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CHAPTER 36
MORTGAGES

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§ 36101. What is a Mortgage.

Mortgage is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

SOURCE: CC § 2920.

§ 36102. Property Adversely Held.

A mortgage may be created upon property held adversely to the mortgagor.

SOURCE: CC § 2921.

§ 36103. Mortgage to be in Writing.

A mortgage can be created, renewed or extended, only by writing, executed with the formalities required in the case of a grant of real property.

SOURCE: CC § 2922.

§ 36104. Lien of Mortgage - When Special.

The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

SOURCE: CC § 2923.

§ 36105. Transfer Generally: Mortgage or Pledge.

(a) Every transfer of an interest in property, made only as a security for the performance of another act, is to be deemed a mortgage, [except when in the case of personal property it is accompanied by actual change of possession, in which case it is deemed a pledge.]

(b) Every transfer of conveyance of any interest in real property by deed of trust or otherwise, with right reserved to repurchase, executed and delivered to secure the performance of another act, is to be deemed a mortgage.

SOURCE: CC § 2924.

NOTE: The concept of a mortgage on personal property has been abolished. The same purpose is found in the Uniform Commercial Code as a *security interest*, and the applicable law governing both security interests and pledges is found in the UCC (13 GCA).

§ 36106. Transfer Defeasance may be Proved.

The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proven (except as against a subsequent purchaser or encumbrancer for value and without notice) though the fact does not appear by the terms of the instrument.

SOURCE: CC § 2925.

§ 36107. Mortgage, on what a Lien.

A mortgage is a lien upon everything that would pass by a grant of the property.

SOURCE: CC § 2926.

§ 36108. Mortgagee not Entitled to Possession.

A mortgage does not entitle the mortgagee to the possession of the property, unless authorized by the express terms of the mortgage, but after the execution of the mortgage the mortgagor may agree to such change of possession without a new consideration.

SOURCE: CC § 2927.

§ 36109. Mortgage not a Personal Obligation.

A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect.

SOURCE: CC § 2928.

§ 36110. Waste.

No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

SOURCE: CC § 2929.

§ 36111. Subsequently Acquired Title.

Title acquired by the mortgagor, subsequent to the execution of the mortgage, inures to the mortgagee as security for the debt in like manner as if acquired before the execution.

SOURCE: CC § 2930.

§ 36112. Foreclosure.

A mortgagee may foreclose the right of redemption of the mortgagor in the manner prescribed by Title 7 of this Code (Civil Procedure).

SOURCE: CC § 2931.

§ 36113. Power of Sale.

A power of sale may be conferred by a mortgagor upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

SOURCE: CC § 2932.

§ 36114. Power of Attorney to Execute.

A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

SOURCE: CC § 2933.

§ 36115. Recording Assignment.

An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

SOURCE: CC § 2934.

§ 36116. Not Notice to Mortgagor.

When the mortgage is executed as security for money due, or to become due, on a promissory note, bond, or other instrument, designated in the mortgage, the record of the assignment of the mortgage is not, of itself, notice to a mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or any of them, to the person holding such note, bond, or other instrument.

SOURCE: CC § 2935.

§ 36117. Passes by Assignment of Debt.

The assignment of a debt secured by mortgage carries with it the security.

SOURCE: CC § 2936.

§ 36118. Discharge of Mortgage.

A recorded mortgage must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as prescribed by Title 21 Guam Code Annotated, Chapter 33, stating that the mortgage has been paid, satisfied or discharged.

SOURCE: CC § 2939; amended by P.L. 5-54.

§ 36119. Satisfying by Foreign Executors.

Foreign executors, administrators, and guardians may satisfy mortgages upon the records of Guam, upon producing and recording in the Department of Land Management a duly certified and authenticated copy of their letters

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testamentary, or of administration, or of guardianship, and which certificate or authentication shall also recite that said letters have not been revoked.

SOURCE: CC § 2939a amended by P.L. 5-54.

§ 36120. Duty of Mortgagee on Satisfaction.

When any mortgage has been satisfied, the mortgagee or his assignee must immediately, on the demand of the mortgagor, execute, acknowledge, and deliver to him a certificate of the discharge thereof, so as to entitle it to be recorded, or he must enter satisfaction, or cause satisfaction of such mortgage to be entered of record; and any mortgagee or assignee of such mortgage who refuses to execute, acknowledge, and deliver to the mortgagor the certificate of discharge or to enter satisfaction, or cause satisfaction of the mortgage to be entered, as provided in this Chapter, is liable to the mortgagor, or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him or them the sum of one hundred dollars (\$100.00).

SOURCE: CC § 2941.

§ 36121. Bottomry or Respondentia not Affected.

Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by any of the provisions of this Chapter.

SOURCE: CC § 2942.

§ 36122. Description of Mortgaged Property.

The description of the mortgaged property shall be such as to enable the parties to the mortgage or any other person, after reasonable inquiry and investigation, to identify the same.

SOURCE: CC § 2943 amended by P.L. 5-54.

ARTICLE 2
MORTGAGE OF REAL PROPERTY

- § 36201. What may be Mortgaged.
- § 36202. Form of Mortgage.
- § 36203. Defeasance Generally.
- § 36204. Acknowledging and Recording Mortgage.

§ 36201. What may be Mortgaged.

Any interest in real property which is capable of being transferred may be mortgaged.

SOURCE: CC § 2947.

§ 36202. Form of Mortgage.

A mortgage of real property may be made in substantially the following form; but may be made in any form in use in the United States, except in the form of deeds of trusts and conveyances with right to repurchase:

“This mortgage, made this ___ day of ___, in the year ___, by A.B., of _____, mortgagor, to C.D., of _____, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (her describe the property), as security for the payment to him of _____ dollars, on (or before) the ___ day of ___ in the year ___, with interest hereon (or as security for the payment of an obligation describing it, etc.)

“A.B.”

SOURCE: CC § 2948.

2015 NOTE: Section 36202 was inadvertently deleted after the 1992 update. Research has revealed that it was never repealed, and is therefore restored pursuant to authority granted by 1 GCA § 1606.

§ 36203. Defeasance Generally.

When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the Department of Land Management.

SOURCE: CC § 2950.

§ 36204. Acknowledging and Recording Mortgage.

Mortgages of real property shall be acknowledged or proved, certified and recorded, in like manner and with like effect, as grants thereof.

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SOURCE: CC § 2952 amended by P.L. 5-54.

ARTICLE 3
GUAM SECURE AND FAIR ENFORCEMENT FOR
MORTGAGE LICENSING ACT OF 2010

SOURCE: Entire article added by P.L. 30-151:1 (May 25, 2010), effective July 31, 2010, pursuant to 18 GCA § 36323.

- § 36301. Title.
- § 36302. Legislative Findings and Intent.
- § 36303. Definitions.
- § 36304. License and Registration Required.
- § 36305. Guam License and Registration Application and Issuance.
- § 36306. Issuance of License.
- § 36307. Pre-Licensing and Re-Licensing Education of Loan Originators.
- § 36308. Testing of Loan Originators.
- § 36309. Standards for License Renewal.
- § 36310. Continuing Education for Mortgage Loan Originators.
- § 36311. Authority to Require License.
- § 36312. Nationwide Mortgage Licensing System and Registry Information Challenge Process.
- § 36313. Enforcement Authorities, Violations and Penalties.
- § 36314. Surety Bond Required.
- § 36315. Minimum Net Worth Required.
- § 36316. Confidentiality.
- § 36317. Investigation and Examination Authority.
- § 36318. Prohibited Acts and Practices.
- § 36319. Mortgage Call Reports.
- § 36320. Report to Nationwide Mortgage Licensing System and Registry.
- § 36321. Privately Insured Credit.
- § 36322. Unique Identifier Shown.
- § 36323. Effective Date.
- § 36324. Severability.

§ 36301. Title.

This Act may be cited as the “Guam Secure and Fair Enforcement for Mortgage Licensing Act of 2010, or Guam S.A.F.E. Mortgage Licensing Act of 2010.”

§ 36302. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that the activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon Guam’s consumers, Guam’s economy, the neighborhoods and communities of Guam, and the housing and real estate industry.

I Liheslaturan Guåhan finds that accessibility to mortgage credit is vital to Guam’s residents.

I Liheslatura also finds that it is essential for the protection of the residents of Guam and the stability of Guam’s economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed.

I Liheslatura further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process. The purpose of this Act is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators.

Therefore, *I Liheslaturan Guåhan* establishes within this Act:

(a) System of Supervision and Enforcement. An effective system of supervision and enforcement of the mortgage lending industry, including:

- (1) The authority to issue licenses to conduct business under this Act, including the authority to write rules or regulations or adopt procedures necessary to the licensing of persons covered under this Act.
- (2) The authority to deny, suspend, condition or revoke licenses issued under this Act.
- (3) The authority to examine, investigate and conduct enforcement actions as necessary to carry out the intended purposes of this Act, including the authority to subpoena witnesses

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and documents, enter orders, including cease and desist orders, order restitution and monetary penalties and order the removal and ban of individuals from office or employment.

(b) Broad Administrative Authority. That the Commissioner *shall* have the broad administrative authority to administer, interpret and enforce this Act, and promulgate rules or regulations implementing this Act, in order to carry out the intentions of *I Liheslatura*.

§ 36303. Definitions.

For purposes of this Act, the following definitions *shall* apply:

(a) *Clerical or Support Duties*. For purposes of this Subsection, the term “Clerical or Support Duties” may include subsequent to the receipt of an application:

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

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

(b) *Commissioner* means Guam’s Commissioner of Banking and Insurance.

(c) *Depository Institution* has the same meaning as in Section 3 of the Federal Deposit Insurance Act. It means any bank or savings association, including any credit union.

(d) *Federal Banking Agencies* means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(e) *Immediate Family Member* means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(f) *Individual* means a natural person.

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(g) *Loan Processor or Underwriter* means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing.

(h) *Mortgage Loan Originator* means an individual who for compensation or gain or in the expectation of compensation or gain:

(1) takes a residential mortgage loan application; *or*

(2) offers or negotiates terms of a residential mortgage loan;

(A) does not include an individual engaged solely as a loan processor or underwriter;

(B) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Guam law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

(C) does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code.

(i) *Nationwide Mortgage Licensing System and Registry* means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(j) *Non-profit Organization* means any organization located within or off island from Guam that has a tax exempt status as a charitable organization, such as under Section 501(c)(3) of the Internal Revenue Code.

(k) *Non-traditional Mortgage Product* means any mortgage product other than a thirty (30) year fixed rate mortgage.

(l) *Person* means a natural person, corporation, company, limited liability company, partnership, or association.

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(m) *Real Estate Brokerage Activity* means any activity that involves offering or providing real estate brokerage services to the public, including:

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

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

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

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

(5) offering to engage in any activity, or act in any capacity, described in Subsections (1), (2), (3), or (4) of this Subsection (m).

(n) *Registered Mortgage Loan Originator* means any individual who:

(1) meets the definition of mortgage loan originator and is an employee of:

(A) a depository institution;

(B) a subsidiary that is:

(i) owned and controlled by a depository institution; and

(ii) regulated by a Federal banking agency; *or*

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

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

(o) *Representations to the public*. An individual engaging solely in loan processor or underwriter activities, *shall not* represent to the

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public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

(p) *Residential Mortgage Broker Branch* means any branch office located within or off island from Guam that provides services from other than a main office located within Guam, which for compensation or gain, or in the expectation of compensation or gain, (1) assists a person in obtaining or applying to obtain a residential mortgage loan; or (2) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan. A mortgage broker either prepares a residential mortgage loan for funding by another entity or table-funds the residential mortgage loan.

(q) *Residential Mortgage Broker Company* means any company located within Guam which for compensation or gain, or in the expectation of compensation or gain, (1) assists a person in obtaining or applying to obtain a residential mortgage loan; or (2) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan. A mortgage broker either prepares a residential mortgage loan for funding by another entity or table-funds the residential mortgage loan.

(r) *Residential Mortgage Lender Branch* means any branch office located within or off island from Guam that provides services from other than a main office located within Guam, which for a fee, compensation or gain takes, offers, negotiates, approves or disapproves the financing of a loan secured by a mortgage with respect to any dwelling that is located in Guam.

(s) *Residential Mortgage Lender Company* means any company located within Guam that for a fee, compensation or gain takes, offers, negotiates, approves or disapproves the financing of a loan secured by a residential mortgage with respect to any dwelling that is located in Guam.

(t) *Residential Mortgage Lender and Servicer Branch* means any branch office located within or off island from Guam that provides services from other than a main office located within Guam, which for a fee or compensation or gain takes, offers, negotiates, approves or

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disapproves the financing of a loan and provides services, which include the receipt of periodic payments from a borrower and making payments of principal and interest, and other payments pursuant to the terms of a loan secured by a residential mortgage with respect to any dwelling that is located in Guam.

(u) *Residential Mortgage Lender and Servicer Company* means any company located within Guam that for a fee, compensation or gain takes, offers, negotiates, approves or disapproves the financing of a loan and provides services, which include the receipt of periodic payments from a borrower and making payments of principal and interest, and other payments pursuant to the terms of a loan secured by a residential mortgage with respect to any dwelling that is located in Guam.

(v) *Residential Mortgage Servicer Branch* means any branch office located within or off island from Guam that for a fee or compensation provides services, which include the receipt of periodic payments from a borrower and making payments of principal and interest, and other payments pursuant to the terms of the loan secured by a residential mortgage.

(w) *Residential Mortgage Servicer Company* means any company located within or off island from Guam that for a fee or compensation provides services, which include the receipt of periodic payments from a borrower and making payments of principal and interest, and other payments pursuant to the terms of the loan secured by residential mortgage.

(x) *Residential Mortgage Loan* means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in Section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(y) *Residential Real Estate* means any real property located in Guam, upon which is constructed or intended to be constructed a dwelling.

(z) *Unique Identifier* means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

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SOURCE: Added by P.L. 30-151:1 (May 25, 2010), amended by P.L. 33-207:1 (Dec. 15, 2016).

2017 NOTE: The definitions, including those added by P.L. 33-207:1, have been alphabetized pursuant to P.L. 33-207:

Section 2. Guam Compiler of Laws to Codify. The Guam Compiler of Laws shall codify, accordingly and in alphabetical order, the subsections of § 36303, Article 3, Chapter 36, Title 18, Guam Code Annotated.

2011 NOTE: Reference to the “Banking and Insurance Commissioner” changed to the “Commissioner of Banking and Insurance” pursuant to P.L. 27-088:10 (May 6, 2004).

§ 36304. License and Registration Required.

(a) General. An individual, unless specifically exempted from this Act under Subsection (c) of this Section, *shall not* engage in the business of a mortgage loan originator with respect to any dwelling located in Guam without first obtaining and maintaining annually a license under this Act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(b) Effective Date. In order to facilitate an orderly transition to licensing and to minimize disruption in the mortgage marketplace, the effective date for Subsection (a) of this Section shall be July 31, 2010, or such later date approved by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a).

(c) Exemption from this Act. The following are exempt from this Act:

(1) Registered Mortgage Loan Originators, when acting for an entity described in § 36303(n);

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

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

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client, *unless* the attorney is

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compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

(d) Independent Contractor Loan Processors or Underwriters. A loan processor or underwriter who is an independent contractor may *not* engage in the activities of a loan processor or underwriter *unless* such independent contractor loan processor or underwriter obtains and maintains a license under § 36304(a). Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(e) Commissioner Authority to Establish Licensing Rules, Regulations or Interim Procedures and Accept Early Applications. For the purposes of implementing an orderly and efficient licensing process, the Commissioner may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications, pursuant to the Administrative Adjudication Law. For previously registered or licensed individuals, the Commissioner may establish expedited review and licensing procedures, pursuant to the Administrative Adjudication Law.

§ 36305. Guam License and Registration Application and Issuance.

(a) Application Form. Applicants for a license *shall* apply in a form as prescribed by the Commissioner. Each such form *shall* contain content as set forth by rule, regulation, instruction or procedure of the Commissioner and may be changed or updated as necessary by the Commissioner in order to carry out the purposes of this Act.

(b) Commissioner May Establish Relationships or Contracts. In order to fulfill the purposes of this Act, the Commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry, or other entities designated by the Nationwide Mortgage Licensing System and Registry, to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this Act.

(c) Waive or Modify Requirements. For the purpose of participating in the Nationwide Mortgage Licensing System & Registry, the Commissioner is authorized to waive or modify, in whole or in part, by rule, regulation or order, any or all of the requirements of this Chapter, and to establish new

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requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System & Registry.

(d) Background Checks. In connection with an application for licensing as a mortgage loan originator, the applicant *shall*, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

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

(2) personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain the following:

(A) an independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; *and*

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

(e) Agent for Purposes of Requesting and Distributing Criminal Information. For the purposes of this Section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of Subsection (d)(1) and (2)(B) of this Section, the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(f) Agent for Purposes of Requesting and Distributing Non-Criminal Information. For the purposes of this Section and in order to reduce the points of contact which the Commissioner may have to maintain for purposes of Subsection (d)(2)(A) and (B) of this Section, the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Commissioner.

§ 36306. Issuance of License.

The Commissioner *shall not* issue a mortgage loan originator license

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unless the Commissioner makes, at a minimum, the following findings:

(a) No License Revocation. The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, *except* that a subsequent formal vacation of such revocation *shall not* be deemed a revocation.

(b) No Felony Conviction. The applicant has *not* been convicted of, or pled guilty or *nocontendere* to, a felony in a domestic, foreign, or military court:

(1) during the seven (7)-year period preceding the date of the application for licensing and registration; or

(2) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering; and

(3) provided that any pardon of a conviction *shall not* be a conviction for purposes of this Subsection.

(c) Character and Fitness. The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this Act.

(1) For purposes of this Subsection, a person has shown that he or she is *not* financially responsible when he or she has shown a disregard in the management of his or her own financial condition. A determination that an individual has *not* shown financial responsibility may include, but *not* be limited to:

(A) current outstanding judgments, except judgments solely as a result of medical expenses;

(B) current outstanding tax liens or other government liens and filings;

(C) foreclosures within the past three (3) years;

(D) a pattern of seriously delinquent accounts within the past three (3) years.

(d) Pre-Licensing Education. The applicant has completed the pre-licensing education requirement described in § 36307 of this Act.

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(e) Written Test. The applicant has passed a written test that meets the test requirement described in § 36308 of this Act.

(f) Surety Bond *or* Minimum Net Worth Requirement. The applicant has met the surety bond requirement of § 36314 *or* the minimum net worth requirement of § 36315 on this Act.

§ 36307. Pre-Licensing and Re-Licensing Education of Loan Originators.

(a) Minimum Educational Requirements. In order to meet the pre-licensing education requirement referred to in § 36306 (d) of this Act, a person *shall* complete *at least* twenty (20) hours of education approved in accordance with Subsection (b) of this Section, which *shall* include *at least*:

- (1) three (3) hours of Federal law and regulations;
- (2) three (3) hours of ethics, which *shall* include instruction on fraud, consumer protection, and fair lending issues; and
- (3) two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) Approved Educational Courses. For the purposes of Subsection (a) of this Section, pre-licensing education courses *shall* be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a pre-licensing education course *shall* include review and approval of the course provider.

(c) Approval of Employer and Affiliate Educational Courses. Nothing in this Section shall preclude any pre-licensing education course, as approved by the Nationwide Mortgage Licensing System and Registry that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Venue of Education. Pre-licensing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) Reciprocity of Education. The pre-licensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in Subsections (a)(1), (2) and (3) of this Section for any State *shall* be accepted as credit towards completion of pre-licensing education requirements in Guam.

(f) Re-Licensing Education Requirements. A person previously licensed under this Act, subsequent to the Effective Date of this Act and applying to be licensed again, must prove that they have completed all of the continuing education requirements for the year in which the license was last held.

§ 36308. Testing of Loan Originators.

(a) Testing of Loan Originators, General. In order to meet the written test requirement referred to in § 36306 (e) of this Act, an individual *shall* pass, in accordance with the standards established under this Subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(b) Qualified Test. A written test *shall not* be treated as a qualified written test for purposes of Subsection (a) of this Section, *unless* the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

- (1) Ethics;
- (2) Federal law and regulation pertaining to mortgage origination;
- (3) Guam law and regulation pertaining to mortgage origination;
- (4) Federal and Guam law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Testing Location. Nothing in this Section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) Minimum Competence:

- (1) Passing Score. An individual *shall not* be considered to have passed a qualified written test *unless* the individual achieves a test score of *not less than* seventy-five percent (75%) correct answers to questions.

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(2) Initial Retests. An individual may retake a test three (3) consecutive times with each consecutive taking occurring *at least* thirty (30) days after the preceding test.

(3) Subsequent Retests. After failing three (3) consecutive tests, an individual *shall* wait *at least* six (6) months before taking the test again.

(4) Retest After Lapse of License. A licensed mortgage loan originator who fails to maintain a valid license for a period of five (5) years *or* longer *shall* retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

§ 36309. Standards for License Renewal.

(a) General. The minimum standards for license renewal for mortgage loan originators *shall* include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under § 36305 (a) through (f) of this Act.

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in § 36310 of this Act.

(3) The mortgage loan originator has paid all required fees for renewal of the license.

(b) Failure to Satisfy Minimum Standards for License Renewal. The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal *shall* expire. The Commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

§ 36310. Continuing Education for Mortgage Loan Originators.

(a) General. In order to meet the annual continuing education requirements referred to in § 36309 (a)(2), a licensed mortgage loan originator *shall* complete *at least* eight (8) hours of education approved in accordance with Subsection (b) of this Section, which *shall* include *at least*:

(1) three (3) hours of Federal law and regulations;

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

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(3) two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) Approved Educational Courses. For the purposes of Subsection (a) of this Section, continuing education courses *shall* be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course *shall* include review and approval of the course provider.

(c) Approval of Employer and Affiliate Educational Courses. Nothing in this Section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator, *or* an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

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

(e) Calculation of Continuing Education Credits. A licensed mortgage loan originator:

(1) *except* for § 36309 (b) and Subsection (i) of this Section, may *only* receive credit for a continuing education course in the year in which the course is taken; and

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

(f) Instructor Credit. A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two (2) hours credit for every one (1) hour taught.

(g) Reciprocity of Education. A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in Subsections (a)(1), (2) and (3) of this Section for any State *shall* be accepted as credit towards completion of continuing education requirements in Guam.

(h) Lapse in License. A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education

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requirements for the last year in which the license was held *prior* to issuance of a new or renewed license.

(i) Make up of Continuing Education. A person meeting the requirements of § 36309 (a)(1) and (3) of this Act may make up any deficiency in continuing education as established by rule or regulation of the Commissioner.

§ 36311. Authority to Require License.

In addition to any other duties imposed upon the Commissioner by law, the Commissioner *shall* require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the Commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the Commissioner may establish Rules and Regulations as necessary, pursuant to the Administrative Adjudication Law, including, but *not* limited to:

- (a) Background Checks. Background checks for:
 - (1) criminal history through fingerprint or other databases;
 - (2) civil or administrative records;
 - (3) Credit history; *or*
 - (4) any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.
- (b) Fees. The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;
- (c) Setting Dates. The setting or resetting as necessary of renewal or reporting dates; *and*
- (d) Other requirements for amending or surrendering a license or any other such activities as the Commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

§ 36312. Nationwide Mortgage Licensing System and Registry Information Challenge Process.

The Commissioner *shall* establish a process whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the Commissioner.

§ 36313. Enforcement Authorities, Violations and Penalties.

(a) In order to ensure the effective supervision and enforcement of this Act, the Commissioner may, pursuant to the Administrative Adjudication Law:

(1) Deny, suspend, revoke, condition or decline to renew a license for a violation of this Act, rules or regulations issued under this Act, or order or directive entered under this Act.

(2) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of § 36306 or § 36309 of this Act, or withholds information or makes a material misstatement in an application for a license or renewal of a license.

(3) Order restitution against persons subject to this Act for violations of this Act.

(4) Impose fines on persons subject to this Act pursuant to Subsections (b), (c) and (d) of this Section.

(5) Issue orders or directives under this Act as follows:

(A) Order or direct persons subject to this Act to cease and desist from conducting business, including immediate temporary orders to cease and desist.

(B) Order or direct persons subject to this Act to cease any harmful activities or violations of this Act, including immediate temporary orders to cease and desist.

(C) Enter immediate temporary orders to cease business under a license or interim license issued pursuant to the authority granted under § 36304 (e) of this Act if the Commissioner determines that such license was erroneously granted or the licensee is currently in violation of this Act;

(D) Order or direct such other affirmative action as the Commissioner deems necessary.

(b) The Commissioner may impose a civil penalty on a mortgage loan originator or person subject to this Act, if the Commissioner finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this Act has violated or failed to comply with

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any requirement of this Act or any regulation prescribed by the Commissioner under this Act or order issued under authority of this Act.

(c) The maximum amount of penalty for each act or omission described in Subsection (b) of this Section *shall* be Twenty-five Thousand Dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the Commissioner is a separate and distinct violation or failure.

§ 36314. Surety Bond Required.

(a) Coverage, Form and Regulations. Each mortgage loan originator *shall* be covered by a surety bond in accordance with this Section. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this Act, the surety bond of such person subject to this Act can be used in lieu of the mortgage loan originator's surety bond requirement.

(1) The surety bond *shall* provide coverage for each mortgage loan originator in an amount as prescribed in Subsection (b) of this Section.

(2) The surety bond *shall* be in a form as prescribed by the Commissioner.

(3) The Commissioner may promulgate rules or regulations with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this Act.

(b) Penal Sum of Surety Bond. The penal sum of the surety bond *shall* be maintained in an amount that reflects the dollar amount of loans originated, as determined by the Commissioner.

(c) Action on Bond. When an action is commenced on a licensee's bond, the Commissioner may require the filing of a new bond.

(d) New Bond. Immediately upon recovery upon any action on the bond, the licensee *shall* file a new bond.

§ 36315. Minimum Net Worth Required.

A minimum net worth *shall* be continuously maintained for mortgage loan originators in accordance with this Section.

(a) In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this Act, the net worth of such

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person subject to this Act can be used in lieu of the mortgage loan originator's minimum net worth requirement.

(b) Minimum net worth *shall* be maintained in an amount that reflects the dollar amount of loans originated, as determined by the Commissioner.

(c) The Commissioner may promulgate rules or regulations, in accordance with the Administrative Adjudication Law, with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this Act.

2017 NOTE: Subsection/subitem designations altered pursuant to the authority of 1 GCA § 1606.

§ 36316. Confidentiality.

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

(a) Protections. *Except* as otherwise provided in Public Law 110-289, Section 1512, the requirements under any Federal law or Guam law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, *shall* continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal law or Guam law.

(b) Agreements and Sharing Arrangements. For these purposes, the Commissioner is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule, regulation or order of the Commissioner.

(c) Non-applicability of Certain Requirements. Information or material that is subject to a privilege or confidentiality under Subsection

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(a) of this Section *shall not* be subject to:

(1) disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or

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

(d) Public Access to Information. This Section *shall not* apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

§ 36317. Investigation and Examination Authority.

In addition to any authority allowed under this Act, the Commissioner *shall* have the authority to conduct investigations and examinations as follows:

(a) Authority to Access Information. For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this Act, the Commissioner *shall* have the authority to access, receive and use any books, accounts, records, files, documents, information or evidence, including, but *not* limited to:

(1) criminal, civil and administrative history information, including non-conviction data as specified in Title 9, Guam Code Annotated, the Criminal and Correctional Code;

(2) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and

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(3) any other documents, information or evidence the Commissioner deems relevant to the inquiry or investigation, regardless of the location, possession, control or custody of such documents, information or evidence.

(b) Investigation, Examination, and Subpoena Authority. For the purposes of investigating violations or complaints arising under this Act, or for the purposes of examination, the Commissioner may review, investigate, or examine any licensee, individual or person subject to this Act, as often as necessary in order to carry out the purposes of this Act. The Commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry.

(c) Availability of Books and Records. Each licensee, individual or person subject to this Act *shall* make available to the Commissioner upon request the books and records relating to the operations of such licensee, individual or person subject to this Act. The Commissioner *shall* have access to such books and records, and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual or person subject to this Act concerning their business.

(d) Reports and Other Information as Directed. Each licensee, individual or person subject to this Act *shall* make or compile reports or prepare other information as directed by the Commissioner in order to carry out the purposes of this Section, including, but *not* limited to:

- (1) accounting compilations;
- (2) information lists and data concerning loan transactions in a format prescribed by the Commissioner; *or*
- (3) such other information deemed necessary to carry out the purposes of this Section.

(e) Control Access to Records. In making any examination or investigation authorized by this Act, the Commissioner may control access to any documents and records of the licensee or person under examination or investigation. The Commissioner may take possession

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of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept.

(1) During the period of control, *no* individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Commissioner.

(2) Unless the Commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this Act, the licensee or owner of the documents and records *shall* have access to the documents or records as necessary to conduct its ordinary business affairs.

(f) Additional Authority. In order to carry out the purposes of this Section, the Commissioner may:

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

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

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

(4) accept and rely on examination or investigation reports made by other government officials within or without Guam; *or*

(5) accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this Act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the Commissioner.

(g) Effect of Authority. The authority of this Section *shall* remain in effect, whether such a licensee, individual or person subject to this Act acts or claims to act under any licensing or registration law

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of Guam, or claims to act without such authority.

(h) Withhold Records. *No* licensee, individual or person subject to investigation or examination under this Section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

2017 NOTE: Subitem designations added pursuant to the authority of 1 GCA § 1606.

§ 36318. Prohibited Acts and Practices.

It is a violation of this Act for a person or individual subject to this Act to:

- (a) directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (b) engage in any unfair or deceptive practice toward any person;
- (c) obtain property by fraud or misrepresentation;
- (d) solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this Act may earn a fee or commission through “best efforts” to obtain a loan even though no loan is actually obtained for the borrower;
- (e) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- (f) conduct any business covered by this Act without holding a valid license as required under this Act, or assist, or aid and abet any person in the conduct of business under this Act without a valid license as required under this Act;
- (g) fail to make disclosures as required by this Act and any other applicable Guam or Federal law including regulations thereunder;
- (h) fail to comply with this Act or rules or regulations promulgated under this Act, or fail to comply with any other State or Federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this Act;
- (i) make, in any manner, any false or deceptive statement or representation including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;

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(j) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry, or in connection with any investigation conducted by the Commissioner or another governmental agency;

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

(l) collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by this Act;

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

(n) fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

§ 36319. Mortgage Call Reports.

Each mortgage licensee *shall* submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which *shall* be in such form and *shall* contain such information as the Nationwide Mortgage Licensing System and Registry may require.

§ 36320. Report to Nationwide Mortgage Licensing System and Registry.

The Commissioner is required to report regularly violations of this Act, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry, subject to the provisions contained in § 36316 of this Act.

§ 36321. Privately Insured Credit.

Non-federally insured credit unions which employ loan originators, as defined in PL 110-289, Title V, the S.A.F.E. Act, *shall* register such employees with the Nationwide Mortgage Licensing System and Registry by

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furnishing the information concerning the employees' identity set forth in Section 1507(a)(2) of PL 110-289, Title V.

§ 36322. Unique Identifier Shown.

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

§ 36323. Effective Date.

The effective date of this Act shall be July 31, 2010.

§ 36324. Severability.

If any provision of this Act or its application to any person or circumstance is held invalid, the remainder of the Act or the application of the provision to other persons or circumstances is *not* affected.
