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June 2008

To: The Chief Executive Officer of Licensed Mortgage Originators and Exempt Entities and Other Interested Parties

From: Kevin M. Murphy 
Deputy Commissioner of Commerce

Re: Legislative Changes to Minn. Stat. Chapter 58, The Minnesota Residential Mortgage Originator and Servicer Licensing Act

Three separate legislative proposals (Senate File No. 3214, Senate File 2881, and Senate File 3154) were recently passed by the Minnesota Legislature and signed into law by Governor Pawlenty. The full text of each bill is available on the Internet.¹ The three bills make significant changes to Chapter 58 of the Minnesota Statutes and related laws. A section-by-section summary of each bill follows:

Senate File 3214 (Commerce Department Initiative)

<u>Section No.</u>	<u>Affected Statute</u>	<u>Effective Date</u>
1	58.02, subd. 18	August 1, 2008
2	58.02, subd. 21	August 1, 2008

Sections one and two amend the definitions of residential mortgage loans and residential real estate and clarify that Chapter 58 covers all residential mortgage loans on one-to-four family properties, regardless of whether or not the owner occupies the property. Before the change, Chapter 58 only applied to loans made primarily for personal, family or household use. This change also affects the scope of section 609.822 of the Minnesota Statutes, which was enacted in 2007 and made mortgage fraud a specific crime in Minnesota.

3	58.14, subd. 3	August 1, 2008
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Changes the record retention time period for complaints from 26 to 60 months.

¹ Go to <http://www.leg.state.mn.us/> and click on the "Senate" or "House" icon. Make sure to select "Regular Session" in the box under the word "Legislation." Then insert sf3214, sf2881, or sf3154 in the get bill box, then click on go, then click on "text."

4 58.14, subd. 4 August 1, 2008

Changes the record retention time period for trust account records from 26 to 60 months.

5 58.14, subd. 5 August 1, 2008

Changes the record retention requirement for business records, including advertisements and residential mortgage loans applied for, originated or serviced from 26 to 60 months.

Senate File 2881 (Industry Initiative)

Section No. Affected Statute Effective Date

1 47.20, subd. 2 January 1, 2009

Raises the limit on the principal amount of a contract for deed subject to usury regulation from \$100,000 to \$300,000.

2 58.13, subd. 1 May 9, 2008

Changes the standard of conduct (24) in Chapter 58 that prohibits a mortgage originator from making a residential mortgage loan without verifying a borrower's reasonable ability to pay. The change provides that a mortgage originator or exempt person may rely on criteria established by the following entities to determine the borrower's reasonable ability to pay a residential mortgage loan:

U.S. Department of Veterans Affairs or the U.S. Department of Housing and Urban Development for interest rate reduction refinancing loans or streamline loans; or criteria authorized or promulgated by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

3 58.18, subd. 1 May 9, 2008

Provides that a borrower injured by a violation of the standards, duties, prohibitions or requirements of section 58.161 (mortgage broker duties of agency) shall have a private right of action and specified damages awarded by the court.

4 58.18, subd. 2 May 9, 2008

Provides that a borrower injured by a violation of the standards, duties, prohibitions or requirements of section 58.161 may also bring an action under section 8.31 (additional duties of attorney general).

5 334.01, subd. 2 January 1, 2009

Technical conforming change related to section 1 of the bill.

Senate File 3154 (Industry Initiative)

<u>Section No.</u>	<u>Affected Statute</u>	<u>Effective Date</u>
1	58.13, subd. 1	August 1, 2008

Adds language to the standard of conduct (24) that prohibits a mortgage originator from making a residential mortgage loan without verifying a borrower's reasonable ability to pay. Adds language that indicates that the analysis of the borrower's reasonable ability to pay may include, but is not limited to consideration of the following items, if verified: (1) the borrower's current and expected income; (2) current and expected cash flow; (3) net worth and other financial resources other than the consumer's equity in the dwelling that secures the loan; (4) current financial obligations; (5) property taxes and insurance; (6) assessments on the property; (7) employment status; (8) credit history; (9) debt-to-income ratio; (10) credit scores; (11) tax returns; (12) pension statements; and (13) employment payment records, provided that no mortgage originator shall disregard facts and circumstances that indicate that the financial or other information submitted by the consumer is inaccurate or incomplete. Provides also that sole reliance on any single listed item is not sufficient to establish income or resources when verifying the reasonable ability to pay.

The above summaries are provided for your convenience and are not intended as legal advice. The statutes and the changes thereto are complex and reference to the bills is recommended.

