OVERVIEW OF ARIZONA MORTGAGE LAWS

Introduction

The Arizona Department of Financial Institutions (AZDFI) regulates all mortgage activity in Arizona including licensing of mortgage brokers, mortgage bankers, and mortgage loan originators. The primary statute regarding mortgage activity is Arizona Revised Statute Title 6, Chapter 9. The following information is presented with the intent to inform and educate the potential mortgage loan originator licensee regarding mortgage industry regulation in Arizona.

Arizona Department of Financial Institutions

Regulatory Authority

The purpose of the Arizona Department of Financial Institutions (AZDFI) is to oversee the execution of the laws of the state relating to financial institutions and enterprises. (ARS 6-110)

Department Structure

The chief officer of the Department is the Superintendent who is appointed by the governor for a term of four years. The Superintendent’s term expires on the third Monday in January of the appropriate year although the Superintendent can be removed by the governor for cause at any time. The requirement for being appointed Superintendent is at least five years of experience in the last 15 years as an executive officer, examiner or supervisor for a financial institution, state or agency of the United States. (ARS 6-111)

The Superintendent appoints a Deputy Superintendent who has the same powers and duties as the Superintendent. The Deputy Superintendent serves at the discretion of the Superintendent. The Superintendent may also appoint assistants, examiners and other personnel as necessary. (ARS 6-112)

Responsibilities and Limitations (ARS 6-122)

The duties of the Superintendent include the following:

- **Examine financial institutions**: The Superintendent will:
  - “Examine or cause to be examined each financial institution annually, except financial institution holding companies, banks, savings and loan associations, credit unions and consumer lenders, and more frequently if the superintendent considers it necessary.
  - Examine or cause to be examined each bank, credit union and savings and loan association at the superintendent's discretion but at least once in every twenty-four month period.
Examine or cause to be examined the business and affairs of any enterprise and any consumer lender for the purpose of administering and enforcing this title at the superintendent's discretion but at least once in a five year period.

Examine or cause to be examined financial institution holding companies as frequently as the superintendent considers necessary to administer and enforce this title."

Escrow agents and escrow companies have separate rules. (ARS 6-122(B))

- **Publish a consumer information brochure**: The Superintendent will “publish a consumer information brochure that includes:
  - The finance charges permitted by this state
  - The types of insurance that may be offered but that are not required by law to be purchased with the granting of a loan
  - Interest rate limitations on all lenders including amounts that may not be charged to borrowers
  - Consumer rights and means of recourse from unfair practitioners”

(ARS 6-122(B)(7))

In addition to the above, the Superintendent is granted total power to administer and enforce all laws and rules relating to financial institutions and enterprises. (ARS 6-123(1)) The Superintendent issues, denies, revokes, suspends and reinstates licenses for all mortgage professionals including mortgage brokers, mortgage bankers, and mortgage loan originators. The Superintendent has the power to put in place rules that have the same enforceability as statutes. (ARS 6-123(2))

The Superintendent’s powers include fingerprinting of license applicants for the purpose of an FBI or Department of Public Safety background check, securing appropriate records from any financial institution, ordering appraisals on properties that are owned by any financial institution, cooperating with other regulatory agencies, holding membership in CSBS (Conference of State Bank Supervisors) and/or AARMR (American Association of Residential Mortgage Regulators), and participation in the Nationwide Mortgage Licensing System established by the S.A.F.E. Act. (ARS 6-123(3-8))

The Superintendent, the Deputy Superintendent and all Department personnel are prohibited from being indebted to any financial institution which they regulate unless the debt was incurred before becoming employed by the Department and is fully disclosed to the Department. There are allowances for employees, except for the Superintendent and Deputy Superintendent, to incur debt with a regulated entity as long as the terms of the debt are available to the general public and the Superintendent approves the debt. (ARS 6-113(A)(1)) An employee of the Department is not allowed to be an officer, director or employee of any regulated entity. (ARS 6-113(A)(2))
The Revolving Fund (ARS 6-135)

Investigative costs, attorney fees and civil penalties recovered for the state by the Attorney General or the Superintendent as a result of actions brought due to breach of Title 6 are deposited into the Department revolving fund. Money in the fund is used for investigative proceedings or for instituting and prosecuting civil actions based on violation of Title 6.

If at the end of any fiscal year, there is more than $50,000 in unencumbered funds in the revolving fund, the amount in excess of $50,000 is transferred to the Department receivership revolving fund. This fund is used to pay costs incurred by the Department due to administration of a receivership when the Superintendent is the receiver.

Money in both funds is exempt from the state rules regarding the lapsing of appropriations, which means that it does not need to be spent before the end of a fiscal year and is available into the next year for Department use.

All other fees, charges, fines and assessments received by the Department are deposited to the state general fund although there is a special designation (financial services fund) within the general fund for loan originator fees. (ARS 6-991.21) This has caused problems with proper funding of the Department since the revenue it generates by conducting inspections and issuing licenses is not necessarily appropriated by the state to the benefit of licensees.

State Law and Regulation Definitions

Arizona mortgage regulation was first written to regulate mortgage brokers, then mortgage bankers, and finally mortgage loan originators. The statutes for each are as follows:

- ARS Title 6, Ch 9, Article 1 (ARS 6-901) Mortgage brokers
- ARS Title 6, Ch 9, Article 2 (ARS 6-941) Mortgage bankers
- ARS Title 6, Ch 9, Article 4 (ARS 6-991) Mortgage loan originators

The following are definitions contained in ARS Title 6, Chapter 9, or Title 20 of the Arizona Administrative Code which contains the rules that the Department has adopted over the years.

The regulations can be found online at: http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=6

**Compensation:** Anything of value or any benefit, including points, commission, bonuses, referral fees, loan origination fees and other similar fees but excluding periodic interest, resulting from the application of the note rate of interest to the outstanding principal balance remaining unpaid from time to time. (ARS 6-901(5))

**Immediate Family Member:** A spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchild or stepsibling whether related by adoption or blood. (ARS 6-991(7))
Loan Originator: A natural person who, for compensation or gain or in the expectation of compensation or gain, takes a residential mortgage application, offers or negotiates terms of a residential mortgage loan, or on behalf of a borrower, negotiates with a lender or note holder to obtain a temporary or permanent modification in an existing residential mortgage loan agreement. (ARS 6-991(12))

Loan Processor or Underwriter: 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 who is licensed or who is exempt from licensure. (ARS 6-991(13))

Loss Mitigation Efforts: When a residential mortgage loan borrower is in default or default is in the foreseeable future and an individual works with the borrower on behalf of the residential mortgage loan servicer to modify, either temporarily or permanently, the obligation or to otherwise mitigate loss on an existing residential mortgage loan. (ARS 6-991.01(11))

Mortgage Banker: A person who is not exempt from licensure who, for compensation or in the expectation of compensation, either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage banking loan or a mortgage loan. (ARS 6-941(5))

Mortgage Banking Loan: A loan which is funded exclusively from the mortgage banker’s own resources, which is directly or indirectly secured by a mortgage or deed of trust or any lien interest on real estate located in Arizona and which is created with the consent of the owner of the real property. For the purposes of this definition, “own resources” means cash, corporate capital or warehouse credit lines. (ARS 6-941(6))

Mortgage Broker: A person who, for compensation or in the expectation of compensation, either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage loan, and who is not exempt by regulation. (ARS 6-901(11))

Mortgage Loan: A loan secured by a mortgage or deed of trust or any lien interest on real estate located in Arizona created with the consent of the owner of the real estate. (ARS 6-901(12))

Mortgage Loan Closing: (also includes “mortgage banking loan closing” or “commercial mortgage loan closing”) The day by which all documents relating to the loan have been executed and recorded and all monies have been accounted for under the terms of the escrow instructions. (ARS 6-901(13))

Registered Loan Originator: An employee of either a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration, who is a mortgage loan originator registered with and maintaining a unique identifier through the NMLS. (ARS 6-991(18))

Residential Mortgage Loan: A mortgage loan that has security in the form of a residential dwelling of one to four units. (ARS 6-901(14))
**Unique Identifier:** The number assigned to a mortgage loan originator by the Nationwide Mortgage Licensing System (NMLS). (ARS 6-991(21))

**License Law and Regulation**

The first mortgage originator license requirement was added to the Arizona statutes in June of 2008 and was later modified to comply with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act). In 2008, the statutes were also modified to include a commercial mortgage broker license.

**S.A.F.E. Mortgage Licensing Act**

On July 30, 2008, President Bush signed the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act) into law. The S.A.F.E. Act established a Nationwide Mortgage Licensing System (NMLS) for the residential mortgage industry to achieve the following objectives:

- Provide for streamlined and uniform application and reporting for mortgage professionals
- Provide a comprehensive database of mortgage professionals to improve accountability and the flow of information between regulators
- Provide easily accessible information to consumers and increase consumer protection

The S.A.F.E. Act requires each state to implement the same standards for the licensing of mortgage loan originators. An applicant must pass a background check, meet minimum educational requirements and pass a test. Arizona participates in the NMLS, and all mortgage loan originator licensing activities are handled through the system.

The web-based NMLS system allows applicants, licensees and registrants in Arizona and other participating states to:

- Apply for a license
- Amend a license
- Update a license
- Renew a license

Regardless of the number of licenses which licensees may hold in various states, the NMLS allows them to have a single record. Each licensee record is assigned a number called a *unique identifier* by the NMLS. Licensees have access to their records via a secured website.

Mortgage licensing in Arizona falls under three distinct licenses:

- Mortgage loan originator license
- Mortgage broker license
- Mortgage banker license
All Arizona license applications are submitted through the NMLS. There are four forms used for this purpose:

**MU1**: The MU1 form is used by *mortgage brokers and mortgage bankers*, including sole proprietors, to apply for licensure within the NMLS. Information required for the MU1 includes:

- Any existing licensing information
- Notarized execution attesting to the accuracy and validity of the information
- Contact information for the company
- Action being taken for each state (currently licensed, applying for licensure, etc.)
- Type of mortgage business
- Any non-mortgage related business conducted by the company
- Any shared business services
- Legal status of the company
- Control information such as controlling entity(ies) and direct or indirect ownership
- Disclosure of any of the following against the company, its officers or owners:
  - Criminal action
  - Regulatory action
  - Civil judicial action
  - Financial action

**MU2**: The MU2 form must be submitted along with the MU1 form for *each owner or executive officer* of a mortgage broker or mortgage banker that is not a natural person. It serves as a biographical statement for each individual. Information required for the MU2 includes:

- The individual’s existing licensing information
- The individual’s personal identifying information such as name, aliases, etc.
- Notarized acknowledgement attesting to the accuracy and validity of the information
- Comprehensive employment information, including a ten-year employment history and any other business affiliations
- Ten years’ residential history
- Fingerprint filing
- Disclosure of any of the following:
  - Financial action
  - Criminal action
  - Regulatory action
  - Civil judicial action
- Any arbitration or litigation
- Termination for regulatory, or related, violations

**MU3:** The MU3 form is submitted along with the MU1 when the company has *branch offices*. Information required for each branch office includes:

- Specific information for existing licenses
- Address(es) and contact information for the office
- Trade names and branch managers
- Notarized execution attesting to the accuracy and validity of the information
- Identification of financial and decision making responsibility for the office

**MU4:** The MU4 form is used by *individual mortgage loan originators* to apply for licensure through the NMLS. The mortgage loan originator must wait until his or her employer has filed its paperwork before filing the MU4. In Arizona, each mortgage loan originator must be sponsored by a mortgage broker or mortgage banker. Information required for the MU4 form is the same as the information required for the MU2 form.

**Licensing Requirements at a Glance**

Licensing requirements for individuals and entities in Arizona will be covered in more detail throughout this course. However, the following chart provides an overview of the licensing requirements for Arizona mortgage professionals.
### Licensee Application Fee Renewal

<table>
<thead>
<tr>
<th>Licensee</th>
<th>Application Fee</th>
<th>Renewal Fee</th>
<th>Pre-Licensing Education</th>
<th>Continuing Education</th>
<th>Surety Bond</th>
<th>Branch Office Fee/Renewal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mortgage Broker</td>
<td>$800, plus $100 NMLS processing fee</td>
<td>50 loans or less per year: $250</td>
<td>Yes: 24 hours</td>
<td>Yes: 12 hours</td>
<td>$10,000 for licensees whose investors include non-institutional investors</td>
<td>Initial fee: $250</td>
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<tr>
<td></td>
<td></td>
<td>More than 50 loans per year: $500</td>
<td></td>
<td></td>
<td></td>
<td>Renewal fee: $200 per branch</td>
</tr>
<tr>
<td>Mortgage Banker</td>
<td>$1,500, plus $100 NMLS processing fee</td>
<td>100 loans or less per year: $750</td>
<td>No</td>
<td></td>
<td>$25,000 - $100,000 depending on base of total assets plus unpaid balance of loans</td>
<td>Initial fee: $500</td>
</tr>
<tr>
<td></td>
<td></td>
<td>More than 100 loans: $1,250</td>
<td></td>
<td></td>
<td></td>
<td>Renewal fee: $250 per branch</td>
</tr>
<tr>
<td>Mortgage Loan Originators</td>
<td>$350, plus $30 NMLS processing fee, $15 credit report fee, and $39 fee if background check authorized at application</td>
<td>$150</td>
<td>Yes: 20 hours</td>
<td>Yes: 8 hours</td>
<td>$100 into recovery fund</td>
<td>N/A</td>
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<td></td>
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<td></td>
<td>OR</td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td>Covered by employer’s surety bond of at least $200,000</td>
<td></td>
</tr>
</tbody>
</table>

### Mortgage Loan Originator License

#### Who Needs an Originator License?

Any person acting a mortgage loan originator must obtain a license. Independent contractors who perform loan processing and underwriting must also obtain a license as a mortgage loan originator. There are exceptions to the originator licensing law. A mortgage loan originator license is only available to a natural person.
**Individual Exemptions (ARS 6-991), (ARS 6-991.01)**

The following are exempt from the mortgage loan originator licensing requirement:

- An individual engaged solely as a loan processor or underwriter unless working as an independent contractor (please note: each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a unique identifier.) (ARS 6-991.02(P))

- A person who only performs real estate brokerage activities and who is licensed properly unless the person is compensated by a lender, a mortgage broker or any other mortgage loan originator (ARS 6-991(12)(b)(ii)))

- A person solely involved in extensions of credit relating to a timeshare plan (ARS 6-991(12)(b)(iii)))

- An employer making a mortgage loan to an employee (ARS 6-991(12)(b)(vi))))

- A person who makes five or fewer mortgage loans per calendar year (ARS 6-991(12)(b)(iv)))

- A registered mortgage originator. Mortgage loan originators who are employed by depository institutions and other federally regulated entities are not required to be licensed. However, they must register with the NMLS. (ARS 6-991.01(1))

- An individual offering or negotiating loan terms for a residential mortgage loan on his or her residence or for an immediate family member (ARS 6-991.01(2)), (ARS 6-991.01(8))

- A person who is a Responsible Individual for a mortgage broker or mortgage banker and who does not act as a mortgage loan originator (ARS 6-991.01(3))

- An employee of a commercial mortgage banker (ARS 6-991.01(4))

- A person who, as seller of real property, receives one or more mortgages or deeds of trust as security for a purchase money obligation (ARS 6-991.01(6))

- A licensed attorney negotiating loan terms on behalf of a client as an ancillary matter to the attorney’s normal representation of the client unless the attorney is compensated by a lender (ARS 6-991.01(7))

- A manufactured home retailer performing only clerical or support duties who receives no compensation or gain (ARS 6-991.01(9))

- An individual who is employed by a residential mortgage loan servicer if the individual is involved solely in loss mitigation efforts, unless the United States Department of Housing and Urban Development determines that the S.A.F.E. Act of 2008 requires the individual to be licensed as a mortgage loan originator (ARS 6-991.01(10))

- A person who takes back a purchase money mortgage in connection with the sale of residential real estate (ARS 6-991(12)(b)(v))))
Licensee Qualifications and Application Process (ARS 6-991.03)

In order to qualify for a mortgage loan originator license, individuals must meet all of the following requirements:

- Satisfactorily complete a 20-hour NMLS-approved course of study during the two-year period immediately preceding the time of application which includes:
  - Three hours of federal law
  - Three hours of ethics including instruction on fraud, consumer protection and fair lending issues
  - Two hours relating to nontraditional mortgage products
  - Four hours of Arizona specific law and regulations
  - Eight additional hours as defined by the Superintendent

(ARS 6-991.03)

- Pass both a national and state specific mortgage loan originator licensing exam not more than one year before the license is granted. The fee for the state specific examination is set by the Superintendent. (ARS 6-991.07) On June 30, 2011 the Department of Housing and Urban Development (HUD) issued a final rule concerning implementation of the S.A.F.E. Act. The final rule clarified the number of test attempts a mortgage loan originator licensing candidate is permitted. A loan originator who fails his/her initial attempt is permitted two additional test attempts. He/she must wait 30 days between each test attempt. If, on the third test attempt, the loan originator does not pass, he/she must wait six months (180 days) prior to attempting the test again.

- The loan originator statute establishes an examination committee to determine and update the standards for passing the loan originator examination. Committee members are appointed by the Superintendent from recommendations of the industry. Four of the five members of the committee are mortgage brokers and the fifth is an employee of the Department. They are not paid. (ARS 6-991.06)

- The statute also lists in detail the areas in which a licensee applicant is to be tested. The applicant must show knowledge in obligations between principal and agent, business ethics, the loan originator law itself and the rules adopted by the Superintendent under the law, mortgage arithmetic, real estate lending principles, mortgages and deeds of trust, various mortgage products and appraisal independence. (ARS 6-991.07)

- Obtain a unique identifier from the NMLS and complete an MU4 Form to apply for an originator license with the State of Arizona. The form requires personal information, employment history and special disclosures including answering questions regarding any felony convictions, financially oriented misdemeanor convictions, and any pending criminal charges. (ARS 6-991.03(B)(3)), (NMLS website- New Application Checklist)

- Submit fingerprints to AZDFI through NMLS for the purpose of a background investigation. (ARS 6-991.03(B)(5))

- Provide a credit report to AZDFI (NMLS website- New Application Checklist)
Submit to AZDFI a $350 application fee and the required $100 deposit into the recovery fund. The recovery fund deposit is not required if the applicant’s employer provides a minimum surety bond of $200,000 for the employee. (NMLS website- New Application Checklist)

**Grounds for Denying a License (ARS 6-991.05(A))**

The Superintendent may deny, suspend or revoke a license if it is determined that an applicant or licensee:

- Is not a person of honesty, truthfulness or good character
- Does not have the financial responsibility, experience or competence to adequately serve the public or to warrant the belief that he/she will act lawfully, honestly and fairly
- Has violated any law, rule or order
- Has been convicted of a felony during the seven-year period immediately preceding the date of the application or has at any time been convicted of a felony for any crime of breach of trust or dishonesty, fraud or money laundering
- Has had a final judgment entered against him/her in a civil action or has had an order entered by an administrative agency of the state, the federal government or any other state on grounds of fraud, deceit or misrepresentation, and the conduct on which the judgment is based indicates that it would be contrary to the interest of the public to permit him/her to be licensed
- Has lied, made a material misstatement or suppressed or withheld information on the application for a license or any document required to be filed with the Superintendent
- Has had a mortgage loan originator, mortgage broker or mortgage banker license revoked or denied in this state or any other state

The Superintendent may suspend or refuse to grant a license to a licensee who is indicted or informed against for forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or a similar offense. A certified copy of the information, indictment, or other evidence of the indictment must be filed with the Superintendent. (ARS 6-991.05(B))

If the Superintendent determines that the applicant is qualified and has paid the required fees, then a mortgage loan originators license will be issued evidenced by a continuous certificate. (New license certificates are not issued every year upon renewal.) The Superintendent will grant or deny a license within 120 days after receiving the completed application and fees. An applicant who has been denied a license may not reapply for a license before one year from the date of the previous application. (ARS 6-991.04(A,C))

Once the license is issued, the Superintendent will keep the mortgage loan originator’s license until an Arizona licensed mortgage broker or mortgage banker employs the originator and provides written notice that the employer has hired the originator. The notice must be from an officer or other person authorized by the employer, must contain a request for the mortgage loan
originator’s license and must be dated, signed and notarized. Upon receipt of the request, the Superintendent will forward the originator’s license to the employing mortgage broker, mortgage banker or consumer lender. (ARS 6-991.04(B))

An applicant for a mortgage loan originator license who is currently registered with the NMLS may be granted a temporary license for a period not to exceed 180 days in order to meet the requirements of licensing. (ARS 6-991.04(L))

**License Maintenance (ARS 6-991.03(C))**

Mortgage loan originator licenses are issued for a one-year period and must be renewed on or before December 31st. (ARS 6-991.04(C, E))

To renew, a mortgage loan originator licensee must:

- Submit a renewal application and required fee to the Superintendent
- Complete eight hours of NMLS-approved continuing education units in the year immediately preceding the renewal including:
  - Three hours of federal law
  - Two hours of ethics
  - Two hours of training related to lending standards for the nontraditional mortgage product marketplace
  - One hour of elective education

Note that licensees cannot take the same approved course two years in a row.

**Recordkeeping and Reporting**

A mortgage loan originator must make available to the Superintendent, upon request, any books and records relating to the licensee’s operations. The Superintendent can interview employers, other employees and customers of the originator. The originator cannot knowingly withhold or destroy any books or records or other information. (ARS 6-991.02(O))

The mortgage loan originator must immediately notify the Superintendent of a change in the mortgage loan originator’s residence address. The Superintendent will endorse the change of address on the license for a fee which he/she determines as appropriate. (ARS 6-991.04(J))

Within five business days after any licensee’s employment is terminated, the employing mortgage broker, mortgage banker or consumer lender must notify the Superintendent of the licensee’s termination and return the license to the Superintendent. (ARS 6-991.04(K))

**Inactive Status**

Licenses not renewed by December 31st are suspended, and the licensee cannot act as a mortgage loan originator until the license is renewed or a new license is issued. A person can renew a suspended license by paying the renewal fee plus a penalty determined by the Superintendent for
each day after December 31st that a license renewal fee was not received by the Superintendent. (ARS 6-991.04(E))

From December 1st through December 31st of each renewal period, a licensee may request inactive status for the following license period. The license will be placed on inactive status after the licensee pays the inactive status renewal fee and surrenders the license to the Superintendent. During inactive status, an inactive licensee cannot act as a mortgage loan originator. A licensee cannot be on inactive status for more than two consecutive renewal periods in any ten-year period. If the licensee violates this provision, the license will expire. (ARS 6-991.04(G))

At renewal, an inactive licensee may return to active status by providing the Superintendent with evidence that the licensee has fulfilled the continuing education requirement, making a written request to the Superintendent for reactivation, paying the annual licensing fee and providing the Superintendent with proof that the licensee meets all other requirements for acting as a mortgage loan originator. (ARS 6-991.04(H))

**Compliance**

**Prohibited Conduct and Practices (ARS 6-991.02)**

It is prohibited for a licensed mortgage loan originator to do any of the following:

- Receive compensation in connection with a mortgage loan if he/she is not licensed by the State of Arizona. Also, unless exempted, an individual cannot “engage in the business of a loan originator” without a license regardless of whether the person is compensated. (ARS 6-991.02(B))

- Accept any money or documents in connection with an application for a mortgage loan while acting on his/her own behalf. A mortgage loan originator must always be an employee of a licensed mortgage broker or banker, and it is on their behalf that money and documents are collected. (ARS 6-991.02(A))

- Advertise, or cause or permit to be advertised, any solicitation of mortgage business. A mortgage loan originator can only advertise in the name of the employing licensee. It is the employer’s license number and name and address that must appear on all advertising. The mortgage originator’s name can appear as well, but never by itself. (ARS 6-991.02(C))

- Make a loan that is less than the minimum amount that the originator’s employer is allowed to make ($5,000 for a mortgage broker; $10,000 for a mortgage banker) or a loan not secured by a mortgage, deed of trust, or other lien interest in real property unless employed by a consumer lender. (ARS 6-991.02(D))

- Be concurrently employed by more than one mortgage broker or mortgage banker (ARS 6-991.02(E))

- Collect compensation for services as a real estate broker or salesperson unless the mortgage loan originator is licensed as a real estate broker or agent and proper disclosure has been made at the time of application informing the customer that the mortgage loan
Overview of Arizona Mortgage Laws

The Recovery Fund (ARS 6-991.09)

The Superintendent is responsible for establishing and maintaining a mortgage recovery fund which consists of the money collected from licensees at application ($100) and each year at

originator is receiving compensation both for mortgage services and real estate services. (ARS 6-991.02(F))

- Accept any assignment of the borrower’s wages or salary (ARS 6-991.02(G))
- Receive or disburse money in servicing or arranging a mortgage loan. All compensation must go through the employer. (ARS 6-991.02(H))
- Make a false promise or misrepresentation or conceal an essential or material fact in the course of the mortgage broker or mortgage banker business (ARS 6-991.02(I))
- Fail to truthfully account for the money belonging to a party to a mortgage loan transaction or fail to disburse money in accordance with the employing mortgage broker or mortgage banker agreements. (ARS 6-991.02(J))
- Engage in illegal or improper business practices (ARS 6-991.02(K))
- Require a person seeking a loan secured by real property to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer. (ARS 6-991.02(L))
- Originate a mortgage loan unless employed by a mortgage broker, mortgage banker or consumer lender (ARS 6-991.02(M))
- Advertise for or solicit mortgage business in any manner without the name and license number as issued on the employing mortgage broker’s, mortgage banker’s or consumer lender’s principal place of business license, approval of the employing mortgage broker, mortgage banker or consumer lender, and the unique identifier of the mortgage loan originator (ARS 6-991.02(N))
- Knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, or other information relating to the loan originator’s business operations (ARS 6-991.02(O))
- A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless he/she obtains and maintains a license. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a unique identifier. (ARS 6-991.02(P))
- An individual engaging only in loan processor or underwriter activities must not represent to the public through advertising or other means of communicating that the individual can or will perform any of the activities of a mortgage loan originator. (ARS 6-991.02(Q))
- Make a loan for $10,000 or less for a term up to three years which is secured by a lien on real property on an owner-occupied residence in which the installment payment is greater than twice the amount of the smallest installment. This is referred to as the “balloon payment prohibition.” (ARS 6-114)
renewal if the fund contains less than two million dollars. The fund may be used to pay for an actual, direct out-of-pocket loss to a person who has been hurt by any “act, representation, transaction or conduct” of a licensee in violation of Arizona law. Money earned from the investment of funds is credited to the fund, and the Superintendent may spend money gained from interest up to $50,000 annually to increase public awareness of the fund.

Payouts from the fund are limited to $200,000 for each transaction regardless of the number of people hurt, the number of licensees involved, or the number of parcels involved. It also has a maximum payout of $500,000 for each licensee. The fund is only liable to pay against the license of a natural person, not a corporation, partnership or any other fictitious entity.

In order to make a claim against the recovery fund, a consumer must act to obtain a judgment against a licensee within five years of being harmed. The aggrieved person must then apply to the Department for payment from the fund within two years. The claimant must show that he/she has pursued other means of restitution from the licensee before receiving a recovery fund payout including claims against the bond of the employer, garnishment of wages of the licensee and amounts recovered from the assets of the licensee. (ARS 6-991.11)

**Required Conduct and Practices (ARS 6-991.08)**

A mortgage loan originator shall make reasonable efforts to secure a loan that is reasonably advantageous to the borrower considering all of the circumstances, including the interest rates, charges and repayment terms of the loan.

**Mortgage Broker and Mortgage Banker Licenses**

**Who Needs a Mortgage Broker License?**

A person can’t act as a mortgage broker without first being licensed. A person who brokers only commercial mortgage loans needs to obtain either a mortgage broker license or a commercial mortgage broker license. A person who brokers residential mortgage loans may only be licensed as a mortgage broker and not as a commercial mortgage broker. A mortgage broker can be a natural person or a legal entity such as a corporation.

**Who Needs a Mortgage Banker License?**

A person (natural person or legal entity) must be licensed to act as a mortgage banker. A mortgage banker makes loans funded exclusively from its own resources which can include a warehouse line of credit. However, mortgage brokers may use warehouse lines of credit as well. What sets mortgage bankers apart from mortgage brokers in Arizona is that with a mortgage banker license, a person can service mortgage loans. A mortgage broker license does not permit the servicing of mortgage loans.

A commercial mortgage banker can both originate and service commercial loans. A mortgage banker can originate and service both residential and commercial loans.
Exemptions (ARS 6-902), (ARS 6-942)

A mortgage broker or mortgage banker license is needed to legally negotiate a mortgage loan for compensation unless:

- A person does business and is regulated under any other law of Arizona, any other state or of the United States, relating to banks, savings banks, trust companies, savings and loan associations, profit sharing and pension trust, credit union, insurance companies or consumer lenders
- The loan is made using the person’s own money for his/her own investment with no intention of selling the loan, and the person is not engaged in the business of making mortgage loans
- The loan has been originated and processed by an Arizona licensee and is being funded by a person who does not maintain a place of business in Arizona and who does not solicit borrowers in Arizona
- A seller of a piece of real estate is providing seller financing for the buyer
- A licensed attorney, who is not actively involved in negotiating mortgage loans, provides mortgage service for a client in the course of his/her practice
- A contractor receives a lien for materials or services for the improvement of a property without the consent of the owner
- The loan is being made by an agency of the state or of the United States
- The loan is being made by a nonprofit certified by the U.S. Small Business Administration whose primary activity consists of providing financing for business expansion
- The loan is being made by an institutional investor as defined earlier, unless the institutional investor makes a mortgage loan other than a commercial loan

Licensee Qualifications and Application Process

Mortgage broker and mortgage banker license applicants are both required to have at least three years’ experience in the lending industry during the five years immediately preceding the time of the application. If the mortgage broker or mortgage banker is not a natural person, then the entity must be registered to do business in the state on the date the license is granted.

The following sections address the licensing requirements for each specific type of license.

Mortgage Broker Licensing

In order to obtain a license in Arizona, a mortgage broker must do the following:

- Have at least three years’ experience in the mortgage broker business or another related business during the five years preceding the license application (ARS 6-903(C)(1))
- Satisfactorily complete a 24-hour state-approved course of study during the three-year period immediately preceding the time of application and receive a passing grade on the final exam (R20-4-907(A))
• Pass a mortgage broker’s test not more than one year before the granting of the license. The test cannot be taken more than twice in a 12-month period. (ARS 6-908(C))

• Obtain a unique identifier from the NMLS and complete an MU1 Form to apply for a mortgage broker license with the State of Arizona. The form requires personal information, employment history and special disclosures including answering questions regarding any felony convictions, financially oriented misdemeanor convictions, and any pending criminal charges. If the applicant is not a natural person, an MU2 form must be submitted as well. (NMLS website- New Application Checklist)

• Submit fingerprints to AZDFI for the purpose of a background investigation (NMLS website- New Application Checklist)

• Secure a bond for $10,000 if the broker will be using only institutional investors and $15,000 if the broker will be using private investors as well. This bond will be deposited with the Superintendent payable to any person injured by the wrongful act, default, fraud or misrepresentation of the licensee or of the licensee’s employees. In lieu of a bond, the applicant can submit a certificate of deposit issued by a depository institution doing business in Arizona to be held by the state Treasurer. (ARS 6-903(J-K))

• If the applicant is not a natural person, one officer, director, member, partner, employee or trustee must be designated in the license as the responsible party. The Responsible Individual (RI) must be an Arizona resident, be involved in the management activities of the licensee and may not be an independent contractor. (ARS 6-903(H))

• Submit to AZDFI an $800 application fee with all required paperwork (ARS 6-126(A)(14))

**Mortgage Banker Licensing**

In order to obtain a license in Arizona, a mortgage banker must do the following:

• Have at least three years’ experience in the mortgage banker business or another related business. If the applicant is not a natural person, the Responsible Individual of the applicant must meet this requirement. (ARS 6-943(C)(1))

• Must have engaged in the past or intend to engage in the business of making mortgage loans or mortgage banking loans (ARS 6-943(C)(2))

• Must be authorized to do business with the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal National Mortgage Association (Fannie Mae), or the Federal Home Loan Mortgage Corporation (Freddie Mac), or must have and maintain a net worth of not less than $250,000 (ARS 6-943(C)(3))

• Provide the Superintendent with a current audited financial statement including a balance sheet prepared within the previous six months (ARS 6-943(C)(4)(b))

• Must have and maintain at all times a net worth of not less than $100,000 (ARS 6-943(C)(5))

• Obtain a unique identifier the NMLS and complete an MU1 Form to apply for a mortgage broker license with the State of Arizona. The form requires personal information, employment history and special disclosures including answering questions regarding any felony convictions, financially oriented misdemeanor convictions, and any
pending criminal charges. If the applicant is not a natural person, an MU2 form must be submitted as well. (NMLS website- New Application Checklist)

- Submit fingerprints to AZDFI for the purpose of a background investigation (NMLS website- New Application Checklist)

- Secure a bond for $25,000 up to $100,000 depending on the total assets of the licensee plus the unpaid balance of loans as of the end of the fiscal year. This bond will be deposited with the Superintendent payable to any person injured by the wrongful act, default, fraud or misrepresentation of the licensee or of the licensee’s employees. (ARS 6-943(H))

- If the applicant is not a natural person, one officer, director, member, partner, employee or trustee must be designated in the license as the responsible party. The Responsible Individual must meet all the licensing requirements and cannot be an independent contractor. (ARS 6-943(F))

- Submit to AZDFI a $1,500 application fee with all required paperwork (ARS 6-126(A)(13))

**Grounds for Denying a Mortgage Broker or Mortgage Banker License (ARS 6-945), (ARS 6-905)**

The Superintendent may deny, suspend or revoke a license for the following:

- Insolvency
- Lack of honesty, truthfulness and good character
- Violation of any applicable law, rule or order
- Refusal to permit an examination of business records and affairs by the Superintendent or refusal or failure, within a reasonable time, to furnish any information or make any report that may be required by the Superintendent
- Conviction in any state of a felony or any crime of breach of trust or dishonesty
- A final judgment entered against an applicant or licensee in a civil action upon grounds of fraud, deceit or misrepresentation, and the conduct on which the judgment is based indicates that it would be contrary to the interest of the public to permit such person to be licensed or to control or manage a license
- An order entered against the applicant or licensee involving fraud, deceit or misrepresentation by an administrative agency of Arizona, the federal government or any other state, and the facts relating to the order would indicate that it would be contrary to the interest of the public to permit the person to be licensed or to control or manage a license
- Lying on the application for a license or any document filed with the Superintendent
- Indictment at any time for any of the following acts:
  - Forgery
  - Embezzlement
o Obtaining money under false pretenses
o Extortion
o Criminal conspiracy to defraud or a similar offense

The regulations that apply to individual licensees also apply to the officers, directors, members, partners, trustees and employees of the entity and can result in denial, suspension or revocation of a license.

If the Superintendent determines that the applicant is qualified and has paid the required fees, then a mortgage broker or mortgage banker license will be issued as evidenced by a continuous certificate. (New license certificates are not issued every year upon renewal.) The Superintendent will grant or deny a license within 120 days after receiving the completed application and fees. An applicant who has been denied a license may not reapply for a license before one year from the date of the previous application. (ARS 6-945(D))

License Maintenance

License Renewals
Mortgage broker and mortgage banker licenses are issued for a one-year period and must be renewed on or before December 31st.

To renew, a licensee or Responsible Individual must:

- Complete 12 hours of state-approved continuing education units in the year immediately preceding the renewal if the licensee is a mortgage broker or mortgage banker.
- Submit a renewal application and required fee to the Superintendent
- Mortgage bankers must submit a financial statement prepared within the past six months with their renewal application to prove they have maintained the minimum net worth

Banker to Broker Conversion (ARS 6-949)
In the update made to the regulation in 2009 in order to bring it into compliance with the S.A.F.E. Act, the Arizona legislature added a provision for a one-time mortgage banker to mortgage broker conversion option. If a mortgage banker licensee funds 150 or fewer loans in the immediately preceding calendar year, the licensee may apply at the time of license renewal to the Department for a conversion to a mortgage broker license. The conversion application must be done in the manner prescribed by the Superintendent, and the approval of the conversion is at the discretion of the Superintendent.

Recordkeeping and Reporting (ARS 6-906), (ARS 6-946)
Arizona requires all licensees to keep and maintain complete and correct records to enable the Superintendent to determine whether the licensee is conducting its business according to the law. Every mortgage broker must maintain original documents or clearly legible copies of all mortgage loan transactions for at least five years from the date of the loan closing. Mortgage bankers must retain original documents or clearly legible copies of all mortgage banking loan transactions and mortgage loan transactions, unless the loan is paid in full or the loan and its
servicing are sold, for at least two years after the date of the closing or the date of the last disbursement, whichever occurs last.

If the licensee operates two or more licensed places of business in Arizona, the records can be maintained at the principal place of business after notifying the Superintendent.

With the approval of the Superintendent, the licensee can maintain the records outside of Arizona, but the records must be made available to the Superintendent within three business days of request. If records are maintained outside of the state, the licensee must provide for the acceptance of collect calls or provide a toll free number to borrowers to obtain information from the records if the office within the state cannot provide information readily to consumers.

**Branch Offices (ARS 6-904(H)), (ARS 6-944(E)), (ARS 6-979)**

Every licensed mortgage broker and mortgage banker must designate and maintain a principal place of business in Arizona for the transaction of business. In industry jargon, Arizona is considered a “brick & mortar” state.

If a licensee wishes to maintain one or more locations in addition to the principal place of business, the licensee needs to first obtain a branch office license from the Superintendent and must designate a person for each branch office to oversee the operations of that office. (A person can oversee more than one branch office.) The Superintendent will issue a branch office license indicating the address of the branch office if the Superintendent determines that the applicant is qualified. There is an application fee for each branch and a renewal fee each year.

All licensees must prominently display their license in their office and prominently display all branch licenses within the respective branches.

**Responsible Individuals (ARS 6-903(H)), (ARS 6-943(F)), (ARS 6-976)**

If a licensee is not a natural person, a Responsible Individual must be designated to oversee the operations of the office. This person must be an officer, director, member, partner, employee or trustee of the licensee and cannot be an independent contractor.

The Responsible Individual must be a resident of Arizona and must have at least three years’ experience in the mortgage industry or equivalent experience in a related business. The superintendent has given detailed requirement for equivalent experience in R20-4-906 and R20-4-1802.

It is very important that Responsible Individuals are in active management of the licensee, as they are responsible for ensuring that the licensee is meeting the requirements of the statutes. The Responsible Individual must have the authority to manage the licensee according to the regulations and rules.

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1 Refers to Arizona Administrative Code Title 20. Arizona Administrative Code Title contains the rules that apply to the activities of the Superintendent and the interpretation of all Arizona statutes and rules administered by the Superintendent.
A licensee must notify the Superintendent if its Responsible Individual will cease to be in active management of the licensee within ten days of discovering this fact. The licensee must designate a new Responsible Individual within 90 days of notification to the Superintendent. If the licensee is not placed under active management of a qualified Responsible Individual, and if notice is not received by the Superintendent within the 90-day period, the license will expire.

**Change of Address (ARS 6-904(H)), (ARS 6-944(E)), (ARS 6-979(D)), (ARS 6-991.04(J))**

All licensees – mortgage loan originators, mortgage brokers and mortgage bankers – must notify the Superintendent immediately of any change of address. For originators, this is their residence address. For all others, it is the address of the principal place of business and any branch offices.

**Termination of Licensee’s Employment (ARS 6-991.04(K))**

Within five business days after any licensee’s employment is terminated, the employing mortgage broker, mortgage banker or consumer lender must notify the Superintendent of the licensee’s termination and return the license to the Superintendent.

**Inactive Status (ARS 6-904), (ARS 6-944), (ARS 6-981)**

Licenses not renewed by December 31st are suspended and the licensee cannot participate in mortgage-related business until the license is renewed or a new license is issued. A person can renew a suspended license by paying the renewal fee plus $25 for each day after December 31st that a license renewal fee was not received by the Superintendent.

From December 1st through December 31st of each renewal period, mortgage broker licensees may request inactive status for the following license period. The license will be placed on inactive status after the licensee pays the inactive status renewal fee and surrenders the license to the Superintendent. During inactive status, inactive licensees cannot act in their normal mortgage capacities. A licensee cannot be on inactive status for more than two consecutive renewal periods in any ten-year period. The license expires if the licensee violates this.

At renewal, an inactive licensee may return to active status by providing the Superintendent with evidence that the licensee has fulfilled the continuing education requirement, making a written request to the Superintendent for reactivation, paying the annual licensing fee and providing the Superintendent with proof that the licensee meets all other requirements for active licensure.

Failure of a licensee to operate the business of making mortgage loans or mortgage banking loans for a continuous period of 12 months or more is grounds for revocation of the license. The Superintendent, when shown good cause, can extend the time for operating the business for a single fixed period not to exceed 12 months. (ARS 6-943(S))

**Broker and Banker Compliance**

**Prohibited Conduct and Practices (ARS 6-909), (ARS 6-947)**

Arizona law creates a number of prohibitions for licensed mortgage brokers and mortgage bankers. The primary goal of these prohibitions is to prevent fraudulent activity and abusive
lending practices in lending transactions. The prohibitions relate to four types of practices:

- Misleading borrowers
- Failing to disburse funds or release documents
- Altering loan documents
- Collecting illegal fees

**Misleading Borrowers**
To ensure that licenses do not mislead borrowers in mortgage lending transactions, the law prohibits a licensee from making a false promise or misrepresentation or concealing an essential or material fact in the course of mortgage business. Charges or rates stated must be set forth in such a manner as to prevent misunderstanding by prospective borrowers.

**Altering Loan Documents**
Mortgage fraud often involves the use of incomplete or altered loan documents. Therefore, Arizona prohibits the following:

- Inducing, requiring or permitting any document to be signed by a party to the transaction if the document contains any blank spaces to be filled in after it has been signed. (Verification of employment, verification of deposit and verifications of mortgages and rent are exempt from this prohibition.) The borrower can sign a document allowing the licensee to fill in blank spaces if it states what spaces can be filled in by the licensee.
- Recording or causing to be recorded any document that would give rise to liability under ARS 33-420. This section of the law speaks specifically of false documents or documents signed by someone not entitled to sign them, such as deeds. The prohibition basically says that licensees should not take part in recording documents that are fraudulent.
- Recording a mortgage or deed of trust if funds are not available for the immediate disbursal to the borrower unless, before that recording, the licensee informs the borrower in writing of a definite date by which payment must be made and obtains the borrower’s written permission for the delay.

**Collecting Illegal Fees**

- A person is not entitled to receive compensation in connection with arranging for or negotiating a mortgage loan if the person is not licensed according to Arizona law. A licensee is prohibited from paying compensation to, contracting with or employing as an independent contractor, a person who is acting as a licensee but is unlicensed.
- A licensee, except in good faith, is not allowed to cause a delay in a loan closing that results in increased costs to a borrower.
- A licensee is not allowed to request or require a person seeking a mortgage loan on an owner-occupied residence of $200,000 or less to sign an exclusivity agreement that prohibits him/her from seeking the loan from another source.
- A licensee cannot collect compensation for rendering services as a real estate broker or real estate salesperson unless the licensee is also licensed to sell real estate. The licensee
must fully disclose to the customer that compensation is being received for both the mortgage services and the real estate sales services.

Miscellaneous Prohibited Acts
The following is a brief list of other prohibited acts:

- A mortgage broker may not make or negotiate a loan that is less than $5,000 and/or not secured by a lien on real property. A mortgage banker may not make or negotiate a loan that is less than $10,000 and/or not secured by a lien on real property.
- A licensee may not engage in illegal or improper business practices.
- A licensee may not require a person seeking a loan secured by real property to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.
- A licensee may not accept any assignment of the borrower’s wages or salary in connection with making a mortgage loan.

Required Conduct
All licensees must follow the balloon payment prohibition in ARS 6-114 which states that a loan cannot be made in an amount of $10,000 or less for a term up to three years which is secured by a lien on an owner-occupied dwelling that has a payment greater than twice the amount of the smallest installment. The section applies only to subordinate liens (liens not in first position) executed in a refinance transaction. (ARS 6-114)

A licensee must truthfully account for funds belonging to a party to a mortgage loan transaction and only disburse funds in accordance with agreements. All appraisal and credit report fees must be kept separate from the operating funds of a licensee (no commingling) in a trust account. Excess funds collected must be returned to the payee. (ARS 6-906(C)), (ARS 6-946(C)), (ARS 6-983(C))

A licensee must reasonably supervise all employees including those mortgage originators duly licensed under the law. Licensees are required to conduct a background check on any potential employee. Employee records must include a completed and signed employment application, documents required under the Immigration Reform and Control Act of 1986, and proof that the licensee has consulted with the applicant’s most recent or next most recent employer, if any. (ARS 6-909(Q)), (ARS 6-947(P))

Discussion Scenario

Loan Funding Issues
Triple A Mortgage Corporation began doing business two years ago. They incurred a large amount of start up expenses and had not been successful in finding efficient operational procedures. Despite the operational havoc, business was going great! Their phones were ringing and potential borrowers were very receptive to the mortgage loan programs the company offered.
Jeff, the company’s accountant, ran into a problem one month with paying the company’s operational expenses. He decided to “borrow” a significant amount of funds from Triple A Mortgage Company’s trust account just for a few weeks to pay the bills. At the same time, Triple A Mortgage Company’s sales team was experiencing a high volume of closings.

The time came to disburse funds after several mortgage closings, as required by Arizona law. The closing agent failed to disburse funds for 25 agreements it entered into with Arizona residential mortgage loan customers. Triple A Mortgage Corporation was ordered to cease and desist several months later due to violation of Arizona state laws.

**Discussion Questions:**

- Which state (and federal) laws did Triple A Mortgage Company violate?
- If you are the President of Triple A Mortgage Company and you find out what Jeff has been doing, how would you react and why?
- If you were Jeff, what could you have done differently to avoid these prohibited acts?
- Discuss the impact of failing to disburse funds or untimely fund distribution on the whole mortgage process.

**Discussion Feedback**

When handling funds on behalf of a consumer for loan funding or the payment of third party services, mortgage professionals are required to manage those funds carefully. Escrow requirements are covered not only under the Arizona Revised Statutes but also under the federal Real Estate Settlement Procedures Act (RESPA).

Because escrow funds are not the property of the mortgage professional, the funds must be handled according to the instructions of their owner. By “borrowing” money for business expenses, Jeff was actually misappropriating the funds, which is not a minor offense in most jurisdictions. If the President of the company was aware of Jeff’s actions he/she would also be guilty. However, upon discovery of Jeff’s actions, if the President took action, such as termination, replacement of the funds, etc. the company’s liability could potentially be minimized.

Failing to disburse funds and mishandling escrow funds is not only a violation of the law. It also puts a black mark on the mortgage industry. Consumer trust greatly diminishes if borrowers believe that their financial matters will not be handled with diligence and care.

**Disclosures and Agreements**

**Advance Fees (ARS 6-906(C)), (ARS 6-946(C))**

If a licensee requires an advance fee to be paid in connection with an application for a mortgage banking loan or mortgage loan, there must be a written agreement. The agreement must contain information pertaining to the payment of the fee or disposition of the fee and whether the loan is finally closed or not. The agreement must define under what conditions the fee may be returned to the customer. Upfront fees being held for payment of third party services must be held in a
trust account, not the licensee’s general operating account. The licensee must keep all agreements and disburse money from the trust account as detailed in the agreement.

All documents provided by or at the expense of the applicant must be returned or transferred to any financial institution the applicant designates without additional consideration, except for fees for which the applicant has previously contracted (e.g. appraisal fee) provided that the transfer of any document is not prohibited by law.

**Required Disclosures to Investors (ARS 6-907)**
A licensee is required to provide to private investors the following before the investor pays any money into a transaction:

1. An independent statement of the value of the property upon which the lien will be placed (the subject property).
2. A copy of the preliminary title report that states the condition of title and discloses any encumbrances, assessments and liens of record on the subject property.
3. A disclosure statement which includes the following information:
   a. The name and address of the owner of the subject property
   b. Information regarding the ability of the borrower to pay
   c. A legal description or address of the subject property
   d. Any improvements on the property or any utilities which will serve the property
   e. The terms and conditions of the mortgage loan being made or sold, including the principal balance owed and the status of principal and interest payments required
   f. The terms and conditions of all liens on the property securing the mortgage loan being made or sold
   g. A statement as to whether the licensee is acting as the principal or the agent in the transaction
   h. Any additional information the Superintendent may require

The licensee has to use best efforts to verify all the information required and then must sign the statement indicating that the information is accurate. The lender must acknowledge receiving a copy of the disclosure, and the licensee must keep a copy of the acknowledgement for at least two years from the date of the mortgage loan closing.

**Compliance with Federal Regulations**
Before a licensee closes on residential real property designed principally for the occupancy of one to four families, the licensee must fully comply with federal real estate lending disclosure requirements. These include the requirements of Title I of the Consumer Credit Protection Act (15 US Code sections 1602 through 1666 – which include the Truth-in-Lending Act), the Real Estate Settlement Procedures Act (12 US Code sections 2601-2617) and all the regulations declared under those acts.

2 A private investor is defined as any investor who is not a financial institution, state or national bank, state or federal savings and loan association, state or federal savings bank, state or federal credit union, financial enterprise, licensed real estate broker or salesman, profit sharing or pension trust or insurance company. In essence, a private investor is a non-institutional investor.
Advertising (ARS 6-909(C)), (ARS 6-947(D)), (ARS 6-984(D)), (ARS 6-991.02(C, N))

Licensees may not knowingly advertise, display, distribute, broadcast or televise, in any manner any false, misleading or deceptive statement or representation with regard to rates, terms or conditions for a mortgage banking loan or a mortgage loan.

Rates and charges must be stated in a clear and concise manner.

All advertising must be done in the name of the employing entity. Mortgage loan originators are not allowed to advertise independently without using the name as it appears on the license and the license number of their employing broker or banker’s principal place of business.

If the license is in the name of a natural person, nothing in the advertisement or solicitation can imply that the license is in the name of another person or entity. Advertising does not include business cards, radio and television advertising directed at national or regional markets and promotional items, except if those items contain rates or terms in which a mortgage loan or mortgage banking loan can be obtained.

Discussion Scenario

Problematic Advertising

Marvelous Mortgage Company, a licensed mortgage broker in Arizona, mailed thousands of solicitations to Arizona residents as part of its advertising campaign. The mailers were sent to consumers who have federally-insured loans and to consumers with adjustable-rate mortgages. The mailers offered the possibility of hundreds or thousands of dollars in refunds, and many appeared to be from the federal government. Only in the small print footnote did the Marvelous Mortgage Company disclose that the true purpose of the mailer was to solicit the recipient for a home loan.

It also featured first mortgages at 1% with no points and no fees. During one period where 100 loans were reviewed, only ten borrowers actually received the 1% rate. However, each of those ten borrowers ended up paying $10,000 in points and fees and ended up paying 7.89% APR.

Finally, in big bold letters the mailer advertised “Immediate Loan Approval!”

ARS Title 6, Chapter 9 requires mortgage professionals to comply with the federal Truth-in-Lending Act and to ensure advertisements are not false, misleading or deceptive. When the Arizona Department of Financial Institutions saw this ad, it provided notice that it intended to revoke the Marvelous Mortgage Company’s license to do business in Arizona.

Discussion Questions:

- What specifically could be changed in this mailing to align it with state and federal mortgage laws?
From a consumer’s perspective, how would this mailing be misleading?

Discuss effective, legal means of advertising for mortgage products. Provide an example or two.

Discussion Feedback
Advertisements and promotional materials are a valuable method of increasing business and providing name recognition for a business. While advertisements are meant to entice and attract consumers, it is critical that they do not give misleading information or result in deceptive trade practices such as “bait-and-switch.” Language such as “immediate approval,” when no such perk exists, and promotion of loan rates/terms that are not actually available are classic examples of deceptive and misleading advertising. Additionally, giving the impression that a marketing piece is actually communication from a federal agency is outright fraud.

Mortgage professionals can ensure their advertisements meet state and federal guidelines by only including truthful statements and offering rates/terms which are available to qualified applicants. Additionally, advertisements should meet disclosure requirements; for instance, the federal Truth-in-Lending Act requires that APR and other terms are disclosed when certain trigger terms are included. Additionally, instead of just focusing on advertisement of loan products, mortgage professionals can attract consumers and differentiate themselves by highlighting things like service, experience and customer care.

Disciplinary Action

Notifications, Hearings and Appeals

Cease and Desist Orders (ARS 6-137)
If it appears to the Superintendent that any licensee has engaged, is engaging or is about to engage in any act, practice or transaction which constitutes a violation of the regulations or rules or a violation of any federal insurance regulation, the Superintendent may issue an order directing the licensee to cease and desist from engaging in the act and to take appropriate affirmative action within a reasonable period of time as determined by the Superintendent.

An order issued by the Superintendent under these circumstances becomes effective at the time it is served and remains effective and enforceable unless removed by the Superintendent or a reviewing court.

A licensee may request a hearing, and after requesting the hearing, may move that the order be stayed or modified pending the hearing. If the order is not stayed or modified or the motion is not acted on within ten days, the person may apply to the superior court for an order for relief.

The Superintendent may apply to the superior court for an injunction keeping the licensee from engaging in the act, practice or transaction. Upon proof, the court can grant without bond a temporary restraining order, preliminary injunction or permanent injunction, or the Superintendent can apply to the court for an order granting additional relief.
An order that is issued by the Superintendent to a licensee that has engaged or is engaging in a violation that is related to unlicensed activity is open to the public.

**Hearings and Judicial Review**
The Superintendent or an administrative law judge may conduct hearings, including hearings relating to orders of the Superintendent granting, denying, revoking or suspending a license. A final decision of the Superintendent is subject to judicial review if the licensee seeking review files with the superior court in Maricopa County.

**Suspension, Revocation, and Rescission of Licenses**

The Superintendent may suspend or revoke a license to a licensee who is indicted or informed against for forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or a similar offense. A certified copy of the information, indictment, or other evidence of the indictment must be filed with the Superintendent. (ARS 6-905(B))

If the licensee is not a natural person, the license can be suspended or revoked if an officer, director, member, partner, trustee, employee, while acting in the course of the mortgage licensee’s business, or a person entitled to vote more than 20% of the outstanding voting shares of the licensee acted or failed to act in a manner as would be cause for suspending or revoking a license if the licensee had been an individual. (ARS 6-905(C))

A licensee who is a natural person may have its license suspended or revoked if an employee of the licensee is found to have acted in any of the aforementioned ways while acting as an employee.

Please see the section Grounds for Denying a License for additional causes for license suspension or revocation.

**Penalties and Fines**

Violations of the law are subject to both civil and criminal penalties.

**Civil Penalties (ARS 6-132)**
Title 6, Chapter 1, Article 3 of the Arizona Statutes empowers the Superintendent to assess civil penalties for violations of the Act. The Superintendent can charge a penalty of up to $5,000 against a person for knowing violations of any provision of the Title or of any rule or order adopted under the Title. This includes violations of the Arizona Administrative Code where the Superintendent’s rules are published.

Fines can also be imposed on any officer, director, employee, agent or other person who participates in conduct found to violate the law.

If an individual or entity receives a fine, the fine must be paid in full within 30 days. If it is not paid in full within 30 days, the Attorney General may bring an action in the superior court against the individual or entity. If the superior court finds the individual or entity knowingly
violated a section of the statute, the court may enforce the civil penalty imposed by the Superintendent or may impose a different civil penalty. The penalty imposed by the court may be the same or different than the fine imposed by the Superintendent.

Each day of a violation constitutes a separate offense.

Any person who violates any order or injunction issued by a court may face a civil penalty of up to $10,000 for each violation. This fine is in addition to any other penalty or remedy for contempt of court. The Attorney General acting in the name of Arizona may petition for recovery of civil penalties. (ARS 6-136)

**Criminal Penalties (ARS 6-133)**
The Superintendent does not criminally prosecute licensees. When criminal prosecution is pursued, it is the state Attorney General who prosecutes. The Superintendent will work in conjunction with the Attorney General in such matters including turning over the necessary records and examination findings.

If a person knowingly violates any provision of the Chapter or Rule, and a penalty is not specifically provided for in the statute, he/she is guilty of a Class 6 felony, and just like the civil penalty, each day of violation constitutes a separate offense.

If an individual knowingly makes a false statement, misrepresentation or false certification in an application, record, report, or other document required to be filed under the statute, he or she is guilty of a Class 3 felony. For a conviction, the individual must have made the false statement with intent to deceive. An honest mistake will not result in a conviction under the statute.

Any person who knowingly makes a material misstatement or omission with intent to injure or defraud a financial institution or to deceive the Superintendent is guilty of a Class 3 felony.

**Arizona Unique State Test Areas**

**Title 33: General Purpose/Legal Effects of Mortgages, Deeds of Trust, and Security Agreements**

**Conveyances and Deeds (ARS 33-402)(-406)**
A conveyance or deed passes ownership interest in a property from a grantor (present owner) to a grantee (owner to be). All conveyances for a term of more than one year must be in writing, signed by the one who is conveying the property and must be acknowledged (notarized). If a conveyance has not been properly notarized, but has been recorded for longer than ten years, it is considered properly notarized.

There are three forms of conveyance described in ARS Title 33 regarding Property.

1. To quit claim – “For the consideration of ____________, I hereby quit claim to ___________ (the grantee) all my interest in the following real property (describing it).”
Effect is to convey whatever interest the grantor has to the grantee.

2. To convey – “For the consideration of __________, I hereby convey to __________ (the grantee) the following real property (describing it).”

Effect is to convey ownership of the property without any warranties about the title itself.

3. To convey and warrant – “For consideration of __________, I hereby convey to __________ (the grantee) the following real property (describing it) and I warrant the title against all persons whomsoever (or other words of the warranty).”

Effect is to convey clear ownership to the grantee.

A person may gain rights to property without formal conveyance in the case of adverse possession. When someone has consistently used the rights in a property without notice to cease for ten years, an “easement of prescription” may exist which would entitle the person who has adversely possessed the property to rights in the property.

**Mortgages (ARS 33-701)(-715)**

A mortgage is a lien on a property that secures a loan and is paid in installments over time. Any interest in real property capable of being transferred may be mortgaged. A mortgage does not entitle the mortgagee (lender) to possession of the property unless authorized by the express terms of the mortgage. Arizona is a lien state meaning that, when a mortgage is placed on a property, the mortgagor (borrower) retains title to the property and has simply put an “encumbrance” on the property to secure a debt owed.

A mortgage may be created, renewed or extended only by formal writing and must be acknowledged, certified and recorded. A mortgage or deed of trust that is given as security for a loan made to purchase real property has priority over all other liens and encumbrances that are incurred against the purchaser before acquiring title to the real property.

**A deed of trust** (also known as a trust deed) is an executed document signed in conformity with Arizona law conveying property to a qualified trustee or trustees to secure the performance of a contract. The “trust property” is any legal, equitable, leasehold or other interest in real property which is capable of being transferred, whether or not it is subject to any prior mortgages, trust deeds, contract for conveyance of real property or other liens or encumbrances.

**Affidavit of Affixture (ARS 33-1501)**

For a manufactured home to be financed as real property, a legal document referred to as an affidavit of affixture must be recorded. The affidavit of affixture surrenders to the Motor Vehicle Department the vehicle identification numbers that a manufactured home receives at the factory and legally attaches the manufactured home to a real property parcel. Once the affidavit of affixture is filed, the home can no longer legally be removed from the land.

For lenders it is very important that the affidavit of affixture is recorded and recorded properly. Otherwise, the lien against the property will be against raw land only.
**Foreclosure Processes (ARS 33-721)(-730)**

Foreclosure is the legal process by which a lender forces the sale of a mortgaged property because the borrower has not made payment according to the terms of the note to which the mortgage is tied. The following provides a general overview of the Arizona foreclosure process.

Ownership of Arizona properties is held in title by means of a trust deed. A trust deed or deed of trust gives a beneficial interest in a property to the lender by means of a trust until payment in full is made for all liens against the property. Arizona law permits mortgages to serve as liens upon real property and for judicial foreclosures to occur through the courts. However, due to the “power of sale” provisions within most deeds of trust, non-judicial foreclosure is the primary mechanism used to foreclose on a property.

A judicial foreclosure requires a process that goes through the court systems. Because those systems often get backed up, a “non-judicial” foreclosure is sometimes seen as more efficient. The lender may begin the non-judicial foreclosure process when a borrower is first late on payments and the process can take as little as 90 days.

The lender must appoint a trustee to handle the appropriate paperwork. A trustee is the individual or entity that has the legal right to sell the home in a trustee sale. When the deed of trust is executed by the borrower/owner, the borrower/homeowner is the trustor. The trustor places into trust a beneficial interest in the property to the beneficiary or the lender. The deed of trust is tied to the note or promise to pay that is executed at the same time as the deed of trust. If the trustor defaults on the note, the deed of trust authorizes the trustee to sell the property on behalf of the lender.

Foreclosure requires a notice or advertisement of sale to be placed in the newspaper where the property is located. This must run once a week for at least four weeks.

The notice of sale must also be posted at the property, and the sale must be recorded by the country recorder within 20 days before the proposed sale date. If the homeowner has not reinstated the loan before the sale, the trustee will conduct the home sale. If the mortgaged property does not sell for an amount sufficient to satisfy the judgment, under a deed of trust, in many cases, a deficiency judgment cannot be filed against the trustor. Under a judicial foreclosure, a deficiency judgment may be filed against the mortgagor.

**Liens (ARS 33-901)(-1076)**

A lien is a legal claim or hold on a property making it collateral against money owed to another person. A lien secures the payment of a debt. Arizona law states that a nonconsensual lien may not be recorded unless the lien is accompanied by an order or judgment from a court authorizing the filing of the lien.

A consensual lien is a lien the parties agree to by contract. For example, a mortgage is a consensual lien in exchange for the property. A nonconsensual lien is placed on a property when there is a debt owed by the property owner and the property owner doesn’t receive anything in exchange for that lien.
In Arizona, a nonconsensual lien is not legally valid unless the lien is accompanied by an order or judgment from a court authorizing the filing of the lien. An order need not be obtained if the lien is filed by a government entity or political subdivision or agency, a validly licensed utility or water delivery company, a mechanics’ lien claimant or an entity regulated by the real estate laws.

Even though Arizona statute explains that liens are only valid with a court order (or when filed by the exempted entities), individuals and other entities still attempt to file liens against property. When a property owner questions the validity of the lien, he/she may request the help of the County Attorney or the Attorney General.

The property owner may request that the County Attorney or Attorney General remove these invalid liens. This removal is known as “non-judicial removal” of the liens. Both the creditor and the homeowner will receive notice of this invalid lien.

A nonconsensual lien that is recorded with the county recorder does not affect the marketability of title unless the lien was recorded by an authorized entity. The sale of any lot or parcel of property which is subject to a lien can be voided by the buyer. The exception is if there is a provision in the lien instrument assuring that the buyer will receive title free of the lien upon completion of all payments and terms. The buyer’s right to void the sale may not be exercised if he/she has received title, free of the lien. The buyer’s right to void the sale is in addition to any other legal or equitable remedy.

Arizona has an automatic Homestead Exemption which protects up to $150,000 of equity in a primary residence. The Homestead Exemption protects the owner(s) of a property against personal judgments and other involuntary liens up to the $150,000. Only one exemption may be held by a married couple. It does not require the recording of any legal document.

**Title 33, Chapters 6, 6.1, and 16: Mortgages, Deeds of Trust, and Planned Communities**

Title 33, Chapters 6, 6.1, and 16 discuss mortgages, deeds of trust, and planned communities, respectively. Chapter 6 gives the basics of what a mortgage is, interests which may be mortgaged, the effect of a mortgage as a lien, and more. To start off, the law defines a mortgage as:

- *Every transfer of an interest in real property, other than in trust, or a trust deed subject to the provisions of chapter 6.1 of title 33, made only as a security for the performance of another act, is a mortgage.*

Title 33 also goes on to discuss the foreclosure requirements in Arizona. The statute covers information ranging from the state as parties to foreclosure actions in a court case to limitation on a deficiency judgment on a mortgage or deed of trust as collateral for consumer goods.

In chapter 6.1, the regulation lists the general provisions for deeds of trust. A “trust deed” or “deed of trust” means: “a deed executed in conformity with this chapter and conveying trust property to a trustee or trustees qualified under section 33-803 to secure the performance of a contract or contracts, other than a trust deed which encumbers in whole or in part trust property
located in Arizona and in one or more other states.” (ARS 33-801(8)) Finally, Chapter 16 gives an overview of planned communities in Arizona. According to the regulation, a planned community is:

“A real estate development which includes real estate owned and operated by a nonprofit corporation or unincorporated association of owners that is created for the purpose of managing, maintaining or improving the property and in which the owners of separately owned lots, parcels or units are mandatory members and are required to pay assessments to the association for these purposes. Planned community does not include a timeshare plan or a timeshare association.” (ARS 33-1802(4))

For more information regarding Title 33 and its provisions, please check: http://www.azleg.state.az.us/arizonarevisedstatutes.asp?title=33

Obligations Between Principal and Agent (Mortgage Loan Originators)

All of the regulations, rules and laws in the world will not guarantee that a mortgage loan originator will act ethically. In the end, the originator must understand the obligation he/she has to the other parties of a transaction.

The originator is in a unique position because he/she has an obligation not just to the borrower, but also to the source of the money being lent whether that is the company he/she works for, a wholesale or correspondent lender or the secondary market itself. Every loan must be originated with both the best interests of the borrower and the lender in mind.

The originator is obligated to both the borrower and lender to:

- Know and adhere to all regulations and rules, both federal and state
- Be honest and truthful at all times
- Be committed to full disclosure regarding every aspect of the loan
- Communicate frequently giving any bad news quickly
- Pursue education opportunities to be excellent
- Take care to details and follow up
- Act professionally at all times

Originators are many times the only people in the lending world that deal directly with the borrower. They are the eyes and ears of the industry. An originator needs to develop the sense for when more questions need to be asked for the benefit of both the borrower and the investor.

In a world where many believe that ethics can be regulated, it is up to the mortgage industry to attract, train and develop the very best originators possible, originators that understand the important role they play in the lives of their clients and in the industry as a whole.
Discussion Scenario

Consumer Complaint Letter

March 16, 2009
State of Arizona
Department of Financial Institutions

To Whom It May Concern:

On February 2, 2009 I telephoned the Marvelous Mortgage Company of Anytown, Arizona. I spoke to a Robert DoGood. On that day, Mr. DoGood advised me that his company was one of the most competitive in the state. He told me the rate to refinance my mortgage for 15 years would be 6.625% and zero points. He also told me that based upon the information I gave and my credit report that I would also qualify for this loan with ease – “slam dunk” I believe were his exact words.

A sudden death in my family made it impossible for me to see Mr. DoGood until February 13th. On the morning of the 13th, I called Mr. DoGood to confirm our appointment and to verify that my rate would still be 6.625% with zero points – which he indeed confirmed. That evening when Mr. DoGood arrived at my home for our appointment (late), he advised me that turmoil in the market that afternoon caused the rates to go up to 6.75%. We proceeded to complete the application anyway.

After apologizing for his lateness, Mr. DoGood quickly completed the application, told me to review the documents and disclosures he asked me to sign, and because he was unable to make copies of our originals at that time, he said he would have his processor forward my originals back to me with some additional papers.

I left a message for Mr. DoGood on February 27th. When he returned my call, I asked how everything was going and he said “fine.” I indicated that I had read that rates were going up and I was relieved because I knew I had a 30-day lock. I asked when the appraisal was going to be done and he said that it had been ordered but that the appraisers were quite busy this time of year. He said he would check on it, but not to worry, I would be closing soon.

On March 16th, Mr. DoGood advised me that my rate would be 7.375%. I told Mr. DoGood that wasn’t what I was told my rate would be and that I wanted my money back. He said that the fees he collected from me were already spent and that my rate was “floating.” He said he would forward a copy of the appraisal to me but that no money would be refunded.

I am sick about the loss of money as well as the time I have wasted, especially now that rates are almost a full point higher! Can you please help me get my money back?

Thank you,
I.M. Not Happy
## Marvelous Mortgage Company Loan Log

<table>
<thead>
<tr>
<th>Date</th>
<th>Notes to processor</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/13/09</td>
<td>Linda – copy attached original documents and return to borrower. Open file and send GFE, TIL and broker agreement. Lock loan at Investor A at 6.625% and zero points. (RD)</td>
</tr>
<tr>
<td>2/16/09</td>
<td>Opened file, ordered appraisal, sent originals back to borrower. (LS)</td>
</tr>
<tr>
<td>2/18/09</td>
<td>Credit report back – looks OK – alt. doc, should be ready to go to UW as soon as I get appraisal. (LS)</td>
</tr>
<tr>
<td>2/18/09</td>
<td><strong>Notes to processor</strong>&lt;br&gt;Linda – lock-in fax confirmation to Investor A shows busy, called Stan in secondary marketing dept., he shows NO LOCK! Rates have moved…will have to float. Notice we didn’t send the GFE/TILA/Retention …back date disclosures but do not send lock confirmation or retention agreement. (RD)</td>
</tr>
<tr>
<td>2/27/09</td>
<td><strong>Notes to processor</strong>&lt;br&gt;Linda – borrower called on appraisal. What is status? (RD)</td>
</tr>
<tr>
<td>2/27/09</td>
<td><strong>Notes to LO</strong>&lt;br&gt;Rob – I called Fabulous Appraisal – Betty said they let their clerical person go because of mistakes, couldn’t find order. Will send Tom out ASAP. Rates are rising and loan is still not locked yet. (LS)</td>
</tr>
<tr>
<td>3/4/09</td>
<td>Loan submitted to Investor A (LS)</td>
</tr>
<tr>
<td>3/6/09</td>
<td><strong>Notes to LO</strong>&lt;br&gt;Rob – loan approved – rate is floating; need to send approval letter. (LS)</td>
</tr>
<tr>
<td>3/6/09</td>
<td><strong>Notes to processor</strong>&lt;br&gt;Send approval out dated March 9 at original rate and zero points. Will advise borrower we are unable to close…don’t see lock agreement in file (RD)</td>
</tr>
<tr>
<td>3/11/09</td>
<td>Advised borrower, investor needed 48 hours notice to close, plus loan has to fund within rescission period. Only thing we can do is wait until original “lock” expires, then get the best market price. Will call borrower on 3/16/09. (RD)</td>
</tr>
</tbody>
</table>

### Discussion Questions:

Refer to the Consumer Complaint Letter. How do you think this complaint might be:

- Handled by the regulator?
- Handled by Marvelous Mortgage Company?

Refer to the Marvelous Mortgage Company Loan Log. How could better communication have affected or prevented the complaint? What about follow-up?
Refer to the Consumer Complaint Letter and Loan Log. What potential perceptions have been created by the interaction between the consumer and the mortgage company?

- Perception of the regulator
- Perception of the consumer
- Perception of the mortgage company owner/management

Do you think the mortgage loan originator’s actions were ethical or unethical? What most influenced your decision?

**Consumer Complaint Letter: The Potential Outcome**

It is a possibility that a complaint letter such as this could motivate the regulator to investigate the mortgage broker company. While Rob DoGood’s actions might not be standard operating procedure for all mortgage loan originators at his company, I.M. NotHappy’s complaint certainly puts the company at risk for being put under the microscope.

The company would be wise to take a close look at its policies and procedures pertaining to rate locks and floating rates. Management may need to retrain staff and ensure mortgage loan originators are clear on following borrower requests to lock an interest rate.

Based on discrepancies between the consumer’s complaint letter to the regulator and the notes in the Loan Log, it appears that Rob DoGood did a poor job of communicating with I.M. NotHappy and, in fact, may have lied about certain aspects of the loan process. Appropriately advising the customer about the rate lock situation, and possibly the appraisal, seem questionable.

Ultimately the mortgage loan originator handled the rate lock in a sloppy and unethical manner. Mistakes happen, but the customer should have been advised immediately when it was discovered that the rate was not locked as expected. The telling event is I.M. NotHappy’s description of a call placed to Rob DoGood on February 27th – the mortgage loan originator was well aware the rate was floating based on the Loan Log, but the customer was under the impression the rate was locked.

**Title 11, Chapter 8: Development Fees**

Title 11 of the Arizona Revised Statutes outlines the development fees for the state of Arizona. Most notably, it details the form for each deed evidencing a transfer of title and any contract relating to the sale of real property.

**Affidavit of Legal Value**

Any time a property in Arizona is sold or transferred, an affidavit of legal value is recorded at the same time. The affidavit is a statement by the buyer and seller or their agents regarding the details of the transaction. The affidavit certifies the following information:

- The name and address of the buyer and seller
- The name and address where a tax statement can be sent
- The complete legal description of the property
- The address of the property
- The date of sale
- The total consideration paid for the property, the amount of cash down payment
- Whether or not the type of financing included cash, a new third party loan, a new loan from the seller, an assumption of an existing loan or an exchange or trade of property
- Whether or not the estimated market value of personal property received by the buyer equals 5% or more of the total consideration
- The assessor’s parcel number
- The conditions of the transaction including the relationship, if any, of the parties
- The use and description of the property, and, in the case of a residential dwelling, whether the property is to be owner-occupied or rented
- The name and address of the person to contact regarding information contained on the affidavit

(ARS 11-1133)

The county recorder will refuse to record any deed if a complete affidavit of legal value is not part of the recording package. There are certain cases that are exempted.

The affidavits of value are used to calculate the assessment value of properties within the area of the sold properties.

For further information you can find more information on Title 11 at:
http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=11

**Title 12, Chapter 5: Limitations of Actions**

Title 12, Chapter 5 of the Arizona Revised Statutes outlines the limitations of actions on real property. The section outlines the two-, three-, and five-year limitations on any action to recover real property from a person in peaceable and adverse possession under title or color of title.

For more information of the Limitations of Actions please reference:
http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=12

**Title 32, Chapter 20: Sale of Subdivided Lands**

The sale of subdivided lands is outlined in this section of the law. The law defines a subdivision or subdivided lands as:

- Means improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests
- Includes a stock cooperative, lands divided or proposed to be divided as part of a common promotional plan and residential condominiums

(ARS 32-2101(56)(a-b))

However, the definition does not include:

- Leasehold offerings of one year or less
- The division or proposed division of land located in this state into lots or parcels each of which is or will be thirty-six acres or more in area including to the centerline of dedicated roads or easements, if any, contiguous to the lot or parcel.
- The leasing of agricultural lands or apartments, offices, stores, hotels, motels, pads or similar space within an apartment building, industrial building, rental recreational vehicle community, rental manufactured home community, rental mobile home park or commercial building.
- The leasing of agricultural lands or apartments, offices, stores, hotels, motels, pads or similar space within an apartment building, industrial building, rental recreational vehicle community, rental manufactured home community, rental mobile home park or commercial building.
- The subdivision into or development of parcels, plots or fractional portions within the boundaries of a cemetery that has been formed and approved pursuant to this chapter.

(ARS 32-2101(56)(c))

For more information on the sale of subdivided lands please refer to:
http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=32

**Title 42, Chapter 15: Assessment of Permanently Affixed Mobile Homes**

According to the state of Arizona, a permanently affixed mobile home is one that is installed on real property that is owned by the owner of the mobile home. (ARS 42-15201(2)) Only when a mobile home has been permanently fixed to real property and an affidavit of affixture has been recorded by the state is it considered real property.

More information on permanently affixed mobile homes can be found at:
http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=42.

**Title 42, Chapter 17: Tax Levies, Tax Payments, Public Improvements, and Environmental Quality**

Title 42, Chapter 17, Article 4 of Arizona mortgage law reviews the process for which governing bodies of each county, city, town, community college district and school district fix, levy and assess the amount of money to be raised from primary and secondary property taxation each year. The governing bodies determine this on or before the third Monday in August each year.
They also designate the amounts to be levied for every action in their budget. Finally, they fix and determine a primary property tax rate and a secondary property tax rate, each rounded to four decimal places on each $100 of taxable property shown by the finally equalized valuations of property, less exemptions, that appear on the tax rolls for the fiscal year and that when extended on those valuations will produce, in the aggregate, the entire amount to be raised by direct taxation for that year. (ARS 42-17151)

There are limits to the levies these counties, municipalities, and schools can impose. The property tax oversight commission determines the criteria for any exceptions to levy limits.

Within three days after the final levies are determined for a county, city, town or community college district, the chief county fiscal officer shall notify the property tax oversight commission of the amount of the primary property tax levied.

Tax assessments are completed by the county board of supervisors for the estimated amounts on the taxable property in a county. However, primary property taxes may not be assessed in any tax year against real property, improvements and personal property classified as class three. Arizona law defines class three as:

For purposes of taxation, class three is established consisting of real and personal property and improvements to the property that are used for residential purposes, that are not otherwise included in class one, two, four, six, seven or eight and that are valued at full cash value. The homesite that is included in class three may include:

- Up to ten acres on a single parcel of real property on which the residential improvement is located.
- More than ten, but not more than forty, acres on a single parcel of real property on which the residential improvement is located if it is zoned exclusively for residential purposes or contains legal restrictions or physical conditions that prevent the division of the parcel.
  - For purposes of this section, "physical conditions" means topography, mountains, washes, rivers, roads or any other configuration that limits the residential usable land area.

(ARS 42-12003)

There are a few things to note about tax liens in Arizona:

- A tax that is levied on real or personal property is a lien on the assessed property
- A tax that is levied against personal property of a person who owns real property of a value of less than two hundred dollars in the county is a personal liability of the property owner, in addition to being a lien against the property
- The lien:
  - Attaches on January 1 of the tax year.
  - Is not satisfied or removed until one of the following occurs:
- The taxes, penalties, charges and interest are paid.
- Title to the property has finally vested in a purchaser under a sale for taxes
- A certificate of removal and abatement has been issued pursuant to section 42-18353.

- Is prior and superior to all other liens and encumbrances on the property, except:
  - Liens or encumbrances held by this state.
  - Liens for taxes accruing in any other years.

- For taxpayers valued by the department pursuant to section 42-14151, the lien shall attach to all property, real and personal, regardless of the taxing jurisdiction where such property is located. Such lien will attach to the entire system and may not be released by payment of a portion of the tax liability relating to a single portion or component of the system.

- If a political subdivision of this state acquires title to property after December 31, 1998, any lien for delinquent taxes on the property:
  - Is not abated, extinguished, discharged or merged in the title to the property unless approved by the county board of supervisors.
  - Is enforceable in the same manner as other delinquent tax liens.

**Title 48, Chapter 4: Municipal Improvement Districts**

Title 48, Chapter 4, outlines municipal improvement districts. When the public interest or convenience requires, the city or town of a municipality may order the laying out, opening, extending, widening, straightening or closing up of any public street, lane, subway, court, place or other areas within the municipality. It may also acquire, by condemnation, any property necessary or convenient for that purpose. (ARS 48-502)

For more information on public improvements, go to: [http://www.azleg.state.az.us/arizonarevisedstatutes.asp?title=48](http://www.azleg.state.az.us/arizonarevisedstatutes.asp?title=48).

**Arizona Administrative Code Title 20, Chapter 4**

Title 20 of the Arizona Administrative Code outlines the administrative rules for the Department of Financial Institutions. The code pertaining to mortgage brokers can be found in Article 9. Within Article 9, it lists the requirements for such things as a person overseeing a branch office, notification of a change of address, and recordkeeping requirements. In particular, the Code goes into great detail concerning the recordkeeping requirements for a mortgage broker and also mentions information regarding hazardous waste management.

**Recordkeeping Requirements (R20-4-917)**

Recordkeeping is required for each licensee. A licensee is allowed to use a computer or mechanical recordkeeping system with prior approval from the Superintendent. Written records
are not necessary if an approved computer or mechanical system is being used, however any requested information must be generated quickly and accurately from whichever system is used. If the recordkeeping system changes in fundamental structure (i.e. from computer-based back to paper-based or from a computer system to a mechanical system), the Superintendent must also be made aware of the change.

Records maintained by mortgage brokers must include the following:

- A list of all executed loan applications or executed fee agreements that include the following information:
  - Applicant's name
  - Application date
  - Amount of initial loan request
  - Final disposition date
  - Disposition (funded, denied, etc.)
  - Name of loan officer

- A record, such as a cash receipts journal, of all money received in connection with a mortgage loan including:
  - Payor's name
  - Date received
  - Amount
  - Receipt's purpose, including identification of a related loan, if any

- A sequential listing of checks written for each bank account relating to the mortgage broker business, such as a cash disbursement journal, including:
  - Payee's name
  - Amount
  - Date
  - Payment's purpose, including identification of a related loan, if any

- Bank account activity source documents for the mortgage broker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices

- A trust subsidiary ledger for each borrower that deposits trust funds showing:
  - Borrower's name or co-borrowers' names
  - Loan number, if any
  - Amount received
  - Purpose for the amount received
  - Date received
- Date deposited into trust account
- Amount disbursed
- Date disbursed
- Disbursement's payee and purpose
- Balance

- A file for each application for a mortgage loan containing:
  - The agreement with the customer concerning the broker's services, whether as a loan application, fee agreement, or both
  - Document showing the application's final disposition, such as a settlement statement, or a denial or withdrawal letter
  - Correspondence sent, received, or both by the licensee
  - Contract, agreement, and escrow instructions to or with any depository
  - Documents showing compliance with the Consumer Credit Protection Act's (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act's (12 U.S.C. §§ 2601 through 2617) disclosure requirements, to the extent applicable
  - If the loan is funded by an investor that is not a financial institution, an enterprise, a licensed real estate broker or salesman, a profit sharing or pension trust or, an insurance company, the documents provided to the investor under A.R.S. § 6-907, a copy of the executed note and executed deed of trust or mortgage, and any assignment by the broker to the investor
  - If the loan is closed in the mortgage broker's name, a copy of all closing documents including: closing instructions, any applicable rescission notice, HUD-1 settlement statement, final Truth-in-Lending disclosure, executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee
  - Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee

- Samples of every piece of advertising relating to the mortgage broker's business in Arizona

- Copies of governmental or regulatory compliance reviews

- If the licensee is not a natural person, a file containing:
  - Organizational documents for the entity
  - Minutes
  - A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date
  - Annual report, if required by law
• If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction

• If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal, or other final order disposing of the action

• If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them

Record reconciliation requirements vary based on the number of transactions completed in the prior calendar quarter. If ten or fewer transactions occurred, the licensee should reconcile and update all records at least once each calendar quarter. If more than 10 transactions occurred during the prior calendar quarter, the licensee should reconcile and update records monthly. In addition to reconciling each trust bank account, a licensee must verify each trust balance to each trust subsidiary ledger at each reconciliation.

Every mortgage broker shall maintain original documents or clearly legible copies of all mortgage loan transactions for not fewer than five years from the date of the mortgage loan closing. In cases where a loan application did not result in the making of a loan, the mortgage loan’s closing date is either the date a licensee receives a written cancellation notice from the applicant or the date a license mails written notice to an applicant that the application has been denied.

For more information, please go to: http://www.azsos.gov/Public_services/Title_20/20-04.htm.
Overview of Arizona Mortgage Laws

Appendix

- Arizona Association of Realtors Purchase Agreement