, civil, and administrative history information, including
2 nonconviction data;

3 (B) Personal history and experience information, including
4 independent credit reports obtained from a consumer reporting agency
5 described in section 603(p) of the Fair Credit Reporting Act; and

6 (C) Any other documents, information, or evidence the commissioner
7 deems relevant to the inquiry or investigation regardless of the location,
8 possession, control, or custody of such documents, information, or evidence.

9 (b) The commissioner may review, investigate, or examine any licensee,
10 individual, or person regardless of whether such individual or person has
11 obtained a license under this chapter as often as necessary in order to carry out
12 the purposes of this chapter. The commissioner may direct, subpoena, or order
13 the attendance of and examine under oath all persons whose testimony may be
14 required about the loans or the business or subject matter of any such
15 examination or investigation, and may direct, subpoena, or order such person
16 to produce books, accounts, records, files, and any other documents the
17 commissioner deems relevant to the inquiry.

18 (c) Each licensee, individual, or person subject to this chapter shall make
19 available to the commissioner upon request the books and records relating to
20 the operations of such licensee, individual, or person. The commissioner shall
21 have access to such books and records and to interview the officers, principals,

1 control persons, mortgage loan originators, employees, independent
2 contractors, agents, and customers of the licensee, individual, or person
3 concerning their business.

4 (d) Each licensee, individual, or person subject to this chapter shall make or
5 compile reports or prepare other information as directed by the commissioner
6 in order to carry out the purposes of this section, including:

7 (1) Accounting compilations;

8 (2) Information lists and data concerning loan transactions in a format
9 prescribed by the commissioner; or

10 (3) Such other information as the commissioner deems necessary to
11 carry out the purposes of this chapter.

12 (e) In making any examination or investigation authorized by this chapter,
13 the commissioner may control access to any documents and records of the
14 licensee or person under examination or investigation. The commissioner may
15 take possession of the documents and records or place a person in exclusive
16 charge of the documents and records in the place where they are usually kept.
17 During the period of control, no individual or person shall remove or attempt
18 to remove any of the documents and records except pursuant to a court order or
19 with the consent of the commissioner. Unless the commissioner has
20 reasonable grounds to believe the documents or records of the licensee have
21 been or are at risk of being altered or destroyed for purposes of concealing a

1 violation of this chapter, the licensee or owner of the documents and records
2 shall have access to the documents or records as necessary to conduct its
3 ordinary business affairs.

4 (f) In order to carry out the purposes of this chapter, the commissioner
5 may:

6 (1) Retain attorneys, accountants, or other professionals and specialists
7 as examiners, auditors, or investigators to conduct or assist in the conduct of
8 examinations or investigations;

9 (2) Enter into agreements or relationships with other government
10 officials or regulatory associations in order to improve efficiencies and reduce
11 regulatory burden by sharing resources, standardized or uniform methods or
12 procedures, and documents, records, information, or evidence obtained under
13 this section;

14 (3) Use, hire, contract, or employ public or privately available analytical
15 systems, methods, or software to examine or investigate the licensee,
16 individual, or person subject to this chapter;

17 (4) Accept and rely on examination or investigation reports made by
18 other government officials within or without this state; or

19 (5) Accept audit reports made by an independent certified public
20 accountant for the licensee, individual, or person subject to this chapter in the
21 course of that part of the examination covering the same general subject matter

1 as the audit and may incorporate the audit report in the report of the
2 examination, report of investigation, or other writing of the commissioner.

3 (g) The authority of this section shall remain in effect, whether such a
4 licensee, individual, or person acts or claims to act under any licensing or
5 registration law of this state, acts without such authority, or surrenders such
6 licensee's license.

7 (h) No licensee, individual, or person subject to investigation or
8 examination under this section may knowingly withhold, abstract, remove,
9 mutilate, destroy, or secrete any books, records, computer records, or other
10 information.

11 ~~(e)~~(i) The commissioner shall make an examination of the affairs, business,
12 and records of each licensee at least once every three years. The commissioner
13 may, in the case of those licensees who, ~~under section 2233 of this title,~~ do not
14 maintain a Vermont office, accept reports of examinations prepared by another
15 state or federal regulatory agency as substitutes if such reports are available to
16 the commissioner and are determined to be adequate in exercising his or her
17 powers and discharging his or her responsibilities under this chapter.

18 ~~(d)~~(j) Each licensee shall pay to the department all fees, costs, and expenses
19 of any examination, review, and investigation fees as prescribed by section 18
20 of this title, which fees, costs, and expenses shall be billed when they are
21 incurred. In addition to the powers set forth in section 2210 of this title, the

1 commissioner may maintain an action for the recovery of examination, review
2 and investigation fees, costs, and expenses as prescribed in section 18 of this
3 title in any court of competent jurisdiction.

4 § 2223. RECORDS REQUIRED OF LICENSEE

5 The licensee shall keep, use in the licensee's business, and make available
6 to the commissioner upon request, such books, accounts, records, and data
7 compilations as will enable the commissioner to determine whether such
8 licensee is complying with the provisions of this chapter and with the rules and
9 regulations lawfully made by the commissioner hereunder. Every licensee
10 shall preserve such books, accounts, records, and data compilations in a secure
11 manner for at least seven years after making the final entry on any loan
12 recorded therein. Thereafter, the licensee shall dispose of such books,
13 accounts, records, and data compilations in accordance with 9 V.S.A. § 2445.

14 § 2224. ANNUAL REPORT; MORTGAGE CALL REPORTS

15 (a) Annually, on or before April 1, each ~~licensee~~ licensed lender, mortgage
16 broker, and sales finance company shall file a report with the commissioner
17 giving such relevant information as the commissioner reasonably may require
18 concerning the business and operations during the preceding calendar year of
19 each licensed place of business conducted by such licensee within the state.
20 Such report shall be made under oath and shall be in the form prescribed by the

1 commissioner, who shall make and publish annually an analysis and
2 recapitulation of such reports.

3 (b) Annually, within 90 days of the end of its fiscal year, each licensed
4 lender, mortgage broker, and sales finance company shall file financial
5 statements with the commissioner in a form and substance satisfactory to the
6 commissioner, which financial statements must include a balance sheet and
7 income statement.

8 (c) Each licensed lender, mortgage broker, and mortgage loan originator
9 shall submit to the Nationwide Mortgage Licensing System and Registry
10 reports of condition, which shall be in such form and shall contain such
11 information as the Nationwide Mortgage Licensing System and Registry may
12 require.

13 § 2225. STATEMENT OF RATES OF CHARGE

14 Rates of charge shall be stated fully and clearly in such manner as necessary
15 to prevent misunderstanding thereof by prospective borrowers.

16 § 2226. DECEPTIVE ADVERTISING

17 No licensee or other person shall advertise, print, display, publish,
18 distribute, or broadcast or cause or permit to be advertised, printed, displayed,
19 published, distributed, or broadcast, in any manner whatsoever any statement
20 or representation with regard to the rates, terms, or conditions for the lending
21 of money, credit, goods, or things in action which is false, misleading, or

1 deceptive. The commissioner may order any person to desist from any conduct
2 which the commissioner finds to be a violation of the foregoing provisions.

3 § 2227. CONDUCT OF UNRELATED BUSINESS

4 No licensee shall conduct the business of making noncommercial loans
5 under this chapter within any office, room, or place of business in which any
6 other business is solicited or engaged in, or in association or conjunction
7 therewith, except as may be authorized in writing by the commissioner upon
8 his or her finding that the character of such other business is such that the
9 granting of such authority would not facilitate evasions of this chapter or of the
10 rules and regulations lawfully made hereunder.

11 § 2228. USE OF OTHER NAMES OR BUSINESS PLACES

12 No licensee shall transact such business or make any loan provided for by
13 this chapter under any other name or at any other place of business than that
14 named in the license. This section shall not apply to commercial loans made to
15 a borrower located outside of Vermont for use outside of Vermont.

16 § 2229. CONFESSIONS OF JUDGMENT; POWERS OF ATTORNEY;

17 CONTENTS OF NOTES

18 No licensee shall take any confession of judgment. No licensee shall take
19 any power of attorney excepting such as may be incorporated in a form of note
20 approved by the commissioner for use in the financing of insurance premiums.

21 No licensee shall take any note, promise to pay, or security that does not

1 accurately disclose the actual amount of the loan, the time for which it is made,
2 and the agreed rate of interest, nor any instrument in which blank spaces are
3 left to be filled in after execution. Notwithstanding the foregoing provisions of
4 this section, the commissioner may by rule exempt from all or part of this
5 section commercial loans.

6 § 2230. RATE OF INTEREST

7 (a) Every licensee may charge, contract for, and receive thereon interest,
8 calculated according to the actuarial method as set forth in ~~section 41a(d)(2)~~
9 subsection 41a(d) of Title 9, not exceeding the rates permitted by chapter 4 of
10 Title 9, except that the rate of interest on loans secured by motor vehicles,
11 mobile homes, travel trailers, aircraft, watercraft and farm equipment may not
12 exceed the rate permitted by ~~section~~ subdivision 41a(b)(4) of Title 9.

13 (b) Interest may be charged, contracted for, and received at the single
14 annual percentage rate that would earn the same interest as the graduated rates
15 when the loan is paid according to its agreed terms and the calculations are
16 made according to the actuarial method. Interest shall not be paid, deducted,
17 received, or added to principal in advance, except that the advance collection
18 of interest for a period not to exceed 30 days shall be permitted upon the
19 origination of a mortgage loan. ~~The~~ Except for loans made pursuant to section
20 2216 of this title, the maximum interest permitted on loans made under this
21 chapter shall be computed on the basis of the number of days actually elapsed.

1 For the purpose of these computations a year is any period of 365 consecutive
2 days and 366 days during a leap year.

3 (c) No licensee shall induce or permit any person jointly or severally to
4 become obligated, directly or contingently or both, under more than one
5 contract of loan made under this section at the same time, for the purpose of
6 obtaining a higher rate of interest than would otherwise be permitted by law.

7 (d) This section shall not apply to commercial loans.

8 § 2231. CONTRACTS TO BE REPAYABLE IN MONTHLY

9 INSTALLMENTS; MAXIMUM TERM; ADDITIONAL CHARGES

10 PROHIBITED; INVALIDITY OF LOAN CONTRACT

11 (a) Except for loans made pursuant to section 2216 of this title and in
12 compliance with applicable regulations of the commissioner, all loan contracts
13 made under the provisions of this chapter shall require repayment in
14 substantially equal consecutive monthly installments of principal and interest
15 combined.

16 (b) In addition to the interest and charges herein provided for no further or
17 other charge or amount for any examination, service, brokerage, commission,
18 expense, fee, bonus, or other thing or otherwise shall be directly or indirectly
19 charged, contracted for or received except filing, recording, releasing or
20 termination fees paid or to be paid to a public officer; the premium or
21 identifiable charge for credit life or disability insurance obtained, provided or

1 sold by the licensee subject to the provisions of sections 4101-4115 or sections
2 3805 and 3806 of this title and any gain or advantage to the licensee from such
3 shall not be deemed in violation of this chapter nor an additional charge in
4 violation of this section or section 2230 of this title. For loans subject to this
5 subsection, if any interest, consideration, or charges in excess of those
6 permitted by this subsection, except as the result of an accidental or bona fide
7 error are charged, contracted for or received, the contract of loan shall be void
8 and the licensee shall have no right to collect or receive any principal, interest
9 or charges whatsoever.

10 (c) This section shall not apply to commercial loans.

11 (d) The provisions of subsection (b) of this section shall not apply to
12 mortgage loans.

13 § 2232a. REQUIREMENTS REGARDING THE BORROWER

14 (a) Each licensed lender shall deliver to the borrower at the time any loan is
15 made a statement, showing in clear and distinct terms the amount and date of
16 the loan and of its maturity, the nature of the security, if any, for the loan, the
17 name and address of the borrower and of the licensee, and the agreed rate of
18 charge.

19 (b) Each licensed lender shall, in advance of any loan closing, deliver to
20 each prospective borrower, based on the type of loan applied for, a full and

1 accurate schedule of the charges to be made and the method of computing the
2 same.

3 (c) Each licensed lender or holder shall give to the borrower a plain and
4 complete statement of all payments made on account of any such loan
5 specifying the amount applied to finance charges and the amount, if any,
6 applied to principal, and stating the unpaid principal balance, if any, of such
7 loan. When payment is made, a licensee shall provide the borrower with a
8 statement therefor within 30 days after the payment is received, or shall
9 provide, on an annual basis, statements setting forth the information required
10 herein. Each licensed lender or holder shall provide a transaction history of the
11 loan to the borrower upon request.

12 (d) Each licensed lender or holder shall permit payment to be made in
13 advance without prepayment premium or penalty in any amount on any
14 contract of loan at any time, but the licensee or holder may apply such payment
15 first to all finance charges in full at the agreed rate up to the date of such
16 payment.

17 (e) Each licensed lender or holder shall upon repayment of the loan in full,
18 promptly mark indelibly every obligation and security signed by the borrower
19 with the word "Paid" or "Canceled," and within 30 days release any mortgage,
20 restore any pledge, cancel and return any note, record or file any necessary
21 release or discharge, cancel and return any assignment given to the licensee by

1 the borrower, and refund to the borrower, in accordance with regulations
2 promulgated by the commissioner any unearned portion of the premium for
3 credit life or disability insurance if a premium for such insurance was
4 disbursed on behalf of the borrower at the time the loan was originally made.
5 The provisions of this subsection shall not affect the right of action created by
6 section 464 of Title 27.

7 (f) This section shall not apply to commercial loans.

8 § 2233. EFFECT CHARGES; LOAN SOLICITATION; SPECIALIZED
9 FINANCING

10 (a) ~~No~~ Other than a mortgage broker fee pursuant to section 2219 of this
11 title, no person who is required to be licensed under this chapter, shall directly
12 or indirectly charge, contract for, or receive any interest, discount,
13 consideration or charge greater than is authorized by section 41a or 46 of Title
14 9. No such loan for which a greater rate of interest, finance charge,
15 consideration or charges than is authorized by section 41a or 46 of Title 9 has
16 been charged, contracted for, or received shall be enforced in this state, and
17 every person in any way participating therein in this state shall be subject to
18 the provisions of this chapter. However, any loan legally made in any state
19 which then had in effect a regulatory loan law similar in principle to this
20 chapter may be enforced in this state only to the extent of collecting the

1 principal amount owed and interest thereon at a rate not greater than that
2 authorized by section 41a or 46 of Title 9.

3 (b) A loan solicited ~~and~~ or made by mail, telephone, or electronic means to
4 a Vermont resident shall be subject to the provisions of this chapter
5 notwithstanding where the loan was legally made. No person shall engage in
6 the business of soliciting ~~and~~ or making loans by mail, telephone, or electronic
7 means to residents of this state unless duly licensed. Such licensee shall be
8 subject to the applicable provisions of this title and chapters 4, 59, and 61 of
9 Title 9, but shall not be required to have or maintain a place of business in the
10 state.

11 (c) No person other than a ~~bank, savings and loan association, credit union,~~
12 depository institution, pawnbroker, insurance company, or seller of
13 merchandise or services shall engage in specialized financing, including ~~but~~
14 ~~not limited to~~ tuition plans or other such financing, but not including insurance
15 premium financing, for residents of this state unless duly licensed. Such
16 licensee shall be subject to the applicable provisions of this title and chapters 4,
17 59, and 61 of Title 9, but shall not be required to maintain a place of business
18 in this state. Such financing may include more than one loan per borrower. A
19 license granted to such lenders shall be explicit in its authority with respect to
20 the types of business permitted.

1 § 2234. ASSIGNMENT OF WAGES

2 The payment in money, credit, goods, or things in action, as consideration
3 for any sale or assignment of, or order for, the payment of wages, salary,
4 commissions, or other compensation for services, whether earned or to be
5 earned, for the purpose of regulation under this chapter, shall be deemed a loan
6 secured by such assignment. The amount by which such assigned
7 compensation exceeds the amount of such consideration actually paid, for the
8 purposes of regulation under this chapter, shall be deemed finance charges or
9 charges upon such loan from the date of such payment to the date such
10 compensation is payable. Such transactions shall be governed by and subject
11 to applicable provisions of this title and chapters 4, 59₂, and 61 of Title 9.

12 § 2235. REQUIREMENTS FOR ASSIGNMENT OF WAGES

13 No assignment of or order for payment of any salary, wages, commissions,
14 or other compensation for services, earned or to be earned, given to secure any
15 loan made by any licensee under this chapter, shall be valid unless the amount
16 of such loan is paid to the borrower simultaneously with its execution. Such
17 assignment or order, or any chattel mortgage or other lien on household
18 furniture then in the possession and use of the borrower, shall not be valid
19 unless it is in writing, signed in person by the borrower, nor shall it be valid if
20 the borrower is married unless it is signed in person by both husband and wife.

1 However, written assent of a spouse shall not be required if the borrower has
2 title as a result of a court order.

3 § 2236a. EXTENT OF ASSIGNMENT; SERVICE UPON EMPLOYER

4 Under any such assignment or order for the payment of future salary,
5 wages, commissions, or other compensation for services given as security for a
6 loan made by any licensee under this chapter, a sum not to exceed ten percent
7 of the borrower's salary, wages, commissions, or other compensation for
8 services shall be collectible from the employer of the borrower by the licensee
9 at the time of each payment to the borrower of such salary, wages,
10 commissions, or other compensation for services, from the time that a copy of
11 such assignment, verified by the oath of the licensee or ~~his~~ the licensee's agent,
12 together with a similarly verified statement of the amount unpaid upon such
13 loan, is served upon the employer.

14 § 2237. LICENSES MODIFIED, AMENDED, OR REPEALED BY
15 AMENDMENT TO CHAPTER

16 This chapter or any part thereof may be modified, amended, or repealed so
17 as to effect a cancellation or alteration of any license or right of a licensee
18 hereunder, provided that such cancellation or alteration shall not impair or
19 affect the obligation of any pre-existing lawful contract between any licensee
20 and any borrower.

1 § 2238. OUT-OF-STATE COMMERCIAL LOANS

2 A commercial loan made to a borrower located outside of Vermont for use
3 outside of Vermont shall be deemed to be made outside the state of Vermont
4 and shall not be subject to this chapter except upon written agreement of the
5 licensee and borrower.

6 § 2239. COMMERCIAL LEASES

7 This chapter shall not apply to commercial leases as defined in chapters 59
8 and 61 of Title 9.

9 § 2240. NATIONAL LICENSING SYSTEM

10 (a) In furtherance of the commissioner's duties under this chapter, the
11 commissioner may participate in ~~a national licensing system~~ the National
12 Mortgage Licensing System and Registry and may take such action regarding
13 participation in the licensing system as the commissioner deems necessary to
14 carry out the purposes of this section, including:

15 (1) Issue rules or orders, and may establish procedures, to further
16 participation in the ~~national licensing system~~ National Mortgage Licensing
17 System and Registry;

18 (2) Facilitate and participate in the establishment and implementation of
19 the ~~national licensing system~~ National Mortgage Licensing System and
20 Registry;

1 (3) ~~Contract with the administrator of the national licensing system to~~
2 ~~collect, process, and maintain information for the department~~ Establish
3 relationships or contracts with the National Mortgage Licensing System and
4 Registry or other entities designated by the National Mortgage Licensing
5 System and Registry;

6 (4) Authorize the ~~national licensing system~~ National Mortgage
7 Licensing System and Registry to collect and maintain records and to collect
8 and process any fees associated with licensure on behalf of the commissioner;

9 (5) Require persons engaged in activities that require a license under this
10 chapter to utilize the ~~national licensing system~~ National Mortgage Licensing
11 System and Registry for license applications, renewals, amendments,
12 surrenders, and such other activities as the commissioner may require, and to
13 pay through the national licensing system all fees provided for under this
14 chapter;

15 (6) Authorize the ~~national licensing system~~ National Mortgage
16 Licensing System and Registry to collect fingerprints on behalf of the
17 commissioner in order to receive or conduct criminal history background
18 checks, and in order to reduce the points of contact which the Federal Bureau
19 of Investigation may have to maintain for purposes of this subsection the
20 commissioner may use the Nationwide Mortgage Licensing System and

1 Registry as a channeling agent for requesting information from and distributing
2 information to the Department of Justice or any governmental agency.

3 (7) In order to reduce the points of contact which the commissioner may
4 have to maintain for purposes of subsection 2202(c) of this chapter the
5 commissioner may use the Nationwide Mortgage Licensing System and
6 Registry as a channeling agent for requesting and distributing information to
7 and from any source so directed by the commissioner.

8 (b) The commissioner may require persons engaged in activities that
9 require a license under this chapter to submit fingerprints, and the
10 commissioner may utilize the services of a ~~national licensing system~~
11 ~~licensing system~~ Nationwide Mortgage Licensing System and Registry to
12 process the fingerprints and to submit the fingerprints to the Federal Bureau of
13 Investigation, the Vermont state police, or any equivalent state or federal law
14 enforcement agency for the purpose of conducting a criminal history
15 background check. The licensee or applicant shall pay the cost of such
16 criminal history background check, including any charges imposed by the
17 ~~national licensing system~~ Nationwide Mortgage Licensing System and
18 Registry.

19 (c) Persons engaged in activities that require licensure pursuant to this
20 chapter shall pay all applicable charges to utilize the ~~national licensing system~~
21 Nationwide Mortgage Licensing System and Registry, including such

1 processing charges as the administrator of the ~~national licensing system~~
2 Nationwide Mortgage Licensing System and Registry shall establish, in
3 addition to the fees required under this chapter.

4 (d) The ~~national licensing system~~ Nationwide Mortgage Licensing System
5 and Registry is not intended to and does not replace or affect the
6 commissioner's authority to grant, deny, suspend, revoke, or refuse to renew
7 licenses.

8 § 2241. PROHIBITED ACTS AND PRACTICES

9 It is a violation of this chapter for a person or individual to:

10 (1) Directly or indirectly employ any scheme, device, or artifice to
11 defraud or mislead borrowers or lenders or to defraud any person;

12 (2) Engage in any unfair or deceptive practice toward any person;

13 (3) Obtain property by fraud or misrepresentation;

14 (4) Solicit or enter into a contract with a borrower that provides in
15 substance that the person or individual may earn a fee or commission through
16 "best efforts" to obtain a loan even though no loan is actually obtained for the
17 borrower;

18 (5) Solicit, advertise, or enter into a contract for specific interest rates,
19 points, or other financing terms unless the terms are actually available at the
20 time of soliciting, advertising, or contracting;

1 (6) Conduct any business covered by this chapter without holding a
2 valid license as required under this chapter, or assist or aid and abet any person
3 in the conduct of business under this chapter without a valid license as required
4 under this chapter;

5 (7) Fail to make disclosures as required by this chapter and any other
6 applicable state or federal law, including regulations thereunder;

7 (8) Fail to comply with this chapter or rules adopted under this chapter,
8 or fail to comply with any orders or directives from the commissioner, or fail
9 to comply with any other state or federal law, including the rules thereunder,
10 applicable to any business authorized or conducted under this chapter;

11 (9) Make, in any manner, any false or deceptive statement or
12 representation, including with regard to the rates, points, or other financing
13 terms or conditions for a mortgage loan, or engage in bait and switch
14 advertising;

15 (10) Negligently make any false statement or knowingly and willfully
16 make any omission of material fact in connection with any information or
17 reports filed with a governmental agency or the Nationwide Mortgage
18 Licensing System and Registry or in connection with any investigation
19 conducted by the commissioner or another governmental agency;

20 (11) Make any payment, threat, or promise, directly or indirectly, to any
21 person for the purposes of influencing the independent judgment of the person

1 in connection with a residential mortgage loan, or make any payment, threat, or
2 promise, directly or indirectly, to any appraiser of a property, for the purposes
3 of influencing the independent judgment of the appraiser with respect to the
4 value of the property;

5 (12) Collect, charge, attempt to collect or charge, or use or propose any
6 agreement purporting to collect or charge any fee prohibited by this chapter;

7 (13) Cause or require a borrower to obtain property insurance coverage
8 in an amount that exceeds the replacement cost of the improvements as
9 established by the property insurer;

10 (14) Fail to account truthfully for monies belonging to a party to a
11 mortgage loan transaction.

12 § 2242. REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM

13 AND REGISTRY

14 (a) Subject to state privacy and confidentiality law, the commissioner is
15 required to report regularly violations of this chapter, as well as enforcement
16 actions and other relevant information, to the Nationwide Mortgage Licensing
17 System and Registry subject to the provisions contained in section 2243 of this
18 title.

19 (b) A licensee may challenge information the commissioner enters into the
20 Nationwide Mortgage Licensing System and Registry in accordance with the

1 administrative procedure act (chapter 25 of Title 3) and any rules adopted by
2 the department on hearing procedures.

3 § 2243. CONFIDENTIALITY

4 In order to promote more effective regulation and reduce regulatory burden
5 through supervisory information sharing:

6 (1) The privacy or confidentiality of any information or material
7 provided to the Nationwide Mortgage Licensing System and Registry, and any
8 privilege arising under federal or state law (including the rules of any federal
9 or state court) with respect to such information or material, shall continue to
10 apply to such information or material after the information or material has been
11 disclosed to the Nationwide Mortgage Licensing System and Registry. Such
12 information and material may be shared with all state and federal regulatory
13 officials with mortgage industry oversight authority without the loss of
14 privilege or the loss of confidentiality protections provided by federal law or
15 state law.

16 (2) For these purposes, the commissioner is authorized to enter
17 agreements or sharing arrangements with other governmental agencies, the
18 Conference of State Bank Supervisors, the American Association of
19 Residential Mortgage Regulators, or other associations representing
20 governmental agencies.

1 (3) Information or material that is subject to privilege or confidentiality
2 under subdivision (1) of this section shall not be subject to:

3 (A) Disclosure under any federal or state law governing the
4 disclosure to the public of information held by an officer or an agency of the
5 federal government or the respective state; or

6 (B) Subpoena or discovery, or admission into evidence, in any
7 private civil action or administrative process, unless with respect to any
8 privilege held by the Nationwide Mortgage Licensing System and Registry
9 with respect to such information or material, the person to whom such
10 information or material pertains waives, in whole or in part, in the discretion of
11 the person, that privilege.

12 (4) This section shall not apply with respect to information or material
13 relating to the employment history of, and publicly adjudicated disciplinary
14 and enforcement actions against, mortgage loan originators that is included in
15 the Nationwide Mortgage Licensing System and Registry for access by the
16 public.

17 § 2244. UNIQUE IDENTIFIER SHOWN

18 The unique identifier of any person originating a residential mortgage loan
19 shall be clearly shown on all residential mortgage loan application forms,
20 solicitations, or advertisements, including business cards or websites, and any
21 other documents as established by rule or order of the commissioner.

1 Sec. 2. 12 V.S.A. § 4532a is added to read:

2 § 4532a. NOTICE TO COMMISSIONER OF BANKING, INSURANCE,

3 SECURITIES, AND HEALTH CARE ADMINISTRATION

4 (a) At the same time the mortgage holder files an action to foreclose owner
5 occupied, one-to-four-family residential property, the mortgage holder shall
6 file a notice of foreclosure with the commissioner of the department of
7 banking, insurance, securities, and health care administration. The
8 commissioner may require that the notice of foreclosure be sent in an
9 electronic format. The notice of foreclosure shall include:

10 (1) the name and current mailing address of the mortgagor;

11 (2) the address of the property being foreclosed;

12 (3) the name, address, and telephone number of the current mortgage
13 holder;

14 (4) the name of the original lender, if different;

15 (5) the name, address, and telephone number of the mortgage servicer, if
16 applicable; and

17 (6) any other information the commissioner may require.

18 (b) The commissioner of banking, insurance, securities and health care
19 administration, after notice and an opportunity for hearing, may assess an
20 administrative penalty of not more than \$5,000.00 on any person who fails to
21 file the notice required by subsection (a) of this section. The authority granted

1 to the commissioner by this subsection shall be in addition to any other
2 authority granted to the commissioner by law, and shall be exercised pursuant
3 to the commissioner's authority under Title 8 and the rules adopted thereunder.

4 Sec. 3. TRANSITIONAL PROVISIONS

5 (a) Any mortgage broker or licensed lender holding a Vermont license as of
6 the effective date of this act shall have until December 1, 2009 to comply with
7 the bond and liquid asset requirements of 8 V.S.A. § 2203.

8 (b) All individuals who, as of the effective date of this act, are currently
9 employed by a mortgage broker holding a valid Vermont license and who are
10 authorized to act as a mortgage broker under such license, or are currently
11 employed by a lender holding a valid Vermont license and are acting as a
12 lender or loan officer under such license, shall complete the prelicensing
13 education and testing requirements and shall obtain a mortgage loan originator
14 license required by this act no later than July 1, 2010. All other individuals
15 must obtain a mortgage loan originator license as required by this act prior to
16 acting as a mortgage loan originator in this state.

17 Sec. 4. EFFECTIVE DATE

18 This act shall take effect on July 1, 2009, except that Sec. 2 (notice of
19 foreclosure) shall take effect 30 days after passage of this act.