

Introduced by

Industry and Business Committee

(At the request of the Department of Financial Institutions)

1 A BILL for an Act to create and enact chapter 13-12 of the North Dakota Century Code, relating  
2 to residential mortgage lenders; to amend and reenact sections 13-04.1-01, 13-04.1-02.1,  
3 13-04.1-03, 13-04.1-08, 13-04.1-08.1, 13-04.1-09, 13-04.1-09.3, 13-04.1-10, 13-04.1-13,  
4 13-04.1-14, and 13-04.1-17 of the North Dakota Century Code, relating to money brokers; to  
5 repeal section 13-04.1-16 of the North Dakota Century Code, relating to call reports; to provide  
6 a penalty; and to provide for application.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 13-04.1-01 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **13-04.1-01. Administration.**

11 The department of financial institutions shall use its facilities to administer and enforce this  
12 chapter. ~~Any person or persons delegated to administer this chapter may not have financial-~~  
13 ~~interests directly or indirectly in any business which is subject to this chapter.~~ The department  
14 has the power to promulgate rules and regulations having the force and effect of law,  
15 reasonably necessary to carry out the provisions of this chapter, in accordance with chapter  
16 28-32. Any hearing held and any orders issued pursuant to this chapter must be in accordance  
17 with chapter 28-32. In addition to those powers set forth in chapter 28-32, the department has  
18 additional powers as set forth in this chapter.

19 **SECTION 2. AMENDMENT.** Section 13-04.1-02.1 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **13-04.1-02.1. Entities exempted from licensing requirements.**

22 This chapter does not apply to:

- 23 1. Banks;  
24 2. Credit unions;

Sixty-eighth  
Legislative Assembly

- 1        3.    Savings and loan associations;
- 2        4.    Insurance companies;
- 3        5.    Residential mortgage lenders licensed under chapter 13-12;
- 4        6.    Individuals licensed under chapter 13-10 solely pursuant to the individual's official
- 5            duties as a mortgage loan originator;
- 6        6-7.   State or federal agencies and employees of state or federal agencies solely pursuant
- 7            to the individual's official duties as an employee of the state or federal agency;
- 8        7-8.   Institutions chartered by the farm credit administration;
- 9        8-9.   Trust companies;
- 10       9-10.   Any other person or business regulated and licensed to lend money by the state of
- 11            North Dakota;
- 12       10-11.   A real estate broker, broker, or a real estate salesperson as defined in section
- 13            43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real
- 14            estate sold by the real estate broker, broker, or real estate salesperson;
- 15       11-12.   Any person, retail seller, or manufacturer providing or arranging financing for its own
- 16            property or inventory held as a normal course of business, or to leases on any real
- 17            property;
- 18       12-13.   A bona fide pawnbrokering transaction made by a pawnbroker licensed by a North
- 19            Dakota county or municipality;
- 20       14.    A certified development corporation that qualifies as a nonprofit entity under section
- 21            501(c)(3) of the federal Internal Revenue Code [26 U.S.C. 501(c)(3)] in the offers of:
- 22            a.    Loan products primarily limited to the small business administration, United
- 23            States department of agriculture, or other government loan products; or
- 24            b.    Nongovernmental loan products that are limited to loans to promote community
- 25            development or home ownership, and these loans are offered with favorable
- 26            terms including an interest rate at or below the wall street journal prime rate and
- 27            loan fees of less than a quarter percent of the loan origination balance; or
- 28       13-15.   A nonprofit corporation that qualifies as a nonprofit entity under section 501(c)(3) of
- 29            the Internal Revenue Code [26 U.S.C. 501(c)(3)] which is not primarily in the business
- 30            of soliciting or brokering loans, if the nonprofit corporation makes five or fewer loans in
- 31            a given calendar year, makes these loans to promote community development or

1 home ownership, and offers these loans on favorable terms, including an interest rate  
2 at or below the wall street journal prime rate and loan fees of less than a quarter  
3 percent of the loan origination balance.

4 **SECTION 3. AMENDMENT.** Section 13-04.1-03 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **13-04.1-03. Application for money broker license.**

7 Every application for a money broker license or branch registration, or for a renewal thereof,  
8 must be made upon forms designed and furnished by the department of financial institutions  
9 and must contain any information which the department shall deem necessary and proper. A  
10 branch registration that constitutes a net branch or net branching arrangement is prohibited.  
11 The department may further require any ~~application~~ applicant to provide additional information  
12 which is not requested on the application form. The applicant must register with the North  
13 Dakota secretary of state if so required.

14 **SECTION 4. AMENDMENT.** Section 13-04.1-08 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **13-04.1-08. Revocation of license - Suspension of license - Surrender of license.**

- 17 1. The commissioner may issue ~~and serve~~ upon any licensee an order suspending or  
18 revoking a licensee's license if the commissioner finds that:
- 19 a. The licensee has failed to pay the annual license fee under this chapter or any  
20 examination fee imposed by the commissioner under the authority of this chapter.
  - 21 b. The licensee, either knowingly or without the exercise of due care to prevent the  
22 same, has violated any provision of this chapter or any regulation or order  
23 lawfully made pursuant to and within the authority of this chapter.
  - 24 c. Any fact or condition existing at the time of the original application for such  
25 license which clearly would have warranted the department of financial  
26 institutions in refusing originally to issue such license.
  - 27 d. The licensee has failed to maintain the required bond.
  - 28 e. The licensee has failed to maintain registration with the secretary of state if so  
29 required.
- 30 2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.

- 1           3. If no hearing is requested within twenty days of the date the order is served upon the  
2           licensee, ~~or if the order is final.~~ If a hearing is held and the commissioner finds that the  
3           record so warrants, the commissioner may enter a final order. The final order shall be  
4           final suspending or revoking the license.
- 5           4. If the commissioner finds that probable cause for revocation of any license exists and  
6           that enforcement of the chapter requires immediate suspension of such license  
7           pending investigation, it may, ~~upon written notice,~~ enter an order suspending such  
8           license for a period not exceeding the time required to serve upon the licensee written  
9           notice plus sixty days, pending the holding of a hearing as prescribed in this chapter.
- 10          5. Any licensee may surrender the licensee's license by ~~delivering it to~~providing the  
11          department of financial institutions with written notice of its surrender, but such  
12          surrender does not affect the licensee's civil or criminal liability for acts committed prior  
13          thereto.

14          **SECTION 5. AMENDMENT.** Section 13-04.1-08.1 of the North Dakota Century Code is  
15          amended and reenacted as follows:

16          **13-04.1-08.1. Suspension and removal of money broker officers and employees.**

- 17          1. The commissioner of financial institutions may issue ~~and serve~~ upon a current or  
18          former money broker officer or employee and upon the licensee involved an order  
19          stating:
- 20               a. That the current or former officer or employee is ~~willfully~~ engaging or has ~~willfully~~  
21               engaged in any of the following conduct:
- 22                       (1) Violating a law, rule, order, or written agreement with the commissioner.  
23                       (2) Engaging in harassment or abuse, the making of false or misleading  
24                       representations, or engaging in unfair practices involving lending activity.  
25                       (3) Performing an act of commission or omission or practice which is a breach  
26                       of trust or a breach of fiduciary duty.
- 27               b. The term of the suspension or removal from employment and participation within  
28               the conduct or the affairs of a ~~money broker~~financial corporation, financial  
29               institution, credit union, or any other entity licensed by the department of financial  
30               institutions.
- 31          2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.

- 1           3. If a hearing is not requested within twenty days of the date the order is served, ~~or if the~~  
2           order shall be final. If a hearing is held and the commissioner finds that the record so  
3           warrants, the commissioner may enter a final order. The final order shall be final  
4           suspending or removing the current or former employee. The current or former officer  
5           or employee may request a termination of the final order after a period of no less than  
6           three years.
- 7           4. A contested or default suspension or removal order is effective immediately upon  
8           ~~service of the final order~~issuance on the current or former officer or employee and  
9           upon the licensee. A consent order is effective as agreed. Any current or former officer  
10          or employee suspended or removed from employment and participation within the  
11          conduct or the affairs of a money broker pursuant to this section is not eligible, while  
12          under suspension or removal, to be employed or otherwise participate in the affairs of  
13          any financial corporation, financial institution, credit union, or any other entity licensed  
14          by the department of financial institutions.
- 15          5. When any current or former officer or employee, or other person participating in the  
16          conduct of the affairs of a licensee is charged with a felony in state or federal court  
17          which involves dishonesty or breach of trust, the commissioner may immediately  
18          suspend the person from office or prohibit the person from further participation in the  
19          affairs of the money broker, or both. The order is effective immediately upon  
20          ~~service~~issuance of the order on the licensee and the person charged and remains in  
21          effect until the criminal charge is finally disposed of or until modified by the  
22          commissioner. If a judgment of conviction, federal pretrial diversion, conviction or  
23          agreement to plea to lesser charges, or similar state order or judgment is entered, the  
24          commissioner may order that the suspension or prohibition be made permanent. A  
25          finding of not guilty or other disposition of the charge does not preclude the  
26          commissioner from pursuing administrative or civil remedies.
- 27          6. ~~Under this section, a person engages in conduct "willfully" if the person acted~~  
28          ~~intentionally in the sense that the person was aware of what the person was doing.~~

29          **SECTION 6. AMENDMENT.** Section 13-04.1-09 of the North Dakota Century Code is  
30          amended and reenacted as follows:

1       **13-04.1-09. Prohibited acts and practices.**

2       It is a violation of this chapter for a person subject to this chapter to ~~knowingly~~:

- 3       1.    Make or cause to be made any material false statement or representation in any  
4            application or other document or statement required to be filed under any provision of  
5            this chapter, or to omit to state any material statement or fact necessary in order to  
6            make the statements made, in light of the circumstances under which they are made,  
7            not misleading.
- 8       2.    Directly or indirectly, employ any device, scheme, or artifice to defraud or mislead  
9            borrowers or lenders to defraud any person.
- 10      3.    Directly or indirectly, make any untrue statement of a material fact or to omit to state a  
11            material fact necessary in order to make the statements made, in the light of the  
12            circumstances under which they are made, not misleading in connection with the  
13            procurement or promise of procurement of any lender or loan funds.
- 14      4.    Engage in any unfair or deceptive practice toward any person.
- 15      5.    Obtain property by fraud or misrepresentation.
- 16      6.    Solicit, advertise, or enter into a contract for specific interest rates, points, or other  
17            financing terms unless the terms are actually available at the time of soliciting,  
18            advertising, or contracting.
- 19      7.    Conduct any business covered by this chapter without holding a valid license as  
20            required under this chapter, or assist or aid and abet any person in the conduct of  
21            business under this chapter without a valid license as required under this chapter.
- 22      8.    Fail to make disclosures as required by this chapter and any other applicable state or  
23            federal law and regulations.
- 24      9.    Fail to comply with this chapter or rules adopted under this chapter, or fail to comply  
25            with any other state or federal law, including the rules and regulations thereunder,  
26            applicable to any business authorized or conducted under this chapter.
- 27      10.   Make, in any manner, any false or deceptive statement or representation, including,  
28            with regard to the rates, points, or other financing terms or conditions for a ~~residential-~~  
29            ~~mortgage~~ loan or engage in bait and switch advertising.
- 30      11.   Negligently make any false statement or ~~knowingly and willfully~~ make any omission of  
31            material fact in connection with any information or reports filed with a governmental

- 1 agency or the nationwide ~~mortgage~~multistate licensing system and registry or in  
2 connection with any investigation conducted by the commissioner or another  
3 governmental agency.
- 4 12. Make any payment, threat, or promise, directly or indirectly, to any person for the  
5 purposes of influencing the independent judgment of the person in connection with a  
6 loan or make any payment, threat, or promise, directly or indirectly, to any appraiser of  
7 a property, for the purposes of influencing the independent judgment of the appraiser  
8 with respect to the value of the property.
- 9 13. Collect, charge, attempt to collect or charge, or use or propose any agreement  
10 purporting to collect or charge any fee prohibited by this chapter.
- 11 14. Cause or require a borrower to obtain property insurance coverage in an amount that  
12 exceeds the replacement cost of the improvements as established by the property  
13 insurer.
- 14 15. Fail to truthfully account for moneys belonging to a party to a loan transaction.
- 15 16. Conduct another business within the same office, suite, room, or place of business at  
16 which the licensee engages in money broker business unless the commissioner  
17 provides written authorization after a determination the other business is not contrary  
18 to the best interests of any borrower or potential borrower.
- 19 17. Enter any agreement that constitutes a precomputed loan.

20 **SECTION 7. AMENDMENT.** Section 13-04.1-09.3 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **13-04.1-09.3. Maximum charges permitted for loans - Installment payments -**  
23 **Permitted charges.**

- 24 1. Interest charges and other fees must be set at rates, amounts, and terms as agreed to  
25 by the parties within the loan contract. However, a licensee may not contract for or  
26 receive finance charges pursuant to a loan in excess of an annual rate of thirty-six  
27 percent, including all charges and fees necessary for the extension of credit incurred  
28 at the time of origination.
- 29 2. Additional charges may be assessed for nonpayment or late payment as agreed to by  
30 the parties within the loan contract. However, a licensee may not contract for or  
31 receive charges in excess of five percent of the payment. For loans originated for fifty

1 thousand dollars or less, these charges may not exceed twenty dollars for each  
2 nonpayment or late payment. The charge may be collected at the time of the default or  
3 any time after default. However, if the charge is taken out of any payment received  
4 after a default occurs and if the deduction results in the default of a subsequent  
5 payment, a charge may not be made for the subsequent default. ~~This restriction does  
6 not apply to court costs; lawful fees for the filing, recording, or releasing in any public  
7 office of any instrument securing a loan; and the identifiable charge or premium for  
8 insurance provided for by rule.~~

9 3. The restrictions outlined in subsections 1, 2, and 4 do not apply to court costs; lawful  
10 fees for the filing, recording, or releasing in any public office of any instrument  
11 securing a loan; or the identifiable charge or premium for insurance provided for by  
12 rule.

13 4. Additional restrictions for small loans originated for less than two thousand dollars  
14 include the following:

- 15 a. Installment loans must be paid in equal installments as agreed to by the parties  
16 within the loan contract. However, the maximum term for installment loans may  
17 not exceed thirty-six months, and a balloon payment is prohibited.
- 18 b. Outstanding balances of existing loans may be refinanced into a new small loan  
19 of less than two thousand dollars, but the combination of any refinance fees  
20 along with any fees collected as part of the original loans may not exceed one  
21 hundred dollars per calendar year.
- 22 c. Additional charges may be assessed as part of a loan extension or deferment of  
23 payment agreed to by the parties within the agreement. However, a licensee may  
24 not contract for or receive charges in excess of one hundred dollars for these  
25 loan extensions or deferments per calendar year.

26 **SECTION 8. AMENDMENT.** Section 13-04.1-10 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28 **13-04.1-10. Orders and injunctions.**

29 Whenever it appears to the department of financial institutions either upon complaint or  
30 otherwise, that any person has engaged in, is engaging in, or is about to engage in any act or  
31 practice or transaction which is prohibited by this chapter, or by any order of the department

1 issued pursuant to any section of this chapter or which is declared to be illegal in this chapter,  
2 the department may, in its discretion:

- 3 1. Issue any order which is effective upon issuance, including cease and desist, stop,  
4 and suspension orders, which it deems necessary or appropriate in the public interest  
5 or for the protection of the public; provided, however, that any person aggrieved by an  
6 order issued pursuant to this subsection may request a hearing before the department  
7 if such request is made within ten days after receipt of the order. Such hearing must  
8 be held in accordance with chapter 28-32 as must any appeal therefrom.
- 9 2. Apply to the district court of ~~any county in this state~~ Burleigh County, for an injunction  
10 restraining such person and the agents, employees, partners, officers, and directors of  
11 such person from continuing such act, practice, or transaction of engaging therein or  
12 doing any acts in furtherance thereof, and for such other and further relief as the facts  
13 may warrant. In any proceeding for an injunction, the department may apply for and on  
14 due showing be entitled to have issued the court's subpoena requiring the appearance  
15 forthwith of any defendants and their agents, employees, partners, officers, or  
16 directors, and the production of such documents, books, and records as may appear  
17 necessary for the hearing upon the petition for an injunction. Upon proof of any of the  
18 offenses described in this section, the court may grant such injunction as the facts  
19 may warrant. The court may not require the department to post a bond.

20 **SECTION 9. AMENDMENT.** Section 13-04.1-13 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **13-04.1-13. Penalty.**

23 Any person violating any of the provisions of this chapter or any rule or order of the  
24 department of financial institutions made pursuant to the provisions of this chapter or who  
25 engages in any act, practice, or transaction declared by any provision of this chapter to be  
26 unlawful is guilty of a class C felony. The commissioner may impose a civil money penalty not to  
27 ~~exceed five thousand dollars per violation upon a person or agency who willfully~~ one hundred  
28 thousand dollars for each occurrence and one thousand dollars per day for each day the  
29 violation continues after issuance of the order against any person who violates a law, rule,  
30 written agreement, or order under this chapter. An interested party may appeal the assessment  
31 of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal

1 within twenty days after service of the assessment of civil money penalties. A civil money  
2 penalty collected under this section must be paid to the ~~state treasurer~~department of financial  
3 institutions and deposited in the financial institutions regulatory fund.

4 **SECTION 10. AMENDMENT.** Section 13-04.1-14 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **13-04.1-14. Confidentiality.**

7 To promote more effective regulation and reduce regulatory burden through supervisory  
8 information sharing:

- 9 1. Except as otherwise provided in Public Law 110-289, section 1512, the requirements  
10 under any federal law, chapter 44-04, or section 6-01-07.1, regarding the privacy or  
11 confidentiality of any information or material provided to the nationwide  
12 ~~mortgage~~multistate licensing system and registry, and any privilege arising under  
13 federal or state law, including the rules of any federal or state court, with respect to  
14 such information or material, continue to apply to such information or material after the  
15 information or material has been disclosed to the nationwide ~~mortgage~~multistate  
16 licensing system and registry. Such information and material may be shared with all  
17 state and federal regulatory officials with mortgage industry oversight authority without  
18 the loss of privilege or the loss of confidentiality protections provided by federal law,  
19 chapter 44-04, or section 6-01-07.1.
- 20 2. For these purposes, the commissioner may enter agreements or sharing  
21 arrangements with other governmental agencies, the conference of state bank  
22 supervisors, the American association of residential mortgage regulators, or other  
23 associations representing governmental agencies.
- 24 3. Information or material that is subject to a privilege or confidentiality under  
25 subsection 1 is not subject to:
  - 26 a. Disclosure under any federal or state law governing the disclosure to the public of  
27 information held by an officer or an agency of the federal government or the  
28 respective state; or
  - 29 b. Subpoena or discovery, or admission into evidence, in any administrative  
30 process, unless with respect to any privilege held by the nationwide  
31 ~~mortgage~~multistate licensing system and registry with respect to such information

1                   or material, the person to whom such information or material pertains waives, in  
2                   whole or in part, in the discretion of such person, that privilege.

3           4.    The commissioner shall take all necessary steps, under any applicable law or rule, to  
4           protect the disclosure of information or material that is subject to a privilege or  
5           confidentiality under subsection 1. Records subject to a privilege or confidentiality  
6           under subsection 1 may be required to be disclosed only pursuant to an order of the  
7           court. The court ordering the disclosure shall issue a protective order to protect the  
8           confidential nature of the records.

9           5.    Application of chapter 44-04 or section 6-01-07.1, relating to the disclosure of  
10          confidential supervisory information or any information or material described in  
11          subsection 1 which is inconsistent with subsection 1, is superseded by the  
12          requirements of this section.

13          **SECTION 11. AMENDMENT.** Section 13-04.1-17 of the North Dakota Century Code is  
14          amended and reenacted as follows:

15          **13-04.1-17. Report to nationwide ~~mortgagemultistate~~ licensing system and registry.**

16          Notwithstanding state privacy law, the commissioner shall report regularly violations of this  
17          chapter, as well as enforcement actions and other relevant information, to the nationwide  
18          ~~mortgagemultistate~~ licensing system and registry subject to the provisions contained in section  
19          13-10-15.

20          **SECTION 12.** Chapter 13-12 of the North Dakota Century Code is created and enacted as  
21          follows:

22          **13-12-01. Administration.**

23          The department of financial institutions shall administer and enforce this chapter. The  
24          department may promulgate rules and regulations having the force and effect of law, reasonably  
25          necessary to carry out the provisions of this chapter, in accordance with chapter 28-32. Any  
26          hearing held and any orders issued pursuant to this chapter must be in accordance with chapter  
27          28-32. In addition to those powers set forth in chapter 28-32, the department has additional  
28          powers as set forth in this chapter.

29          **13-12-02. Definitions.**

30          As used in this chapter, unless the context or subject matter otherwise requires:

- 1       1. "Borrower" means an individual who seeks out, or is solicited by a residential  
2           mortgage lender for the purpose of residential mortgage lending.
- 3       2. "Commissioner" means the commissioner of the department of financial institutions.
- 4       3. "Net branch" means an office at which a licensed residential mortgage lender allows a  
5           separate person that does not hold a valid North Dakota residential mortgage lender  
6           license to originate loans under the license of the residential mortgage lender.
- 7       4. "Net branch arrangement" means an arrangement under which a licensed residential  
8           mortgage lender enters an agreement whereby its designated branch manager has  
9           the appearance of ownership of the licensee by, among other things, sharing in the  
10          profits or losses; establishing, leasing, or renting the branch premises; entering other  
11          contractual relationships with vendors such as for telephones, utilities, and advertising;  
12          having control of a corporate checkbook; or exercising control of personnel through  
13          the power to hire or fire such individuals. A person may be considered to be utilizing a  
14          net branch if the net branch agreement requires the branch manager to indemnify the  
15          licensee for damages from any apparent, express, or implied agency representation  
16          by or through the branch's actions or if the agreement requires the branch manager to  
17          issue a personal check to cover operating expenses whether or not funds are  
18          available from an operating account of the licensee.
- 19       5. "Precomputed loan" means a loan that is expressed as a sum comprising the principal  
20          and the amount of the loan finance charge computed in advance.
- 21       6. "Residential mortgage lender" means a person that, in the ordinary course of  
22          business, engages in residential mortgage lending.
- 23       7. "Residential mortgage lending" means the act of arranging or providing residential  
24          mortgage loans as a form of financing, or advertising or soliciting either in print, by  
25          letter, in person, or otherwise, the right to find lenders or provide residential mortgage  
26          loans for a person.
- 27       8. "Residential mortgage loan" means residential mortgage loan as defined in  
28          subsection 12 of section 13-10-02.
- 29       9. "Residential real estate" means residential real estate as defined in subsection 13 of  
30          section 13-10-02.

1        **13-12-03. Residential mortgage lender license required.**

2        Except as otherwise provided, a person other than a residential mortgage lender licensed  
3 and authorized under this chapter may not engage in residential mortgage lending in the state  
4 without a residential mortgage lender license issued by the commissioner. A person engages in  
5 residential mortgage lending if the borrower resides in North Dakota.

6        **13-12-04. Entities exempted from licensing requirements.**

7        This chapter does not apply to:

- 8        1. Banks;
- 9        2. Credit unions;
- 10       3. Savings and loan associations;
- 11       4. Insurance companies;
- 12       5. Individuals licensed under chapter 13-10 solely pursuant to the individual's official  
13 duties as a mortgage loan originator;
- 14       6. State or federal agencies and employees of state or federal agencies solely pursuant  
15 to the individual's official duties as an employee of the state or federal agency;
- 16       7. Institutions chartered by the farm credit administration;
- 17       8. Trust companies;
- 18       9. A real estate broker, broker, or a real estate salesperson as defined in section  
19 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real  
20 estate sold by the real estate broker, broker, or real estate salesperson;
- 21       10. A certified development corporation that qualifies as a nonprofit entity under section  
22 501(c)(3) of the federal Internal Revenue Code [26 U.S.C. 501(c)(3)] in the offers of:
  - 23       a. Loan products primarily limited to the small business administration, United  
24 States department of agriculture, or other government loan products; or
  - 25       b. Nongovernmental loan products that are limited to loans to promote community  
26 development or home ownership, and these loans are offered with favorable  
27 terms including an interest rate at or below the wall street journal prime rate and  
28 loan fees of less than a quarter percent of the loan origination balance; or
- 29       11. A nonprofit corporation that qualifies as a nonprofit entity under section 501(c)(3) of  
30 the Internal Revenue Code [26 U.S.C. 501(c)(3)] which is not primarily in the business  
31 of soliciting or brokering loans, if the nonprofit corporation makes five or fewer loans in

1           a given calendar year, makes these loans to promote community development or  
2           home ownership, and offers these loans on favorable terms, including an interest rate  
3           at or below the wall street journal prime rate and loan fees of less than a quarter  
4           percent of the loan origination balance.

5           **13-12-05. Application for residential mortgage lender license.**

6           Every application or renewal for a residential mortgage lender license or branch registration  
7           must be made upon forms designed and furnished by the department of financial institutions  
8           and must contain any information which the department deems necessary and proper. A branch  
9           registration that constitutes a net branch or net branching arrangement is prohibited. The  
10          department may further require any applicant to provide additional information which is not  
11          requested on the application form. The applicant must register with the secretary of state, if so  
12          required.

13          **13-12-06. Fee to accompany application for residential mortgage lender license.**

14          The application for license must be in writing, under oath, and in the form prescribed by the  
15          commissioner. The application must give the location where the business is to be conducted  
16          and must contain any further information the commissioner requires, including the names and  
17          addresses of the partners, officers, directors, trustees, and the principal owners or members, as  
18          will provide the basis for the investigation and findings contemplated by section 13-12-05. At the  
19          time of making the application, the applicant shall include payment in the sum of four hundred  
20          dollars, which is not subject to refund, as a fee for investigating the application, and the sum of  
21          four hundred dollars for the annual license fee. In addition, the applicant must pay a fifty dollar  
22          annual fee for each branch location registered to engage in residential mortgage lending in this  
23          state. Fees must be deposited in the financial institutions regulatory fund.

24          **13-12-07. Surety bond required.**

- 25          1. Each licensee shall maintain a surety bond in an amount not less than fifty thousand  
26          dollars. The surety bond must be in a form prescribed by the commissioner.  
27          2. When an action is commenced on a licensee's bond, the commissioner may require  
28          the filing of a new bond.  
29          3. Immediately upon recovery of any action on the bond, the licensee shall file a new  
30          bond.

1        **13-12-08. Minimum net worth required.**

2        A minimum net worth must be continuously maintained by every licensee in accordance  
3 with this section.

4        1. Minimum net worth must be maintained in the amount of twenty-five thousand dollars.

5        2. If the net worth of a licensee falls below the minimum net worth set forth in this  
6 section, the licensee shall provide a plan, subject to the approval of the commissioner,  
7 to increase the licensee's net worth to an amount in conformance with this section.

8        Submission of a plan under this section must be made within twenty business days of  
9 a notice from the commissioner which states the licensee is not in compliance with  
10 subsection 1. If the licensee does not submit a plan under this section, fails to comply  
11 with an approved plan, or has repeated violations of subsection 1, the commissioner  
12 may revoke the license.

13        **13-12-09. Expiration and renewal of license.**

14        All licenses expire on December thirty-first of each year and may be renewed. Renewals  
15 are effective the succeeding January first. Applications for renewal must be submitted thirty  
16 days before the expiration of the license and must be accompanied by the required annual fees,  
17 which are not subject to refund. The form and content of renewal applications must be  
18 determined by the department of financial institutions, and a renewal application may be denied  
19 upon the same grounds as would justify denial of an initial application. When a licensee has  
20 been delinquent in renewing the license, the department may charge an additional fee of fifty  
21 dollars for the renewal of the license. A residential mortgage lender license is not transferable. If  
22 the commissioner determines that an ownership change has occurred in a sole proprietorship,  
23 partnership, limited liability partnership, corporation, or limited liability corporation that was  
24 previously granted a residential mortgage lender license, the commissioner may require a new  
25 application from the purchaser. The application must be filed within forty-five days from the date  
26 change of ownership is consummated. The department shall act on the application within sixty  
27 days from the date the application is received but may extend the review period for good cause.  
28 The residential mortgage lender license granted to the previous owner continues in effect to the  
29 new purchaser until the application is either granted or denied.

30        **13-12-10. Powers of the department of financial institutions.**

31        The department of financial institutions may:

1       1. Determine the qualifications of all applicants based on financial responsibility, financial  
2       condition, business experience, character, and general fitness which must reasonably  
3       warrant the belief that the applicant's business will be conducted lawfully and fairly. In  
4       determining whether this qualification is met, and for the purpose of investigating  
5       compliance with the chapter, the commissioner may review and consider the relevant  
6       business records and capital adequacy of the applicant and the competence,  
7       experience, integrity, and financial ability of a person who is a member, partner,  
8       director, officer, or twenty-five percent or more shareholder of the applicant.

9       2. Establish codes of ethical conduct for licensees.

10       **13-12-11. Manner in which records to be kept.**

11       Every residential mortgage lender licensed under this chapter shall keep a record of all  
12       sums collected by the residential mortgage lender and of all loans completed as a result of the  
13       lender's efforts for a period of six years from the date of last entry. The records of a licensee  
14       may be maintained electronically provided they can be reproduced upon request by the  
15       department of financial institutions and within the required statutory time period provided in this  
16       section. When a licensee ceases operations for any reason, the licensee shall inform the  
17       department of the location of the records. In addition, the licensee shall provide the name of the  
18       individual responsible for maintenance of the records. The licensee shall notify the department  
19       within ten business days of the change of the location of the records or the change of the  
20       individual responsible for maintenance of the records.

21       **13-12-12. Revocation of license - Suspension of license - Surrender of license.**

22       1. The commissioner may issue upon any licensee an order suspending or revoking a  
23       licensee's license if the commissioner finds:  
24       a. The licensee has failed to pay the annual license fee under this chapter or any  
25       examination fee imposed by the commissioner under the authority of this chapter.  
26       b. The licensee, either knowingly or without the exercise of due care to prevent the  
27       same, has violated any provision of this chapter or any regulation or order  
28       lawfully made pursuant to and within the authority of this chapter.  
29       c. Any fact or condition existing at the time of the original application for such  
30       license which clearly would have warranted the department of financial  
31       institutions in refusing originally to issue a license.

- 1           d. The licensee has failed to maintain the required bond.
- 2           e. The licensee has failed to maintain registration with the secretary of state if so
- 3                 required.
- 4         2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
- 5         3. If a hearing is not requested within twenty days of the date the order is served upon
- 6             the licensee, the order is final. If a hearing is held and the commissioner finds the
- 7             record so warrants, the commissioner may enter a final order. The final order
- 8             suspending or revoking the license is final.
- 9         4. If the commissioner finds that probable cause for revocation of any license exists and
- 10            that enforcement of the chapter requires immediate suspension of the license pending
- 11            investigation, it may enter an order suspending the license for a period not exceeding
- 12            the time required to serve upon the licensee written notice plus sixty days, pending the
- 13            holding of a hearing as prescribed in this chapter.
- 14         5. Any licensee may surrender the licensee's license by providing the department of
- 15            financial institutions with written notice of its surrender, but a surrender does not affect
- 16            the licensee's civil or criminal liability for acts committed before the surrender.

17         **13-12-13. Suspension and removal of residential mortgage lender officers and**

18         **employees.**

- 19         1. The commissioner may issue and serve upon a current or former residential mortgage
- 20             lender officer or employee and upon the licensee involved an order stating:
- 21             a. That the current or former officer or employee is engaging or has engaged in any
- 22                 of the following conduct:
- 23                 (1) Violating a law, rule, order, or written agreement with the commissioner.
- 24                 (2) Engaging in harassment or abuse, the making of false or misleading
- 25                     representations, or engaging in unfair practices involving lending activity.
- 26                 (3) Performing an act of commission or omission or practice which is a breach
- 27                     of trust or a breach of fiduciary duty.
- 28             b. The term of the suspension or removal from employment and participation within
- 29                 the conduct or the affairs of a residential mortgage lender.
- 30         2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.

- 1       3. If a hearing is not requested within twenty days of the date the order is served, or if a  
2       hearing is held and the commissioner finds that the record so warrants, the  
3       commissioner may enter a final order suspending or removing the current or former  
4       employee. The current or former officer or employee may request a termination of the  
5       final order after a period of no less than three years.
- 6       4. A contested or default suspension or removal order is effective immediately upon  
7       issuance on the current or former officer or employee and upon the licensee. A  
8       consent order is effective as agreed. Any current or former officer or employee  
9       suspended or removed from employment and participation within the conduct or the  
10      affairs of a residential mortgage lender pursuant to this section is not eligible, while  
11      under suspension or removal, to be employed or otherwise participate in the affairs of  
12      any financial corporation, financial institution, credit union, or any other entity licensed  
13      by the department of financial institutions.
- 14      5. When a current or former officer, employee, or other person participating in the  
15      conduct of the affairs of a licensee is charged with a felony in state or federal court  
16      which involves dishonesty or breach of trust, the commissioner may immediately  
17      suspend the person from office or prohibit the person from further participation in the  
18      affairs of the residential mortgage lender, or both. The order is effective immediately  
19      upon issuance and remains in effect until the criminal charge is finally disposed of or  
20      until modified by the commissioner. If a judgment of conviction, federal pretrial  
21      diversion, conviction or agreement to plea to lesser charges, or similar state order or  
22      judgment is entered, the commissioner may order that the suspension or prohibition  
23      be made permanent. A finding of not guilty or other disposition of the charge does not  
24      preclude the commissioner from pursuing administrative or civil remedies.

25      **13-12-14. Prohibited acts and practices.**

26      It is a violation of this chapter for a person subject to this chapter to:

- 27      1. Make or cause to be made any material false statement or representation in any  
28      application or other document or statement required to be filed under any provision of  
29      this chapter, or to omit to state any material statement or fact necessary in order to  
30      make the statements made, in light of the circumstances under which they are made,  
31      not misleading.

- 1        2. Directly or indirectly, employ any device, scheme, or artifice to defraud or mislead
- 2            borrowers or lenders to defraud any person.
- 3        3. Directly or indirectly, make any untrue statement of a material fact or to omit to state a
- 4            material fact necessary in order to make the statements made, in the light of the
- 5            circumstances under which they are made, not misleading in connection with the
- 6            procurement or promise of procurement of any lender or loan funds.
- 7        4. Engage in any unfair or deceptive practice toward any person.
- 8        5. Obtain property by fraud or misrepresentation.
- 9        6. Solicit, advertise, or enter into a contract for specific interest rates, points, or other
- 10           financing terms unless the terms are actually available at the time of soliciting,
- 11           advertising, or contracting.
- 12       7. Conduct any business covered by this chapter without holding a valid license as
- 13           required under this chapter, or assist or aid and abet any person in the conduct of
- 14           business under this chapter without a valid license as required under this chapter.
- 15       8. Fail to make disclosures as required by this chapter and any other applicable state or
- 16           federal law and regulations.
- 17       9. Fail to comply with this chapter or rules adopted under this chapter, or fail to comply
- 18           with any other state or federal law or rule, applicable to any business authorized or
- 19           conducted under this chapter.
- 20       10. Make, in any manner, any false or deceptive statement or representation, including,
- 21           with regard to the rates, points, or other financing terms or conditions for a residential
- 22           mortgage loan or engage in bait and switch advertising.
- 23       11. Negligently make any false statement or make any omission of material fact in
- 24           connection with any information or reports filed with a governmental agency or the
- 25           nationwide multistate licensing system and registry or in connection with any
- 26           investigation conducted by the commissioner or another governmental agency.
- 27       12. Make any payment, threat, or promise, directly or indirectly, to any person for the
- 28           purposes of influencing the independent judgment of the person in connection with a
- 29           loan or make any payment, threat, or promise, directly or indirectly, to any appraiser of
- 30           a property, for the purposes of influencing the independent judgment of the appraiser
- 31           with respect to the value of the property.

- 1        13. Collect, charge, attempt to collect or charge, or use or propose any agreement  
2            purporting to collect or charge any fee prohibited by this chapter.
- 3        14. Cause or require a borrower to obtain property insurance coverage in an amount that  
4            exceeds the replacement cost of the improvements as established by the property  
5            insurer.
- 6        15. Fail to truthfully account for moneys belonging to a party to a loan transaction.
- 7        16. Conduct another business within the same office, suite, room, or place of business at  
8            which the licensee engages in mortgage lending business unless the commissioner  
9            provides written authorization after a determination the other business is not contrary  
10           to the best interests of any borrower or potential borrower.
- 11       17. Enter any agreement that constitutes a precomputed loan.

12        **13-12-15. Advance fees prohibited - Exception.**

13        A residential mortgage lender may not take any type of fee in advance before the funding of  
14 the loan, unless the residential mortgage lender is licensed under this chapter. A residential  
15 mortgage lender licensed under this chapter may accept an advance expense deposit which  
16 may not exceed the residential mortgage lender's good-faith estimate of the actual cost of any  
17 appraisal or credit reports performed by an independent appraiser or independent credit  
18 reporting agency and required by the originating lender for the evaluation of the potential  
19 borrower's loan application. Any expense deposit that exceeds the actual cost of any appraisal  
20 or credit report must be promptly refunded to the borrower or credited to the borrower's account  
21 at the time of the loan closing. A residential mortgage lender may also charge a fee in advance  
22 to lock an interest rate.

23        **13-12-16. Maximum charges permitted for loans - Installment payments - Permitted**  
24 **charges.**

- 25        1. Interest charges and other fees must be set at rates, amounts, and terms as agreed to  
26            by the parties within the loan contract. A licensee may not contract for or receive  
27            finance charges pursuant to a loan in excess of an annual rate of thirty-six percent,  
28            including all charges and fees necessary for the extension of credit incurred at the  
29            time of origination.
- 30        2. Additional charges may be assessed for nonpayment or late payment as agreed to by  
31            the parties within the loan contract. A licensee may not contract for or receive charges

1           in excess of five percent of the payment. For loans originated for fifty thousand dollars  
2           or less, these charges may not exceed twenty dollars for each nonpayment or late  
3           payment. The charge may be collected at the time of the default or any time after  
4           default. If the charge is taken out of any payment received after a default occurs and if  
5           the deduction results in the default of a subsequent payment, a charge may not be  
6           made for the subsequent default.

7           3. The restrictions outlined in subsections 1 and 2 do not apply to court costs; lawful fees  
8           for the filing, recording, or releasing in any public office of any instrument securing a  
9           loan; and the identifiable charge or premium for insurance provided for by rule.

10           **13-12-17. Orders and injunctions.**

11           Whenever it appears to the department of financial institutions either upon complaint or  
12           otherwise, that any person has engaged in, is engaging in, or is about to engage in any act or  
13           practice or transaction which is prohibited by this chapter, or by any order of the department  
14           issued pursuant to any section of this chapter or which is declared to be illegal in this chapter,  
15           the department may, in its discretion:

16           1. Issue any order which is effective upon issuance, including cease and desist, stop,  
17           and suspension orders, which it deems necessary or appropriate in the public interest  
18           or for the protection of the public, provided that any person aggrieved by an order  
19           issued pursuant to this subsection may request a hearing before the department if a  
20           request is made within ten days after receipt of the order. A hearing to appeal must be  
21           held in accordance with chapter 28-32.

22           2. Apply to the district court of Burleigh County for an injunction restraining the person  
23           and the agents, employees, partners, officers, and directors of the person from  
24           continuing the act, practice, or transaction of engaging or doing any acts in furtherance  
25           thereof, and for such other and further relief as the facts may warrant. In any  
26           proceeding for an injunction, the department may apply for and on due showing be  
27           entitled to have issued the court's subpoena requiring the appearance forthwith of any  
28           defendants and their agents, employees, partners, officers, or directors, and the  
29           production of such documents, books, and records as may appear necessary for the  
30           hearing upon the petition for an injunction. Upon proof of any of the offenses described

1           in this section, the court may grant such injunction as the facts may warrant. The court  
2           may not require the department to post a bond.

3           **13-12-18. Investigations, subpoenas, and examination authority.**

4           In addition to any authority allowed under this chapter, the commissioner may conduct  
5 investigations and examinations as follows:

6           1. The department of financial institutions in its discretion:

7           a. May make a public or private investigation or examination within or outside this  
8           state as it deems necessary to determine whether a person has violated or is  
9           about to violate any provision of this chapter or rule, or to aid in the enforcement  
10           of this chapter or in the prescribing of rules and forms hereunder. The licensee  
11           shall pay an investigation or examination fee and must be charged by the  
12           department of financial institutions at an hourly rate to be set by the  
13           commissioner, sufficient to cover all reasonable expenses of the department  
14           associated with the visitation provided for by this section. Fees must be  
15           deposited in the financial institutions regulatory fund.

16           b. May require or permit any person to file a statement in writing, under oath, or  
17           otherwise as the department determines, as to all the facts and circumstances  
18           concerning the matter to be investigated or examined.

19           c. May publish information concerning any violation of this chapter or any rule or  
20           order under this chapter.

21           2. For the purpose of any investigation, examination, or proceeding under this chapter,  
22           the department of financial institutions may administer oaths and affirmations,  
23           subpoena witnesses, compel their attendance, take evidence, and require the  
24           production of any books, papers, correspondence, memoranda, agreements, or other  
25           documents or records which the department deems relevant or material to the inquiry.

26           3. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the  
27           district court, upon application by the department of financial institutions, may issue to  
28           the person an order requiring the person to appear before the department there to  
29           produce documentary evidence if so ordered or to give evidence touching the matter  
30           in question under investigation or examination. Failure to obey the order of the court  
31           may be punished by the court as a contempt of court.

- 1       4. A person is not excused from attending and testifying or from producing any document  
2       or record before the department of financial institutions, or in obedience to the  
3       subpoena of the department, or in any proceeding instituted by the department, on the  
4       grounds that the testimony or evidence, documentary or otherwise, required of a  
5       person may tend to incriminate the person or subject the person to a penalty forfeiture.  
6       An individual may not be prosecuted or subjected to any penalty or forfeiture for or on  
7       account of any transaction, matter, or thing concerning which the person is compelled,  
8       after claiming the privilege against self-incrimination, to testify or produce evidence,  
9       documentary or otherwise, except that the individual testifying is not exempt from  
10      prosecution and punishment for perjury or contempt committed in testifying.  
11      5. For purposes of initial licensing, license renewal, license suspension, license  
12      conditioning, license revocation or termination, or general or specific inquiry or  
13      investigation to determine compliance with this chapter, the commissioner may  
14      access, receive, and use any books, accounts, records, files, documents, information,  
15      or evidence, including:  
16      a. Criminal, civil, and administrative history information, including nonconviction  
17      data;  
18      b. Personal history and experience information, including independent credit reports  
19      obtained from a consumer reporting agency described in section 603(p) of the  
20      Fair Credit Reporting Act [15 U.S.C. 1681 et seq.]; and  
21      c. Any other documents, information, or evidence the commissioner deems relevant  
22      to the inquiry or investigation regardless of the location, possession, control, or  
23      custody of such documents, information, or evidence.  
24      6. For purposes of investigating violations or complaints arising under this chapter, or for  
25      purposes of examination, the commissioner may review, investigate, or examine any  
26      licensee or person subject to this chapter, as often as necessary in order to carry out  
27      the purposes of this chapter.  
28      7. Upon request, each licensee or person subject to this chapter shall make available to  
29      the commissioner the books and records relating to the operations of the licensee or  
30      person subject to this chapter. The commissioner shall have access to the books,  
31      records, and interviews of the officers, principals, mortgage loan originators,

1 employees, independent contractors, agents, and customers of the licensee or person  
2 subject to this chapter concerning their business.

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

6 a. Accounting compilations;

7 b. Information lists and data concerning loan transactions in a format prescribed by  
8 the commissioner; or

9 c. Other information deemed necessary to carry out the purposes of this section.

10 9. In making any investigation or examination authorized by this chapter, the  
11 commissioner may control access to any documents and records of the licensee or  
12 person under investigation or examination. The commissioner may take possession of  
13 the documents and records or place a person in exclusive charge of the documents  
14 and records in the place where they are usually kept. During the period of control, a  
15 person may not remove or attempt to remove any of the documents and records  
16 except pursuant to a court order or with the consent of the commissioner. Unless the  
17 commissioner has reasonable grounds to believe the documents or records of the  
18 licensee have been, or are at risk of being altered or destroyed for purposes of  
19 concealing a violation of this chapter, the licensee or owner of the documents and  
20 records may have access to the documents or records as necessary to conduct its  
21 ordinary business affairs.

22 10. In order to carry out the purposes of this section, the commissioner may:

23 a. Retain accountants, or other professionals and specialists as examiners,  
24 auditors, or investigators to conduct or assist in the conduct of examinations or  
25 investigations;

26 b. Enter into agreements or relationships with other government officials or  
27 regulatory associations in order to improve efficiencies and reduce regulatory  
28 burden by sharing resources, standardized or uniform methods or procedures,  
29 and documents, records, information, or evidence obtained under this section;

- 1           c. Use, hire, contract, or employ publicly or privately available analytical systems,  
2           methods, or software to examine or investigate the licensee, individual, or person  
3           subject to this chapter;
- 4           d. Accept and rely on examination or investigation reports made by other  
5           government officials, within or without this state; and
- 6           e. Accept audit reports made by an independent certified public accountant for the  
7           licensee or person subject to this chapter in the course of that part of the  
8           examination covering the same general subject matter as the audit and may  
9           incorporate the audit report in the report of the examination, report of  
10          investigation, or other writing of the commissioner.

11       11. The authority of this section remains in effect, whether a licensee or person subject to  
12       this chapter acts or claims to act under any licensing or registration law of this state or  
13       claims to act without such authority.

14       12. A licensee or person subject to investigation or examination under this section may not  
15       knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records,  
16       computer records, or other information.

17       **13-12-19. Response to department requests.**

18       An applicant, licensee, or other person subject to the provisions of this chapter shall comply  
19       with requests for information, documents, or other requests from the department of financial  
20       institutions within the time specified in the request, which must be a minimum of ten days, or, if  
21       no time is specified, within thirty days of the mailing of the request by the department of  
22       financial institutions. If the request for information is in regard to a new application or renewal of  
23       an existing application and is not received within the time specified in the request, or within  
24       thirty days of the mailing of the request, the department may deny the application.

25       **13-12-20. Remedies not exclusive.**

26       The remedies provided for in this chapter are in addition to and not exclusive of any other  
27       remedies provided by law.

28       **13-12-21. Penalty.**

29       A person or company violating any of the provisions of this chapter or any rule or order of  
30       the department of financial institutions made pursuant to the provisions of this chapter or who  
31       engages in any act, practice, or transaction declared by any provision of this chapter to be

1 unlawful is guilty of a class C felony. The commissioner may impose a civil money penalty not to  
2 exceed one hundred thousand dollars for each occurrence and one thousand dollars per day for  
3 each day the violation continues after issuance of the order against any person or company  
4 who violates a law, rule, written agreement, or order under this chapter. An interested party may  
5 appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a  
6 written notice of appeal within twenty days after service of the assessment of civil money  
7 penalties. A civil money penalty collected under this section must be paid to the department of  
8 financial institutions and deposited in the financial institutions regulatory fund.

9 **13-12-22. Confidentiality.**

10 To promote more effective regulation and reduce regulatory burden through supervisory  
11 information sharing:

- 12 1. Except as otherwise provided in Secure and Fair Enforcement for Mortgage Licensing  
13 Act [Public Law 110-289, section 1512, 12 U.S.C. 5111, et seq.], the requirements  
14 under any federal law, chapter 44-04, or section 6-01-07.1, regarding the privacy or  
15 confidentiality of any information or material provided to the nationwide multistate  
16 licensing system and registry, and any privilege arising under federal or state law,  
17 including the rules of any federal or state court, with respect to the information or  
18 material, continue to apply to the information or material after the information or  
19 material has been disclosed to the nationwide multistate licensing system and registry.  
20 The information and material may be shared with all state and federal regulatory  
21 officials with mortgage industry oversight authority without the loss of privilege or the  
22 loss of confidentiality protections provided by federal law, chapter 44-04, or section  
23 6-01-07.1.
- 24 2. For these purposes, the commissioner may enter agreements or sharing  
25 arrangements with other governmental agencies, the conference of state bank  
26 supervisors, the American association of residential mortgage regulators, or other  
27 associations representing governmental agencies.
- 28 3. Information or material that is subject to a privilege or confidentiality under  
29 subsection 1 is not subject to:

- 1           a. Disclosure under any federal or state law governing the disclosure to the public of  
2           information held by an officer or an agency of the federal government or the  
3           respective state; or
- 4           b. Subpoena or discovery, or admission into evidence, in any administrative  
5           process, unless with respect to any privilege held by the nationwide multistate  
6           licensing system and registry with respect to such information or material, the  
7           person to whom the information or material pertains waives, in whole or in part, in  
8           the discretion of the person, that privilege.
- 9           4. The commissioner shall take all necessary steps, under any applicable law or rule, to  
10          protect the disclosure of information or material that is subject to a privilege or  
11          confidentiality under subsection 1. Records subject to a privilege or confidentiality  
12          under subsection 1 may be required to be disclosed only pursuant to an order of the  
13          court. The court ordering the disclosure shall issue a protective order to protect the  
14          confidential nature of the records.
- 15          5. Application of chapter 44-04 or section 6-01-07.1, relating to the disclosure of  
16          confidential supervisory information or any information or material described in  
17          subsection 1 which is inconsistent with subsection 1, is superseded by the  
18          requirements of this section.

19          **13-12-23. Change of name or address.**

20          A licensee is required to submit within twenty business days of the date of change  
21          notification of a change of name or change of address. The notification must be in the form  
22          prescribed by the commissioner.

23          **13-12-24. Call reports.**

24          Each licensee shall submit to the nationwide multistate licensing system and registry  
25          reports of condition which must be in the form and must contain the information as the  
26          nationwide multistate licensing system and registry may require.

27          **13-12-25. Report to nationwide multistate licensing system and registry.**

28          Notwithstanding state privacy law, the commissioner regularly shall report violations of this  
29          chapter, as well as enforcement actions and other relevant information, to the nationwide  
30          multistate licensing system and registry subject to the provisions contained in section 13-12-22.

1        **13-12-26. Disclosure of customer information.**

2        Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter  
3 6-08.1 applies to all residential mortgage lenders licensed under this chapter.

4        **13-12-27. Notice to borrower regarding regulation by the department of financial**  
5 **institutions.**

6        The written contract must contain the following notice in capital letters: NOTICE:

7 RESIDENTIAL MORTGAGE LENDERS ARE LICENSED AND REGULATED BY THE NORTH  
8 DAKOTA DEPARTMENT OF FINANCIAL INSTITUTIONS. THE DEPARTMENT OF FINANCIAL  
9 INSTITUTIONS HAS NOT PASSED ON THE MERITS OF THE CONTRACT AND LICENSING  
10 DOES NOT CONSTITUTE AN APPROVAL OF THE TERMS OR OF THE LENDERS ABILITY  
11 TO ARRANGE ANY LOAN. COMPLAINTS REGARDING THE SERVICES OF RESIDENTIAL  
12 MORTGAGE LENDERS SHOULD BE DIRECTED TO THE DEPARTMENT OF FINANCIAL  
13 INSTITUTIONS.

14        **SECTION 13. REPEAL.** Section 13-04.1-16 of the North Dakota Century Code is repealed.

15        **SECTION 14. APPLICATION.** Residential mortgage lenders holding a valid North Dakota  
16 money brokers license as of August 1, 2023, are not required to obtain a residential mortgage  
17 lenders license as required in section 13-12-03 until December 31, 2023. All other provisions of  
18 this chapter are applicable to residential mortgage lenders as of August 1, 2023.