



IDAHO
DEPARTMENT OF FINANCE

1 Hour Idaho Continuing Education
Idaho Law – 2020

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“Change is the law of life. And those who look only to the past or present are certain to miss the future.”

–John F. Kennedy

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Introduction

▶ Course Objectives

- Participants will learn changes to the Idaho Residential Mortgage Practices Act effective for 2020
- Participants will acquire knowledge of Idaho law that applies to mortgage fraud and prohibited business practices
- Participants will gain an understanding of the remedies available to the Idaho Department of Finance to address violations of the law

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Introduction

- ▶ Topics Covered
 - House Bill 401 – Amending the Idaho Residential Mortgage Practices Act.
 - Mortgage Fraud and the Idaho Financial Fraud Prevention Act – Idaho Code §67-2750, *et seq.*
 - Prohibited Practices and the Idaho Residential Mortgage Practices Act – Idaho Code §26-31-101, *et seq.*
 - Administrative, civil, and criminal remedies authorized under Idaho law

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House Bill 401¹– Amendments to the Idaho Residential Mortgage Practices Act (Act) Effective July 1, 2020

- ▶ Eliminates the requirement for mortgage brokers or mortgage lenders to identify a qualified person in charge.
- ▶ Applies mortgage lending licensing requirements to mortgage loan servicers.
- ▶ Changed definitions and exemptions to accommodate certain construction or rehabilitation lending and investment activity.
- ▶ Incorporates temporary authority for mortgage originators seeking an Idaho license.

¹ A link to HB 401 can be found at: <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2020/legislation/HB401.pdf>

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Qualified Persons in Charge

- ▶ Why the Act was amended to remove the Qualified Persons in Charge (QPICs) requirements –
 - The Department already obtained significant background information on the owners, managers, directors, and other key members or employees of each licensee or applicant.
 - The requirement constrained a mortgage broker and mortgage lender applicant from obtaining a license if it could not find a person who demonstrated three-years experience in mortgage related work and who had obtained a mortgage loan originator license.
- ▶ As a result of amendments to the Act regarding QPICs –
 - A company no longer is required to have a QPIC to obtain a license.
 - A company's license is no longer at risk if it loses a QPIC or cannot identify a new QPIC.
 - Administrative burdens for both licensees and the Department are reduced.

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Mortgage Loan Servicing

- ▶ Why the Act was amended to include mortgage loan servicing –
 - Of the Department’s licensees, nearly a third conducted servicing activities and held more than one license to do so.
 - In addition to needing multiple licenses, mortgage loan services were required to follow standards as required by up to four different laws.
 - These multiple requirements were burdensome to licensees.
- ▶ As a result of the amendments to the Act regarding mortgage loan servicing –
 - Mortgage loan servicers need only obtain one license under the Act.
 - Servicing standards were incorporated into the Act to simplify compliance for licensees.

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Construction and Investment Activities

- ▶ Why the Act was amended to accommodate construction and investment activity –
 - The Act imposed licensing requirements on lenders even if their only borrowers were commercial construction organizations, thereby tending to restrict credit for commercial activities.
 - The Act’s licensing exemption for limited lending activity only applied to lending for consumer purposes, thereby tending to restrict credit for investment purpose lending.
- ▶ As a result of the amendments to the Act –
 - Mortgage lenders whose only borrowers are commercial organizations that engage in the construction or rehabilitation of residential properties are not required to become licensed.
 - Persons who finance loans that are intended to be used for investment purposes may do so five-times or less within any consecutive 12-month period without a license.

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Temporary Authority

- ▶ Why the Act was amended to provide temporary authority –
 - As of 2019, federal law was enacted to allow mortgage loan originators, who were licensed in other jurisdictions or federally registered, to conduct origination activities for a period of time while seeking a license with the Department.
 - The Act’s existing provisions did not provide for a form of temporary authority.
- ▶ As a result of the amendments to the Act regarding temporary authority –
 - Individuals who are licensed in another state, or registered and in good standing, may engage in mortgage origination for up to 120 days after submitting an application for licensure.
 - The Act’s provisions regarding the statutory of withdrawal of a license application apply to those who seek a license with temporary authority. Therefore, an applicant who fails to respond to deficiencies in an application will no longer have temporary authority upon the statutory withdrawal of a license.

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Elements Financial Fraud

- ▶ Fraud commonly includes an intentional deception employed to deprive another of money, property, or legal right that is –
 - Conducted through a material misrepresentation or omission
 - Conducted by misleading a person into performing certain actions
 - Includes intent or a willful action to obtain a specific result

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Financial Fraud in Idaho

- ▶ Since 2005 the Department of Finance has enforced the Idaho Financial Fraud Prevention Act² (IFFPA), which defines Financial Fraud as –
 - To employ any device, scheme or artifice to defraud a financial institution
 - Obtain or attempt to obtain the assets by means of false or fraudulent pretenses, representations, or promises or through the use of any fraudulent device, scheme, artifice, or fraudulent monetary instrument
 - False representation as a financial institution

2. A link to the IFFPA can be found at the Idaho Department of Finance website page at <https://www.finance.idaho.gov/legal/statutes/rules/>

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Financial Fraud Includes Mortgage Fraud

- ▶ Many forms of Mortgage Fraud are considered Financial Fraud –
 - One accepted definition of mortgage fraud is "a material misstatement, misrepresentation, or omission relied on by an underwriter or lender to fund, purchase, or insure a loan. This type of fraud is usually defined as loan origination fraud."³

3. FBI 2010 Mortgage Fraud Report Year in Review: <http://www.fbi.gov/idsa-services/publications/mortgage-fraud-2010/mortgage-fraud-report-2010/>

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Mortgage Fraud Schemes

- ▶ Loan Origination Schemes
- ▶ Settlement Fraud
- ▶ Real Estate Investment Schemes
- ▶ Short Sale Schemes
- ▶ Commercial Real Estate Fraud
- ▶ Foreclosure Rescue
- ▶ Advance Fee Schemes
- ▶ Builder Bailout Schemes
- ▶ Equity Skimming
- ▶ Debt Elimination/Reduction Schemes

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When Mortgage Fraud = Financial Fraud

- ▶ Idaho Code §67-2752 - It is unlawful for any person -
 - (2) To obtain or attempt to obtain money, funds, credits, assets, securities, or other property owned by, or under the custody or control of a financial institution by means of **false or fraudulent pretenses, representations, or promises** or through the use of any **fraudulent device, scheme, artifice, or fraudulent monetary instrument.**

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When Mortgage Fraud = Financial Fraud

- ▶ Idaho Code §67-2752 - It is unlawful for any person -
 - (1) To employ **any** device, scheme or artifice to defraud a financial institution.

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Regulated Activities. Fraud, and Prohibited Practices

- ▶ Certain Schemes identified by the FBI also relate to activities regulated by the Department, under the Idaho Residential Mortgage Practices Act⁴ (Act) –
 - Short Sale Negotiation.
 - Foreclosure Rescue/Loan Modification.
 - Debt Elimination/Reduction.

4. A link to the Act can be found at the Idaho Department of Finance website page at <https://www.finance.idaho.gov/legal/statutes-rules/>

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Regulated Activities, Fraud, and Prohibited Practices

- ▶ Short Sale Negotiation/Foreclosure Rescue/Loan Modification –
 - Idaho Code §26-31-201(2) – Loan modification means an adjustment or compromise of an existing residential mortgage loan. The term "loan modification" does not include a refinancing transaction.
 - Idaho Code §26-31-201(3) – Loan modification activities means for compensation or gain, or in the expectation of compensation or gain, engaging in or offering to engage in effecting loan modifications in this state.

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Regulated Activities, Fraud, and Prohibited Practices

- ▶ Short Sale Negotiation/Foreclosure Rescue/Loan Modification –
 - Idaho Code §26-31-201(5) – Mortgage brokering activities means for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly... engaging in loan modification activities on behalf of a borrower.

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Regulated Activities, Fraud, and Prohibited Practices

- ▶ The Act and the Rules Pursuant to the Idaho Residential Mortgage Practices Act⁵ (IDAPA 12.01.10) imposes certain prohibitions on licensees' practices that may be classified as –
 - Restrictions on Fees and Charges.
 - Direct Consumer Protections.
 - Unfair, Deceptive, and Fraudulent Practices.

5. A link to the Rules can be found on the Idaho Department of Finance website at <https://www.finance.idaho.gov/legal/statutes-rules/>

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Restrictions on Fees and Charges

- ▶ Both the Act and the Rules provide for restrictions of the amount, and timing, of certain fees and charges –
 - Idaho Code §26-31-210 – Prior to the closing of a loan mortgage brokers/lenders may only charge –
 - Third-party fees actually incurred.
 - An application fee.
 - A rate-lock fee.
 - A commitment fee or cancellation fee.
 - All fees authorized must be reasonable and customary.
 - Rules 51.01 and 51.02 further describe what is reasonable and customary for loan application and cancellation fees
 - Fees must relate to the actual costs relative to the fee or actual services provided prior to the imposition of the fee.

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Direct Consumer Protections

- ▶ The Act and the Rules each contain prohibited practices applicable to all licensees and, in certain instances, only to mortgage loan originators.
- ▶ The prohibitions applicable to all licensees include –
 - Obtaining exclusive agency agreement with borrowers – Idaho Code §§26-31-211(1) and 26-31-317(17).
 - Accepting fees not disclosed to borrower prior to closing – Idaho Code §§26-31-211(3) and 26-31-317(19).
 - Obtaining signed instruments or agreements in blank – Idaho Code §§26-31-211(4) and 26-31-317(20).

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Direct Consumer Protections

- ▶ The IRMPA contains additional explicit prohibitions specific to loan originators –
 - Soliciting or entering a contract to be paid a fee for “best efforts” – Idaho Code §26-31-317(4).
 - Soliciting, advertising, or contracting for a loan with specific terms when the terms are not available – Idaho Code §26-31-317(5).
 - Failing to make disclosures – Idaho Code §26-31-317(7).
 - Collecting prohibited charges or using prohibited agreements – (Idaho Code §26-31-317(12).
 - Failing to account for monies – Idaho Code §26-31-317(14).

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Unfair, Deceptive, and Fraudulent Practices

- ▶ The following list ties the prohibited practices for mortgage brokers/lenders and prohibited practices for mortgage loan originators together –
 - Misrepresentation or omission –
 - Of any material fact in connection with a mortgage loan – Mortgage brokers/lenders – Idaho Code §26-31-211(5)
 - False or deceptive statements – Mortgage loan originators – Idaho Code §26-31-317(9)
 - Employing a scheme to defraud or unfair practices –
 - Making false promises to influence or persuade – Mortgage brokers/lenders – Idaho Code §26-31-211(7)
 - Misrepresent, circumvent, or conceal – Mortgage brokers/lenders – Idaho Code §26-31-211(8)

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Unfair, Deceptive, and Fraudulent Practices

- Employ a scheme to defraud or unfair practices (continued) –
 - Directly or indirectly employ a scheme, device, or artifice to defraud (any party) – Mortgage loan originators – Idaho Code §26-31-317(1).
 - Engage in unfair or deceptive practices – Mortgage loan originators – Idaho Code §26-31-317(2).
 - Obtain property by fraud – Mortgage loan originators – Idaho Code §26-31-317(3).
- Influence the independent judgment of parties related to a loan –
 - Through payments made to appraisers – Mortgage brokers/lenders – Idaho Code §26-31-211(6).
 - Through payment, threat, or promise, made to any persons, including appraisers – Mortgage loan originators – Idaho Code §26-31-317(11).

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Enforcement

- ▶ The IFFPA and the Act establish certain remedies available to the Department, or others, to enforce the provisions of the Act. These can be classified as –
 - Administrative Remedies.
 - Civil Remedies.
 - Criminal Provisions.

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Remedies for Mortgage Fraud

- ▶ The IFFPA provides multiple remedies under Idaho Code §67-2755 –
 - Injunctions from continued violations.
 - Cease & Desist orders.
 - Civil Penalties between \$5,000 and \$10,000 – applicable to all parties involved in the fraud
 - Criminal Penalties.

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Remedies for Mortgage Fraud

- ▶ Under the IRMPA, the administrative remedies differ between mortgage brokers/lenders and mortgage loan originators. The actions the Department can take, by order, against a mortgage broker/lender include –
 - Revocation, suspension, or denial of a license –
 - Idaho Code §26-31-113.
 - Idaho Code §26-31-207.
 - Cease & Desist orders –
 - Idaho Code §26-31-205(2).
 - Idaho Code §26-31-114.

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Remedies for Mortgage Fraud

- ▶ The IRMPA provides for expanded administrative remedies in the case of mortgage loan originators –
 - Orders for Restitution/Penalty–
 - Idaho Code §26-31-114 – Order for Restitution.
 - Idaho Code §26-31-114 – Order for Penalties.

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Remedies for Mortgage Fraud

- ▶ The IRMPA also provides that the Department may seek civil remedies for violations. Though the language of these remedies is similar for mortgage brokers/lenders and mortgage loan originators, the remedies that apply to each licensee type are found in different sections of the IRMPA –
 - Mortgage brokers/lenders – Idaho Codes §26-31-205(1) and mortgage loan originators – Idaho Code §26-31-314(1) –
 - Injunctions.
 - Order for penalties.
 - Order for costs.
 - Declaratory judgment.
 - Orders for other remedies, including damages and restitution.

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Criminal Provisions

- ▶ Neither the IFFPA nor the IRMPA grant authority to the Department to criminally prosecute violations of the Act. However, each allow the Department to refer specific violations for criminal prosecution –
 - Violations of the IFFPA and financial fraud
 - Idaho Code §67-2758
 - Unlicensed Mortgage brokering/lending activity
 - Idaho Code §26-31-203(2)
 - Unlicensed Mortgage loan origination activity
 - Idaho Code §26-31-318

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Conclusion

- We have discussed changes to the Idaho Residential Mortgage Practices Act.
- We have discussed the provisions of Idaho law that apply to mortgage fraud and prohibited mortgage related business practices.
- We have discussed the remedies available to the Idaho Department of Finance to address violations of the law.

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Questions?

Contact Information -

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