

ACT NO. 7140

BILL NO. 28-0106

TWENTY-EIGHT LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2009

An Act amending title 9 Virgin Islands Code to adopt the S.A.F.E. Mortgage Licensing Act in the Virgin Islands

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Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 9 Virgin Islands Code, chapter 20, sections 361-381 are designated "Subchapter I" and Subchapter II is added to read as follows.

"Subchapter II. S.A.F.E Mortgage Licensing Act

§382. SHORT TITLE AND PURPOSE OF THIS SUBCHAPTER—

(a) This subchapter may be cited as "The Virgin Islands Secure and Fair Enforcement for Mortgage Licensing Act of 2009"

(b) The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon Virgin Islands' consumers, Virgin Islands' economy, the neighborhoods and communities of Virgin Islands, and the housing and real estate industry. The Legislature finds that accessibility to mortgage credit is vital to the Virgin Islands' citizens. The Legislature also finds that it is essential for the protection of the citizens of the Virgin Islands and the stability of the Virgin Islands' economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The Legislature further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process. The purpose of this subchapter is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators.

(c) Therefore, the Legislature establishes within this subchapter a system that:

(1) Provides uniform license applications and reporting requirements for State-licensed mortgage loan originators;

- (2) Provides a comprehensive licensing and supervisory database;
- (3) Aggregates and improves the flow of information to and between regulators;
- (4) Provides increased accountability and tracking of loan originators;
- (5) Streamlines the licensing process and reduces the regulatory burden;
- (6) Enhances consumer protections and supports anti-fraud measures;
- (7) Provides consumers with easily accessible information, offered at no charge, utilizing electronic media, including the internet, regarding the employment history of and publicly adjudicated disciplinary and enforcement actions against, loan originators;
- (8) Establishes a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.
- (9) Facilitates responsible behavior in the subprime mortgage market place and provides comprehensive training and examination requirements related to subprime mortgage lending; and
- (10) Facilitates the collection and disbursement of consumer complaints on behalf of State and Federal mortgage regulators.

§383. DEFINITIONS—

As used in this subchapter—

- (a) The term “depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.
- (b) The term “federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.
- (c) The term “immediate family member” means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.
- (d) The term “individual” means a natural person.

(1) The term “loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of—

- (A) a State- licensed mortgage loan originator; or
- (B) a registered loan originator.

(2) The term “clerical or support duties” may include subsequent to the receipt of an application—

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

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

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

(4) The term “mortgage loan originator”—

(A) means an individual who for compensation or gain or in the expectation of compensation or gain—

(i) Takes a residential mortgage loan application; or

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

(iii) assists a consumer in obtaining or applying to obtain a residential mortgage loan by, among other things, advising on loan terms, including rates, fees, other costs, preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(B) does not include an individual engaged solely as a loan processor or underwriter except as otherwise provided in this subchapter;

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

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

(5) The term “real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including—

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

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

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

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

(E) Offering to engage in any activity, or act in any capacity, described in subparagraphs (A), (B), (C), or (D) of this paragraph.

(e) The term “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of State- licensed loan originators and the registration of registered loan originators or any system established by the Secretary under Public Law 110-289, section 1509.

(f) The term “nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

(g) The term “registered mortgage loan originator” means any individual who—

(1) Meets the definition of mortgage loan originator and is an employee of—

(A) A depository institution;

(B) A subsidiary that is—

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

(ii) Regulated by a federal banking agency; or

(C) An institution regulated by the Farm Credit Administration;
and

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

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

(i) The term “residential real estate” means any real property located in the Virgin Islands, upon which is constructed or intended to be constructed a dwelling.

(j) The term “Secretary” means the Secretary of Housing and Urban Development.

(k) The term “State-licensed mortgage loan originator” means any individual who-

(A) is a mortgage loan originator;

(B) is not an employee of—

(i) a depository institution;

(ii) a subsidiary that is—

(1) owned and controlled by a depository institutions: and

(2) regulated by a federal banking agency: or

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

(C) is licensed by a State or by the Secretary under Public Law 110-289, section 1508 and registered as a mortgage loan originator with, and maintains a unique identifier through the Nationwide Mortgage Licensing System and Registry.

(n) The term “unique identifier” means a number or other identifier that —

(1) permanently identifies a loan originator;

(2) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the federal Banking agencies to facilitate

electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and publicly adjudicated disciplinary and enforcement actions against loan originators; and

(3) shall not be used for purposes other than those set forth under this subchapter.

§383a (a) To the greatest extent possible and to accomplish the purpose of this subchapter, the Virgin Islands shall use unique identifiers in lieu of social security numbers.

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

§384. LICENSE AND REGISTRATION REQUIRED; SUPERVISED LOAN PROCESSOR AND UNDERWRITERS; INDEPENDENT CONTRACTOR LOAN PROCESSORS OR UNDERWRITERS

(a) Subject to the existence of a licensing or registration regime, as the case may be, an individual, unless specifically exempted from this subchapter under subsection (c) may not engage in the business of a mortgage loan originator with respect to any dwelling located in the Virgin Islands without first-

(1) obtaining and maintaining annually-

(A) a registration as a registered loan originator; or

(B) a license and registration as a State- licensed mortgage loan originator; and

(2) obtaining a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(b)(1) —A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationary, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a loan originator is not required to be a State-licensed loan originator.

(2) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless the independent contractor loan processor or underwriter obtains and maintains a license. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(c) The following are exempt from this subchapter:

(1) Registered Mortgage Loan Originators, when acting for an entity described in §383 (g) (1) (A), (B), or (C) and (g) (2) ;

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

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

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

(5) Agencies of the federal Government, the Territory of the Virgin Islands, or any State or municipal government, or any quasi-governmental agency making mortgage loans under the specific authority of the laws or regulations of any state, the Territory of the Virgin Islands or the United States, including without limitation, the Virgin Islands Housing Finance Authority and the Government Employees Retirement System, with respect to their activities in offering, accepting, completing and processing mortgage loan applications under their programs.

(d) Subsection (c) (5) does not apply if the United States Department of Housing and Urban Development determines by guidelines, rules, interpretive letter or otherwise that such individuals must be licensed under the Fair Enforcement for Mortgage Licensing Act of 2008, or that this subsection is otherwise inconsistent with this subchapter.

(e) Upon approval or consent by the United States Department of Housing and Urban Development, the Banking Board must be authorized to exempt in whole or in part from this subchapter additional individuals or classes of individuals which the Banking Board finds inappropriate to effectuate the purposes of this chapter.

§385. STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE

(a) **APPLICATION FORM**—Applicants for a license shall apply in a form as prescribed by the Banking Board or its designated agent. Each such form must contain content as set forth by rule, regulation, instruction or procedure of the Banking Board or its designated agent and may be changed or updated as necessary by the Banking Board or its designated agent in order to carry out the purposes of this subchapter.

(b) **BACKGROUND CHECKS**—In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including—

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

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the Banking Board or its designated agent—

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

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

(3) AGENT— For the purposes of this subsection and in order to reduce the points of contact which the Federal Bureau of Investigation and other entities may have to maintain for purposes of subsection (b)(1) and (b) (2) of this section, the Banking Board or its designated agent may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency and from any other source so directed by the Banking Board or its designated agent.

(c) ISSUANCE OF LICENSE—The Banking Board may not issue a mortgage loan originator license unless the Banking Board or its designated agent finds that the individual meets the minimum standards for licensing and registration as a State-licensed mortgage loan originator:

(1) NO LICENSE REVOCATION— The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation.

(2) NO FELONY CONVICTION— The applicant has not been convicted of, or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court—

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

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

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

(3)(A) CHARACTER AND FITNESS— The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this subchapter.

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

- (i) Current outstanding judgments, except judgments solely as a result of medical expenses;
- (ii) Current outstanding tax liens or other government liens and filings;
- (iii) Foreclosures within the past three years;
- (iv) A pattern of seriously delinquent accounts within the past three years.

(4) PRE-LICENSING EDUCATION— The applicant has completed the pre-licensing education requirement.

(A) MINIMUM EDUCATIONAL REQUIREMENTS— In order to meet the pre-licensing education requirement, a person shall complete at least 20 hours of education approved in accordance with subparagraph (B) of this paragraph, which must include at least—

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

(B) APPROVED EDUCATIONAL COURSES, LIMITATIONS AND STANDARDS—For purposes of subparagraph (A) of this paragraph, pre-licensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a pre-licensing education course shall include review and approval of the course provider.

- (a) To maintain the independence of the approval process, the Nationwide Mortgage Licensing System and Registry may not directly or indirectly offer pre-licensure educational courses for loan originators.

(b) In approving courses under this section, the Nationwide Mortgage Licensing System and registry shall apply reasonable standards in the review and approval of courses.

(C) APPROVAL OF EMPLOYER AND AFFILIATE EDUCATIONAL COURSES—Nothing in this section precludes any pre-licensing education course, as approved by the Nationwide Mortgage Licensing System and Registry that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(D) VENUE OF EDUCATION—Pre-licensing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(E) RECIPROCITY OF EDUCATION—The pre-licensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in paragraphs (4)(A)(i)(ii) and (iii) of this subsection for any state may be accepted as credit towards completion of pre-licensing education requirements in the Virgin Islands.

(F) RE-LICENSING EDUCATION REQUIREMENTS— A person previously licensed under this subchapter subsequent to the effective date of this subchapter applying to be licensed again must prove that they have completed all of the continuing education requirements for the year in which the license was last held.

(5) WRITTEN TEST— The applicant has passed a written test that meets the test requirement described in this subchapter.

(A) In order to meet the written test requirement referred to in this subsection an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(B) QUALIFIED TEST—A written test may not be treated as a qualified written test for purposes of subparagraph (A), unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including—

- (i) Ethics;
- (ii) Federal law and regulation pertaining to mortgage origination;

(iii) State law and regulation pertaining to mortgage origination;

(iv) Federal and State law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(C) TESTING LOCATION—Nothing in this section prohibits a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(D) MINIMUM COMPETENCE—

(i) PASSING SCORE—An individual is considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(ii) INITIAL RETESTS—An individual may retake a test 3 consecutive times with each consecutive taking occurring at least 30 days after the preceding test.

(iii) SUBSEQUENT RETESTS—After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again.

(iv) RETEST AFTER LAPSE OF LICENSE—A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

(6) SURETY BOND & NET WORTH—The applicant has met the surety bond and net worth requirement as required pursuant to subchapter.

(A) SURETY BOND REQUIRED—

(i) COVERAGE, FORM AND REGULATIONS—Each mortgage loan originator must be covered by a surety bond in accordance with this section. An applicant for an original license or for the renewal of a license shall file a surety bond with each original application and any renewal application for the license. The surety bond must:

(a) run to the Government of the Virgin Islands for the benefit of any person who has been damaged by a

licensee as a result of violating any law or regulation governing the activities of mortgage loan originators;

(b) be issued by a surety company authorized to do business in the Virgin Islands;

(c) provide coverage for each mortgage loan originator in an amount as prescribed in subparagraph (A)(ii) of this paragraph;

(d) be in a form as prescribed by the Banking Board or its designated agent;

(e) be conditioned upon the applicant's complying with all of the Virgin Islands laws regulating the activities of mortgage loan originators, performing all written agreements with borrowers or prospective borrowers and accounting for all funds received by the licensee in conformity with the consistently applied standard system of accounting; and

(f) be continuously maintained thereafter for as long any license issued under this chapter remains in force.

(ii) PENAL SUM OF SURETY BOND—

(a) If an applicant has not conducted business as a mortgage loan originator in the Virgin Islands in any of the three calendar years preceding the year in which an original application for a license is filed, the surety bond required under this subsection is \$25,000.

(b) If an applicant has conducted business as a mortgage loan originator in the Virgin Islands in any of the three calendar years preceding the year in which an original or renewal application is filed, the applicant shall provide a sworn statement setting forth the total dollar amount of mortgage loans applied for and accepted or mortgage loans applied for, procured, and accepted by the mortgage loan originator during the latest calendar year such business was conducted. The bond required in this circumstance is determined as follows:

(I) Where the total dollar amount of stated loans was \$1,000,000 or less, the bond is \$25,000;

(II) Where the total dollar amount of stated loans was more than \$1,000,000 but not more than \$2,000,000, the bond is \$30,000;

(III) Where the total dollar amount of stated loans was more than \$2,000,000 but not more than \$3,000,000, the bond is \$40,000;

(IV) Where the total dollar amount of stated loans was more than \$3,000,000, the bond is \$50,000;

(iii) ACTION ON BOND—When an action is commenced on a licensee's bond the Banking Board or its designated agent may require the filing of a new bond.

(7) NEW BOND—Immediately upon recovery upon any action on the bond the licensee shall file a new bond; and MINIMUM NET WORTH REQUIRED—

(A) MINIMUM NET WORTH—A minimum net worth of \$25,000 must be continuously maintained for mortgage loan originators in accordance with this subsection.

(i) If the mortgage loan originator is an employee or exclusive agent of a person subject to this subchapter, the net worth of such person subject to this subchapter may be used in lieu of the mortgage loan originator's minimum net worth requirement.

(ii) The Banking Board may promulgate rules or regulations with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this subparagraph.

§386. STANDARDS FOR LICENSE RENEWAL

(a) The minimum standards for license renewal for State-licensed mortgage loan originators must include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under section 385(c)(1)-(6).

(2) The mortgage loan originator has satisfied the annual continuing education required in section 385 (c)(4)(F).

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

(b) FAILURE TO SATISFY MINIMUM STANDARDS OF LICENSE RENEWAL—The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire. The Banking Board or its designated agent may adopt procedures for the reinstatement of expired licenses consistent with the

standards established by the Nationwide Mortgage Licensing System and Registry.

(c) CONTINUING EDUCATION FOR STATE-LICENSED MORTGAGE
LOAN ORIGINATORS –

(1) IN GENERAL - In order to meet the annual continuing education requirements referred to in subsection (a) (2), a licensed mortgage loan originator shall complete at least 8 hours of education approved in accordance with subsection (2) of this section, which shall include at least—

(A) 3 hours of Federal law and regulations;

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

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

(2) APPROVED EDUCATIONAL COURSES—For purposes of paragraph (1) of this subsection, continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course must include review and approval of the course provider.

(3) APPROVAL OF EMPLOYER AND AFFILIATE EDUCATIONAL COURSES—Nothing in this section precludes any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator or by an agency contract, or any subsidiary or affiliate of such employer or entity.

(4) VENUE OF EDUCATION- Continuing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(5) CALCULATION OF CONTINUING EDUCATION CREDITS- A licensed mortgage loan originator-

(A) Except for paragraph (2) of this subsection, may only receive credit for continuing education course in the year in which the course is taken; and

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

(6) INSTRUCTOR CREDIT—A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

(7) **RECIPROCITY OF EDUCATION**- A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in paragraph (1)(A),(B), and (C) of this subsection for any state must be accepted as credit towards completion of continuing education requirements in the Virgin Islands.

(8) **LAPSE IN LICENSE**—A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(9) **MAKE UP OF CONTINUING EDUCATION**—A person meeting the requirements of section 386(a)(1) and (3) may make up any deficiency in continuing education as established by rule or regulation of the Banking Board or its designated agent.

§387. AUTHORITY TO REQUIRE LICENSE AND MODIFICATION OF ACT

(a) In addition to any other duties imposed upon the Banking Board by law, the Banking Board shall require State-licensed mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement the Banking Board or its designated agent may participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the Banking Board or its designated agent may establish by rules or order requirements as necessary, including but not limited to:

(1) Background checks for:

(A) Criminal history through fingerprint or other databases;

(B) Civil or administrative records;

(C) Credit history; or

(D) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.

(2) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;

(3) The setting or resetting as necessary of renewal or reporting dates; and

(4) Requirements for amending or surrendering a license or any other such activities as the Banking Board or its designated agent deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(b) (1) For the purposes of implementing an orderly and efficient licensing process the Banking Board or its designated agent may establish licensing rules or

regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals the Banking Board or its designated agent may establish expedited review and licensing procedures.

(2) In order to fulfill the purposes of this subchapter, the Banking Board or its designated may establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this subchapter.

(3) For the purpose of participating in the Nationwide Mortgage Licensing System & Registry, the Banking Board or its designated agent may waive or modify by rule, regulation or order, any requirements of this subchapter to establish new requirements as necessary to participate in the Nationwide Mortgage Licensing System & Registry.

§388. ENFORCEMENT AUTHORITIES, VIOLATIONS AND PENALTIES—

(a) In order to ensure the effective supervision and enforcement of this subchapter, the Banking Board or its designated agent may:

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

(2) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of section 385(c) or Section 386, or withholds information or makes a material misstatement in an application for a license or renewal of a license.

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

(4) Impose fines on persons subject to this subchapter pursuant to subsection (c) of this section.

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

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

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

(C) Enter immediate temporary orders to cease business under a license if the Banking Board or its designated agent determines that such

license was erroneously granted or the licensee is currently in violation of this subchapter;

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

(b) The Banking Board or its designated agent may impose a civil penalty on a mortgage loan originator or person subject to this subchapter, if the Banking Board or its designated agent finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this subchapter has violated or failed to comply with any requirement of this subchapter or any regulation prescribed by the Banking Board or its designated agent under this subchapter or order issued under authority of this subchapter.

(c) The maximum amount of penalty for each act or omission described in subsection (2) of this section shall be \$1,000.

(d) Each violation or failure to comply with any directive or order of the Banking Board or its designated agent is a separate and distinct violation or failure.

§389. CONFIDENTIALITY

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

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

(b) AGREEMENTS AND SHARING ARRANGEMENTS—For these purposes, the Banking Board or its designated agent may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators or other associations representing governmental agencies as established by rule, regulation or order of the Banking Board or its designated agent.

(c) NONAPPLICABILITY OF CERTAIN REQUIREMENTS—Information or material that is subject to a privilege or confidentiality under paragraph (1) of this subsection shall not be subject to—

(1) Disclosure under any Federal or Virgin Islands law governing the

disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or

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

(c) **COORDINATION WITH OTHER LAW**— Any Virgin Islands law, including any Virgin Islands open record law, relating to the disclosure of confidential supervisory information or any information or material described in subsection (a) of this section which is inconsistent with subsection (a) is superseded by the requirements of this section.

(d) **PUBLIC ACCESS TO INFORMATION**—This section does not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

§390. INVESTIGATION AND EXAMINATION AUTHORITY

In addition to any authority allowed under this subchapter the Banking Board or its designated agent shall have the authority to conduct investigations and examinations as follows:

(a) **AUTHORITY TO ACCESS INFORMATION**—For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this subchapter, the Banking Board or its designated agent shall have the authority to access, receive and use any books, accounts, records, files, documents, information or evidence including but not limited to:

(1) Criminal, civil and administrative history information, including nonconviction data as specified in Virgin Islands Code; and

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

(3) Any other documents, information or evidence the Banking Board or its designated agent deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence.

(b) **INVESTIGATION, EXAMINATION, AND SUBPOENA AUTHORITY**— For the purposes of investigating violations or complaints arising under this subchapter, or for the purposes of examination, the Banking Board or its designated agent may

review, investigate, or examine any licensee, individual or person subject to this subchapter, as often as necessary in order to carry out the purposes of this subchapter. The Banking Board may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the Banking Board or its designated agent deems relevant to the inquiry.

(c) **AVAILABILITY OF BOOKS AND RECORDS**—Each licensee, individual or person subject to this subchapter shall make available to the Banking Board or its designated agent upon request the books and records relating to the operations of such licensee, individual or person subject to this subchapter. The Banking Board or its designated agent shall have access to such books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual or person subject to this subchapter concerning their business.

(d) **REPORTS AND OTHER INFORMATION AS DIRECTED**—Each licensee, individual or person subject to this subchapter shall make or compile reports or prepare other information as directed by the Banking Board or its designated agent in order to carry out the purposes of this section including but not limited to:

- (1) Accounting compilations;
- (2) Information lists and data concerning loan transactions in a format prescribed by the Banking Board or its designated agent; or
- (3) Such other information deemed necessary to carry out the purposes of this section.

(e) **CONTROL ACCESS TO RECORDS**—In making any examination or investigation authorized by this subchapter, the Banking Board or its designated agent may control access to any documents and records of the licensee or person under examination or investigation. The Banking Board or its designated agent may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Banking Board or its designated agent. Unless the Banking Board or its designated agent has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this subchapter, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(f) **ADDITIONAL AUTHORITY**—In order to carry out the purposes of this section, the Banking Board or its designated agent may:

- (1) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of

examinations or investigations;

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

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

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

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

(g) EFFECT OF AUTHORITY—The authority of this section shall remain in effect, whether such a licensee, individual or person subject to this subchapter acts or claims to act under any licensing or registration law of this State, or claims to act without such authority.

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

§391. BROAD ADMINISTRATIVE AUTHORITY

That the Banking Board shall have the broad administrative authority to administer, interpret and enforce this subchapter, and promulgate rules or regulations implementing this subchapter, in order to carry out the intentions of the Legislature.

§392. PROHIBITED ACTS AND PRACTICES

In addition to those prohibited acts set forth in 9 V.I.C. section 374 governing mortgage lenders and brokers and their employees, it is a violation of this subchapter for a person or individual subject to this subchapter to:

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

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

(c) Obtain property by fraud or misrepresentation;

(d) Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this subchapter may earn a fee or commission through “best efforts” to obtain a loan even though no loan is actually obtained for the borrower;

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

(f) Conduct any business covered by this subchapter without holding a valid license as required under this subchapter, or assist or aide and abet any person in the conduct of business under this subchapter without a valid license as required under this subchapter ;

(g) Fail to make disclosures as required by this subchapter and any other applicable state or federal law including regulations thereunder;

(h) Fail to comply with this subchapter or rules or regulations promulgated under this subchapter, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this subchapter;

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

(j) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the Banking Board or its designated agent or another governmental agency;

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

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

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

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

§393. REPORTS

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

(b) **REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY**—Subject to Virgin Islands privacy law the Banking Board or its designated agent is required to report regularly violations of this subchapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.

§394. NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY**INFORMATION CHALLENGE PROCESS**

The Banking Board or its designated agent shall establish a process whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the Banking Board or its designated agent.

§395. PRIVATELY INSURED CREDIT UNIONS

Non-federally insured credit unions that employ loan originators, as defined in PL 110-289, Title V, the S.A.F.E. Act, shall register such employees with the Nationwide Mortgage Licensing System and Registry by furnishing the information concerning the employees' identity set forth in Section 1507(a)(2) of PL 110-289, Title V.

§396. SEVERABILITY

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

§397. EFFECTIVE DATE

In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for implementation of this subchapter shall be December 31, 2010, or such later date approved by the Secretary of the United States Department of Housing and Urban Development, pursuant to the authority granted under Public Law 119-289, Section 1508 (a)".

Thus passed by the Legislature of the Virgin Islands on October 28, 2009.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 19th
Day of November, A.D., 2009.



A handwritten signature in black ink, appearing to read "Louis Patrick Hill".

Louis Patrick Hill
President

A handwritten signature in black ink, appearing to read "Samuel Sanes".

Samuel Sanes
Legislative Secretary

Bill No. 28-0106 is hereby approved.

Witness my hand and the Seal of the
Government of the United States
Virgin Islands at Charlotte Amalie, St.
Thomas, this 25th day of November,
A.D., 2009.



A handwritten signature in blue ink, appearing to read "John P. deJongh, Jr.".

John P. deJongh, Jr.
Governor