A Lender's Duty to Investigate Its Borrower

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Until recently, a mortgage lender preparing to make a loan needed only to conduct a basic search of the title and records of the subject property. A lender was not required to search into the background and financial status of a borrower to ensure that the borrower was legitimate and would be able to repay the loan. As long as the borrower had recorded title and there were no senior recorded liens or notices of pendency, the lender was free to give out a loan knowing its interest in the property was protected. The lender was what is referred to as a "bona fide encumbrancer for value," which meant that, if the borrower's ability to repay had been overstated or if the transaction was tainted by outright fraud, the lender's interest in the property was still secure.

When the United States became mired in the foreclosure crisis in 2008, huge numbers of homeowners were stuck with loans they could not repay. This had a disastrous snowball effect on the economy. It also opened the door to widespread foreclosure rescue schemes, in which scam artists induced homeowners who faced foreclosure to convey title by falsely promising to help them refinance. In response, the federal government enacted amendments to the Truth in Lending Act (TILA), 15 U.S.C. § 1601 et seq., and many states also enacted legislation designed to protect borrowers from entering into risky loan agreements.

The new federal and state legislation not only imposes a new duty on lenders to verify the ability of their borrowers to repay the loans but also creates a duty for lenders to investigate suspicious situations surrounding the integrity of the borrowers. As discussed in further detail below, if a lender fails to investigate, the lender may not be entitled to bona fide status, and, if it makes the loan, its interest in the property will not be protected. Moreover, the federal government requires bank mortgage lenders to file suspicious activity reports (SARs) if a foreclosure rescue scheme or other fraudulent activity is suspected.

Although the new federal and state regulatory schemes are well intentioned, the new rules do not apply to the overwhelming majority of borrowers otherwise qualified to apply for loans, and, therefore, the loan market is only marginally affected by the lenders' new duty to investigate their borrowers' ability to repay. As discussed below, the recent amendments to TILA require mortgage lenders to verify a borrower's ability to repay for only a small subset of particularly risky loans. Similarly, eight states have enacted laws that mirror the federal approach and limit the duty of lenders in those states to investigate only certain specified categories of risky loans. Just 12 states and the District of Columbia require lenders to determine a borrower's ability to repay in connection with all mortgage loans. Despite the limited scope of mortgage loans generally affected by the new legislation, however, the new rules are a fact of life to which lenders must adapt their loan application processes.

For this article, the authors reviewed the legislation of the 22 states that have ability-to-repay requirements and also recent court decisions of nine states that have addressed a lender's duty to investigate suspicious transactions. Relevant federal laws and regulations were also examined. This research shows that a variety of different approaches are being implemented in this area; nevertheless, the general trend is toward an increased duty for lenders to know their borrowers. The observance of this duty by lenders will protect their interest in ensuring the repayment of their loans, either by the borrowers in accordance with specified mortgage terms or on issuance of court judgments obtained in any necessary foreclosure proceedings.

The Duty to Determine a Borrower's Ability to Repay

The Federal Approach

Congress passed amendments to TILA in 2008 as a way to prevent the kind of predatory lending practices that were at the root of the financial crisis. TILA, as implemented through Regulation Z of the Code of Federal Regulations, requires lenders to verify a buyer's ability to repay certain types of particularly risky loans—interest-only loans, loans with balloon payments, loans whose principal increases over time, and loans for a period of more than 30 years. See 12 C.F.R. § 1026.43(c). The vast majority of loans—more than 92%, according to the Consumer Finance Protection Bureau—meet the requirements of a "qualified mortgage" as defined in the act. See Consumer Fin. Prot. Bureau, *Ability-to-Repay Rule: Protecting Homeowners from Debt Traps,* http://files.consumerfinance.gov/f/201312_cfpb_mortgage-rules_fact-vs-fiction.pdf (last visited Dec. 26, 2014); 12 C.F.R.§ 1026.43(e) (defining "qualified mortgage"). In addition to not containing any of the risky features listed above, the loan also must comply with certain basic underwriting requirements, such as calculating monthly payments based on the highest payment that will apply in the first five years. See 12 C.F.R.§ 1026.43(e). For a qualified mortgage with a higher than average interest rate, there is a rebuttable presumption that the lender has complied with the ability-to-repay requirements of Regulation Z. Id. § 1026.43(e)(1)(ii). For all other qualified mortgages, there is a conclusive presumption that the lender has satisfied the requirements of Regulation Z. Id. § 1026.43(e)(1)(i).

States with Requirements Similar to the Federal Approach

Several states have enacted ability-to-repay requirements that are similar to the federal approach in that they apply only to a small subset of particularly risky loans. Oregon has an ability-to-repay provision limited to negative amortization loans, or those in which the principal increases over the duration of the loan. See Or. Rev. Stat. Ann. § 86A.195. Kentucky, Tennessee, Rhode Island, and South Carolina require lenders to verify a borrower's ability to repay solely for "high-cost" mortgage loans. Ky. Rev. Stat. Ann. § 360.100; Tenn. Code Ann. § 45-20-103; R.I. Gen. Laws § 34-25.2-6; S.C. Code Ann.§ 37-23-40. These states define "high-cost" to mean a loan with an interest rate or points and fees that exceed a certain threshold. Ky. Rev. Stat.§ 360.100; Tenn. Code Ann. § 45-20-102; R.I. Gen. Laws § 34-25.2-4; S.C. Code Ann. § 37-23-20. North Carolina imposes a similar ability-to-repay requirement for "rate spread" loans, which are defined as mortgage loans with an above-average interest rate. N.C. Gen. Stat. § 24-1.1F.

Although these provisions encompass more potential loans than the federal law, overall they are still limited in scope, and they do not impose a general duty on lenders to ensure that all their borrowers can repay their loans.

States with Greater Requirements than the Federal Approach

Twelve states and the District of Columbia have legislation imposing ability-to-repay requirements on all mortgage loans, regardless of size or type. (For a complete list of states, see chart on pages 9-11.) In addition, although New York has no statutory requirement that lenders verify a borrower's ability to repay, the New York State Supreme Court Appellate Division, First Department, recently imposed such a duty for all mortgage loans, at least when the lender is aware of other facts that should arouse suspicion about the transaction. *Miller-Francis v. Smith-Jackson*, 976 N.Y.S.2d 34 (App. Div. 2013). In *Miller-Francis*, the court held that when a mortgage lender had a borrower who did not sign any documents until the closing and who, at the closing, appeared to not understand the transaction being entered into, the lender had a duty to review the borrower's "paystubs, tax returns, or credit history" to ensure that the borrower was in fact able to repay the loan. Id. at 35.

Examples of some state legislation imposing ability-to-repay requirements on all mortgage loans are:

- **Illinois:** 205 Ill. Comp. Stat. 635/5-6—All mortgage lenders must verify a borrower's ability to repay by checking tax returns, payroll receipts, bank records, or other "reasonably reliable" methods.
- **New Mexico:** N.M. Stat. Ann.§ 58-21B-13—Lenders must verify a borrower's ability to repay "through reasonably reliable documentation that may include payroll receipts, tax returns, bank records, asset and credit evaluations, mortgage payment history or other similar reliable documentation." Id. § 58-21B-13(C)(24). Although the requirement does not apply to loans made by government-sponsored entities or to reverse mortgages, such loans must still provide the borrower with a "tangible net benefit." Id.
- **Nevada:** Nev. Rev. Stat. Ann. § 598D.100—A mortgage lender may not "[k]nowingly or intentionally make a home loan . . . without determining, using any commercially reasonable means or mechanism, that the borrower has the ability to repay the home loan." Id. § 598D.100(1)(b).
- **Georgia:** Ga. Code Ann.§ 7-1-1013(9) and the **District of Columbia:** D.C. Code Ann.§ 26-1114(6)—Lenders may not make a loan with the intent to foreclose, which can be shown by the lender making loans to borrowers who have a low probability of being able to repay.
- **Ohio:** Ohio Rev. Code Ann. § 1322.081(A)(5)—A lender must make a reasonable effort to ensure that the terms of a loan are advantageous to a borrower's interest.
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In addition to these states, Minnesota, Massachusetts, Colorado, Hawaii, and New Hampshire have statutes requiring lenders to verify a borrower's ability to repay for all mortgage loans. Minn. Stat. Ann. § 58.13(a)(24); 940 Mass. Code Reg. § 8.06(15); Colo. Rev. Stat. Ann. § **38-40-105(1.7)(a)**; Haw. Rev. Stat. Ann. § 454F-17(17); and N.H. Rev. Stat. Ann. § 397-A:15(X).

California and West Virginia reach a similar result through a slightly different approach. No statutes impose an affirmative duty to verify a borrower's ability to repay, and California courts have expressly held that lenders have no general duty to verify a borrower's ability to repay. See *Castro v. Aurora Loan Servs., LLC*, No. B247114, 2014 WL 2446719 (Cal. Ct. App. June 2, 2014); *Perlas v. GMAC Mortgage, LLC,* 113 Cal. Rptr. 3d 790 (Ct. App. 2010) ("A lender is under no duty 'to determine the borrower's ability to repay the loan. . . . The lender's efforts to determine the creditworthiness and ability to repay by a borrower are for the lender's protection, not the borrower's'") (quoting *Renteria v. United States,* 452 F. Supp. 2d 910, 922–23 (D. Ariz. 2006). Nevertheless, in both states, a lender can have its license revoked if it is shown that the lender has repeatedly made loans to borrowers who cannot afford to repay the loans. See Cal. Fin. Code Ann.§ 22714(a)(4); W.V. Code. § 31-17-12(a)(7). In effect, although California and West Virginia lenders have no affirmative duty to verify their borrowers' ability to repay, lenders in those states who do not verify the ability of *all* borrowers to repay their loans do so at great risk.

The Duty to Investigate Suspicious Transactions

In addition to the requirement to verify a borrower's ability to repay, lenders also may need to investigate potential issues with the borrower or transaction if they are aware of certain facts that should arouse suspicion. Otherwise, a lender may not be entitled to bona fide status, and its interest in the property will not be protected. Recent court decisions in nine states have addressed this issue, and the courts in those states have taken various positions on whether the duty exists and, if so, what facts are sufficient to trigger the duty.

Whether the Duty Exists

Of the nine states that have addressed the issue, four states—New York, California, Texas, and Minnesota—have held explicitly or implied in dicta that if a lender is aware of certain facts that suggest a transaction is suspicious, it has a duty to investigate further. *Miller-Francis v. Smith-Jackson*, 976 N.Y.S.2d 34; *Johnson v. Deutsche Bank Nat'l Trust Co*., No. B223188, 2011 WL 3675691 (Cal. Ct. App. Aug. 23, 2011); *In re Harydzak*, 406 B.R. 499 (Bankr. S.D. Tex. 2009); *Stella v. Wells Fargo Bank, N.A.,* No. A11-1827, 2012 WL 3553123 (Minn. Ct. App. Aug. 20, 2012). A fifth state, Florida, declined to decide whether such a duty exists. *Ocean Bank of Miami v. Inv-Uni Inv. Corp*., 599 So. 2d 694 (Fla. Dist. Ct. App. 1992).

An Illinois court recently held, however, that a mortgage lender faced with a potentially problematic transaction had no further duty to investigate and was protected because it had conducted a basic search of the title and records. *Stump v. Swanson Dev. Co., LLC,* 5 N.E.3d 279 (Ill. App. Ct. 2014). The case involved a business venture between two individuals, Stump and Swanson, in which the two agreed to purchase and develop several properties. Swanson obtained a loan against one of the properties and allegedly spent all of the money fraudulently on himself rather than for the business venture. Swanson subsequently defaulted and the lender foreclosed. Stump brought suit to assert title to the property, contending that the lender should not be entitled to bona fide status because it ignored signs of the fraud and failed to further investigate. The court rejected the argument, holding that the lender had no duty to investigate because

> even though all of [the bank's] policies were not carefully followed, the bank adequately protected its interests by commissioning a title search which disclosed no clouds on title, ascertaining that the appraised value of the collateral equaled or exceeded the amounts of the loans it was making, and assuring itself that its lien stood in first position.

Id. ¶ 114. The court further stated that any failure to adequately investigate before underwriting the loan might have been a breach of duty to the bank's shareholders but did not eliminate the lender's bona fide status.

New Jersey similarly has held that a lender presented with facts that raised suspicion about the transaction had no further duty to investigate and was entitled to take the transaction at face value. *Family First Federal Sav. Bank v. DeVicentis*, 665 A.2d 1119 (N.J. Super. Ct. App. Div. 1995). In a foreclosure action, the defendant contended that she did not fully understand the transaction when she entered into it and that she was fraudulently induced by her son. She argued that the bank should have been made suspicious by the facts that she was an elderly woman and that she showed up at the closing without a lawyer while the other parties had one. The court rejected the defense, stating that

> when an elderly mortgagor appears at a mortgage closing with an adult son for whose benefit the mortgage is being given and who is a co-signor of the mortgage note, and when they appear with an attorney apparently acting for both, the bank is entitled to accept what appears to be a perfectly routine and unexceptionable transaction at face value without intruding itself into the parental or the legal relationships involved.

Id. at 1122. Likewise, the Nevada Supreme Court also recently held, in a case brought by a victim of identity theft, that the lender owed no duty "'to conduct reasonable evaluations into the merits' of the loans taken out in [the plaintiff's] name." *Davenport v. GMAC Mortg.*, No. 56697, 2013 WL 5437119, at *5 (Nev. Sept. 25, 2013).

Similarly, in 1993, a Massachusetts appellate court held that a lender "is under *no* duty . . . to exercise due care in dealing with the borrower or determining whether to make the loan." *Shawmut Bank N.A. v. Wayman*, 606 N.E.2d 925 (Mass. App. Ct. 1993). In the interim since 1993, however, no other Massachusetts appellate court decisions have addressed the issue.

Facts That Trigger the Duty to Investigate

For those states that have imposed a duty to investigate, the question remains: What facts are sufficient to trigger that duty? A review of recent cases from New York, California, Texas, and Minnesota suggests that there is as yet no "bright line" rule by which one can predict when a court will decide that the duty has been triggered.

In New York, appellate courts have decided two cases involving foreclosure rescue scams, and the decisions have reached opposite conclusions. In *Miller-Francis v. Smith-Jackson*, 976 N.Y.S.2d 34, the First Department held that the facts were sufficient to trigger a duty for the lender to investigate. In the case, Miller-Francis ("Miller") was the victim of a foreclosure rescue scheme. About to be foreclosed on, Miller was approached by Smith-Jackson ("Smith"), who offered to help Miller avoid foreclosure. Smith told Miller that Smith was helping Miller refinance, but Smith actually had Miller convey title to Smith. Smith then conveyed title to Henry, a third party who was not aware of the scheme. Henry's sale was funded by a mortgage from Accredited. At the closing, it was apparent that Henry did not understand that he was purchasing a home. Contrary to normal practice, Henry did not sign the mortgage loan application until he was at the closing. Further, Accredited did not look at Henry's pay stubs, tax returns, or credit history before approving his loan application. Moreover, the property was patently over-appraised, which Accredited apparently recognized because it reduced the amount of the loan. The court held that Accredited had a duty to further investigate the transaction (1) because these facts should have aroused suspicion that the transaction was tainted and (2) because Accredited failed to obtain and review Henry's pay stubs and other materials before giving the loan to ensure that Henry would be able to repay it.

Previously, however, in *Mathurin v. Lost & Found Recovery, LLC*, 884 N.Y.S.2d 462 (App. Div. 2009), the Second Department held that the facts pleaded regarding an alleged foreclosure rescue scam were insufficient to trigger a duty for the lender to investigate. In that case, Mathurin was the victim of a foreclosure rescue scheme similar to the one in *Miller-Francis*. Mathurin was in danger of being foreclosed on and was approached by Lost & Found, who said it could help Mathurin refinance, but actually tricked her into conveying title to a straw buyer, who then obtained a mortgage from the lender. Mathurin alleged that the lender (1) failed to take steps to verify that the borrower was not a straw buyer who would be able to repay the loan and (2) failed to take steps to verify that Lost & Found was licensed to conduct refinancing services. The court held that the facts, as Mathurin pleaded them, although sufficient to survive a motion to dismiss, were nevertheless insufficient to trigger a duty by the lender to investigate the borrower.

California courts also have recently decided two cases that reached opposite conclusions regarding the facts that should trigger a lender's duty to investigate. In *Johnson v. Deutsche Bank Nat'l Trust Co.*, No. B223188, 2011 WL 3675691 (Cal. Ct. App. Aug. 23, 2011), a California appellate court held that the allegations regarding a foreclosure rescue scam were sufficient to survive a motion for summary judgment. The court held that because (1) the property was conveyed multiple times in a short period of time, (2) the stated value of the property was steeply inflated, and (3) a prior owner was still in possession despite two intervening conveyances, these facts may have been sufficient to trigger the lender's duty to further investigate before giving the loan. Thus, the court held that there was a material dispute on whether the lender was entitled to bona fide status.

In *Ellis v. Golden Security Bank,* No. B234992, 2012 WL 3860641 (Cal. Ct. App. Sept. 6, 2012), the court held that the facts of an alleged fraudulent transaction were insufficient to give the lender a duty to investigate. In that case, while Kenneth Ellis was incarcerated, his wife, Cindy, convinced him to give her a power of attorney, purportedly to enable her to manage the property. She falsely said that she would manage the property, collect rents, and deposit the rents into a savings account for his benefit. Instead, Cindy attempted to obtain a loan on the property, but the lender refused to approve a loan because the power of attorney appeared to be defective. Cindy then prepared a new power of attorney and forged Kenneth's signature. She also conveyed title to a friend's dummy corporation as a "bona fide gift." She subsequently obtained two separate loans against the property from two different lenders. She defaulted and the lenders foreclosed. Kenneth brought an action to quiet title in which he contended (1) that the first loan was rejected, (2) that title was conveyed to a corporation as a gift, and (3) that two nearly identical powers of attorney executed a year apart should have given both lenders reason to suspect that the loan application was suspicious and that they had a duty to further investigate Cindy's authority to act in his behalf. The court held, however, that the lenders had no duty to further investigate and were entitled to bona fide status. The court explained that

> Kenneth . . . fails to cite authority for the proposition that a lender is required to compare duly notarized signatures for suspected forgeries, or to investigate whether a corporate grantee is qualified to take property as a bona fide gift. We are aware of no authority imposing any such duties of inquiry and decline to create new law in this case imposing new rules about what might constitute constructive notice.

Id. at *9.

In a recent Texas case, the court held that the facts were sufficient to trigger a duty to investigate. *In re Harydzak*, 406 B.R. 499 (Bankr. S.D. Tex. 2009). This case also involved a foreclosure rescue scam. Harydzak, facing foreclosure, was approached by New Horizon who said it could help. New Horizon told Harydzak it was assisting in a refinancing, but actually tricked him into conveying title to New Horizon. New Horizon then obtained a mortgage from the lender. The lender granted the loan (1) based on outside counsel's review of all relevant documents, including the public records from the county clerk's office regarding the title and conveyances of the property; (2) based on an oral appraisal of the property only, without a physical copy of the appraisal report, contrary to the lender's own written procedure; and (3) without making any inquiry concerning numerous discrepancies contained in the appraisal report. The attorney also drafted a Consent by Beneficiaries form that Harydzak signed. The court held that the bank had a duty to investigate because the bank should have followed its standard written procedure and obtained the physical copy of the appraisal report, concluding that the report would have alerted the bank to the suspicious nature of the transaction. The court further held that the bank's attorney drafting a Consent by Beneficiaries form, which was not standard practice, was further evidence that the bank either knew or should have known that the transaction was problematic.

Minnesota courts have also issued opposite rulings on a lender's duty to investigate. In *Stella v. Wells Fargo Bank, N.A.*, No. A11-1827, 2012 WL 3553123 (Minn. Ct. App. Aug. 20, 2012), an appellate court held that the facts of a mortgage dispute were insufficient to trigger a duty to investigate. The trial court initially ruled that there were sufficient facts, specifically that

> (1) respondent had been in possession of the property since 1995, and was in possession as of the date of closing; (2) [bank] had knowledge that [borrower] did not intend to occupy the property; and (3) there were inconsistencies between the Settlement Statement, the loan transmittal documents, and the unsigned promissory note and mortgage regarding the loan. . . .

Id. at *3. The appellate court reversed, holding that when property is registered in the Torrens system, there is no duty to inquire beyond the examination of the title certificate. In dictum, the court noted that even if there were a duty to inquire further based on suspicious facts, the facts alleged in the case were insufficient to place the lender on notice to inquire further. The court noted that it is not unusual for a borrower to not occupy the premises or for a seller to stay in possession until the date of closing and that the documents containing the inconsistencies were not material to the mortgage transaction.

In contrast, in *Claflin v. Commercial State Bank of Two Harbors*, 487 N.W.2d 242 (Minn. Ct. App. 1992), a Minnesota appellate court reversed a trial court finding that the facts were insufficient to trigger a duty to investigate. In this case, the borrower fraudulently convinced his mother to convey the title to her home to him. In doing so, he misrepresented the purpose of the transfer to his mother, he kept the transfer a secret from his wife, and he misrepresented his income on mortgage documents when he subsequently sought a mortgage on the property. The borrower's fraud was eventually uncovered, and his mother sought to have the mortgage nullified. The appellate court held that several factors should have placed the mortgage lender on notice of the borrower's fraud, including the fact that the borrower had immense credit card debt and that he incorrectly represented his income. As a result, the appellate court reversed the lower court's decision, which had awarded a directed verdict to the mortgage lender, and instead awarded punitive damages to the mother.

The SAR Requirement

In addition to the duty to investigate suspicious transactions to protect their interest in the mortgaged property, bank lenders also are required to file SARs if they come across signs of a problematic transaction. Recently, the Financial Crimes Enforcement Network of the Department of Treasury released a guide instructing banks to file SARs if they come across signs of foreclosure rescue scams. Fed. Banking L. Rep.¶ 95-861 (CCH), 2009 WL 8386762. The guide lists several common signs of a foreclosure scam, including the process's being very quick and the borrower's being pressured into signing paperwork he did not understand. These requirements do not apply to nonbank mortgage lenders.

Conclusion

The recent foreclosure crisis has led the federal government and many states to take steps that expand the responsibilities of a lender to investigate its borrower before giving a loan. Going forward, lenders should be aware of the developments in their particular states and make loan decisions with all due prudence. As the review of decisions discussed in this article clearly illustrates, unless lenders act with due diligence, the lender's conduct in making loans to risky borrowers may result in the possible loss of the security for which they have bargained. Although not all states impose a duty on lenders to determine their borrowers' ability to repay their loans, it is certainly prudent to do so, especially in light of the connection that may exist between a borrower's inability to repay and the possible fraud that often underlies a transaction involving a risky borrower. Lenders must be comfortable that courts will enforce their signed loan documents and enforce judgments in foreclosure proceedings. While federal and state governments, as well as the courts, have required greater vigilance by lenders, they have at the same time provided a comfortable platform to allow lenders to be able to enforce payment and foreclosure on all but the riskiest loans. n

Ability-to-Repay Statutes

	Statute	Do lenders have a duty to verify borrower's ability to repay?	Which loans does this apply to?
Federal	Truth in Lending Act, Regulation Z	Yes	Only small subset of particularly risky loans: balloon payment loans, negative amortization loans, interest-only loans, or loans exceeding 30 years.
Alabama	Consumer Credit Act	No	N/A
Alaska	Secure and Fair Enforcement for Mortgage Licensing Act	No	N/A
Arizona	Mortgage Bankers, Mortgage Brokers, and Loan Originators Statute	No	N/A
Arkansas	Fair Mortgage Lending Act	No	N/A
California	Finance Lenders Law	No affirmative duty, but license may be revoked for repeated failure to verify borrowers' ability to repay.	All mortgage loans.
	Financial Code	Yes	Only loans that meet one of the following: (1) the annual percentage rate will exceed the yield on Treasury securities by more than 8%; or (2) the associated fees exceed 6% of the loan amount.
Colorado	Mortgage Loan Originator Licensing Act	Yes	All mortgage loans.
Connecticut	Connecticut Banking Law	Yes	Only high-cost and nonprime home loans.
Delaware	Licensed Lenders Statute	No	N/A
Florida	Loan Originators and Mortgage Brokers Act	No	N/A
Georgia	Banking and Finance Law	Lender prohibited from making loan with intent to foreclose, which can be shown by giving loan to person who has low probability of being able to repay.	All mortgage loans.

	Statute	Do lenders have a duty to verify borrower's ability to repay?	Which loans does this apply to?
Hawaii	Secure and Fair Enforcement for Mortgage Licensing Act	Yes	All mortgage loans.
Idaho	Residential Mortgage Practices Act	No	N/A
Illinois	Residential Mortgage Licensing Act	Yes	All mortgage loans.
	High Risk Home Loan Act	Yes	Only high-risk loans, defined as a loan with one or more of the following characteristics: (1) For a first mortgage, a loan of more than 6% the average prime offer rate; (2) for a second mortgage, a loan of more than 8% the average prime offer rate; (3) a loan with prepayment fees for any prepayment more than three years after the loan is obtained; (4) a loan with prepayment fees of more than 2% the amount paid ahead of schedule; (5) a loan for $20,000 or more that has fees totaling 5% of the total loan amount; or (6) a loan for less than $20,000 that has fees totaling either 8% of the total loan amount or fees totaling $1,000 or more.
Indiana	Mortgage Loan Brokers Act	No	N/A
Iowa	Mortgage Licensing Act	No	N/A
Kansas	Mortgage Business Act	No	N/A
Kentucky	Commerce and Trade Statute	Yes	Only high-cost loans, defined as a loan that meets the criteria of a "mortgage" under the Home Ownership and Equity Protection Act of 1994, or a loan with total points and fees exceeding the greater of $3,000 or 6% of the total loan amount.
Louisiana	SAFE Residential Mortgage Lending Act	No	N/A
Maine	SAFE Mortgage Licensing Act	No	N/A
Maryland	Mortgage Lender Law	No	N/A
Massachusetts	Mortgage Lender and Broker Law	Yes	All mortgage loans.
Michigan	Mortgage Brokers, Lenders, and Servicers Licensing Act	No	N/A
Minnesota	Residential Mortgage Originator and Servicer Licensing Act	Yes	All mortgage loans.
Mississippi	SAFE Mortgage Act	No	N/A
Missouri	Mortgages, Deeds of Trust and Mortgage Brokers Act	No	N/A
Montana	Mortgage Act	No	N/A
Nebraska	Residential Mortgage Licensing Act	No	N/A
Nevada	Mortgage Brokers and Mortgage Agents Act	Yes	All mortgage loans.
New Hampshire	Mortgage Bankers and Brokers Act	Yes	All mortgage loans.
New Jersey	Residential Mortgage Lending Act	No	N/A
New Mexico	Mortgage Loan Originator Licensing Act	Yes	All mortgage loans.
	Home Loan Protection Act	Yes	Mortgage loans with a principal amount not exceeding Fannie Mae's limits for a single family dwelling.

	Statute	Do lenders have a duty to verify borrower's ability to repay?	Which loans does this apply to?
New York	New York Banking Law	No statutory requirement, but may be requirement through case law.	N/A
North Carolina	North Carolina General Statutes	Yes	Only for rate spread home loans, defined as a loan with an annual percentage rate exceeding the limits set out in 15 U.S.C. § 1639.
North Dakota	Mortgage Loan Originator Act	No	N/A
Ohio	Mortgage Broker Act	Lender must make reasonable effort to ensure terms of loan are advantageous to borrower's interest.	All mortgage loans.
Oklahoma	SAFE Mortgage Licensing Act	No	N/A
Oregon	Mortgage Lender Law	Yes	Only for negative amortization loans.
Pennsylvania	Mortgage Loan Industry Licensing and Consumer Protection Law	No	N/A
Rhode Island	Home Loan Protection Act	Yes	Only for high-cost home loans, defined as loans with greater-than-average interest rates or total points and fees exceeding 5% for a loan greater than $50,000 or 8% for a loan less than $50,000.
South Carolina	Consumer Protection Code	Yes	Only for high-cost home loans, defined as a loan with a greater-than-average interest rate or points and fees exceeding 5% for a loan greater than $20,000 or 8% for a loan less than $20,000.
South Dakota	Mortgage Lender Business Statute	No	N/A
Tennessee	Home Loan Protection Act	Yes	Only for high-cost loans, defined as a loan with a greater-than-average interest rate or points and fees exceeding 5% for a loan greater than $30,000 or 8% for a loan less than $30,000.
Texas	Mortgage Banker Registration and Residential Mortgage Loan Originator License Act	No	N/A
Utah	Mortgage Lending and Servicing Act	No	N/A
Vermont	Licensed Lenders Act	No	N/A
Virginia	Mortgage Lenders and Brokers Act	No	N/A
Washington	Consumer Loan Act	No	N/A
Washington, D.C.	Mortgage Lenders and Brokers Act	Lender may not make loan with intent to foreclose, which can be shown by giving a loan to a borrower with a low probability of repayment.	All mortgage loans.
West Virgina	Residential Mortgage Lender, Broker, and Servicer Act	Lenders may have license revoked for repeated failure to verify borrower's ability to repay.	All mortgage loans.
Wisconsin	Mortgage Banker, Loan Originators and Mortgage Brokers Act	No	N/A
Wyoming	Residential Mortgage Practices Act	No	N/A