

ARTICLE 21A

Home Loan Protection

Section

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58-21A-1. Short title.

Chapter [58](#), Article 21A NMSA 1978 may be cited as the "Home Loan Protection Act".

History: Laws 2003, ch. 436, § 1; 2009, ch. 122, § 54.

58-21A-2. Findings.

The legislature finds that:

A. abusive mortgage lending has become an increasing problem in New Mexico, exacerbating the loss of equity in homes and causing the number of foreclosures to increase in recent years;

B. one of the most common forms of abusive lending is the making of loans that are equity-based, rather than income-based;

C. the financing of points and fees in these loans provides immediate income to the originator and encourages creditors to repeatedly refinance home loans; and

D. while the marketplace appears to operate effectively for conventional mortgages, too many homeowners find themselves victims of overreaching creditors who provide loans with high costs and terms that are unnecessary to secure repayment of the loan.

History: Laws 2003, ch. 436, § 2.

58-21A-3. Definitions.

As used in the Home Loan Protection Act:

A. "adjustable rate home loan" means a home loan that has an initial interest rate that adjusts to a variable interest rate at the end of a specified initial period or subsequent periods of time during the remaining term of the home loan;

B. "affiliate" means a person that controls, is controlled by or is under common control with another person;

C. "bona fide discount points" means loan discount points that are knowingly paid by the borrower for the express purpose of reducing, and which in fact do result in a bona fide reduction of, the annual percentage rate otherwise applicable to the home loan; provided, however, that discount points are not "bona fide discount points" if the annual percentage rate otherwise applicable to the home loan exceeds the conventional mortgage rate by more than:

- (1) one and one-half percentage points for a home loan secured by a first lien; or
- (2) three percentage points for a home loan secured by a junior lien;

D. "borrower" means a natural person obligated to repay a home loan, including a co-borrower, cosigner or guarantor;

E. "bridge loan" means a loan for the initial construction of a borrower's principal dwelling on land owned by the borrower with a maturity of less than eighteen months that only requires the payment of interest until the entire unpaid balance is due and payable;

F. "conventional mortgage rate" means the most recently published annual yield on conventional mortgages published by the board of governors of the federal reserve system as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor;

G. "conventional prepayment penalty" means a prepayment penalty or fee that may be collected in a home loan and that is authorized by federal law; provided that a prepayment penalty is not a "conventional prepayment penalty" if the home loan:

- (1) has an annual percentage rate that exceeds the conventional mortgage rate by more than two percent; or
- (2) permits prepayment fees or penalties that exceed two percent of the amount prepaid;

H. "creditor" means a person who regularly offers or makes a home loan;

I. "high-cost home loan" means a home loan in which:

- (1) the contract rate exceeds the rates threshold; or
- (2) the total points and fees exceed the total points and fees threshold;

J. "home loan" means a loan, including an open-end credit plan, other than a reverse mortgage transaction or a bridge loan, where the principal amount does not exceed the conforming loan size limit for a single-family dwelling as established by the federal national mortgage association and where the loan is secured by:

(1) a mortgage or deed of trust on real estate in this state upon which there is located or there is to be located a structure:

(a) designed principally for occupancy by one to four families; and

(b) that is or will be occupied by a borrower as the borrower's principal residence; or

(2) a security interest on a manufactured home that is or will be occupied by a borrower as the borrower's principal residence;

K. "manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty body feet or more in length or, when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when erected on land secured in conjunction with the real property on which the manufactured home is located and connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein. "Manufactured home" includes any structure that meets all the requirements of this subsection except the size requirements and with

respect to which the manufacturer voluntarily files a certification required by the secretary of the United States department of housing and urban development and complies with the standards established under the federal National Manufactured Housing Construction and Safety Standards Act of 1974. "Manufactured home" does not include rental property or second homes or manufactured homes when not secured in conjunction with the real property on which the manufactured home is located;

L. "open-end loan" means a revolving debt that is secured by the equity in the borrower's home, including a home equity line of credit;

M. "points and fees" means:

(1) all amounts payable by a borrower at or before the closing of a home loan, exclusive of any time-price differential due at closing on the loan proceeds, including:

- (a) loan discount points or other discounts;
- (b) loan fees, broker fees or similar charges; and
- (c) fees for preparation of loan-related documents; but

(d) does not include fees for the following purposes, if the amounts are bona fide and reasonable and paid to a person other than the creditor or an affiliate of the creditor: 1) service or carrying charges; 2) credit reports; 3) title exam, title insurance, title closing or similar purposes; 4) escrow charges for future payments of taxes and insurance; 5) fees for notarizing deeds and other documents; 6) appraisals, including fees related to any pest infestation or flood hazard inspections conducted prior to closing; 7) inspection performed prior to closing; 8) attorney fees, if the borrower has the right to select the attorney from an approved list or otherwise; 9) fire and hazard insurance and flood insurance premiums if the conditions in 12 C.F.R. s.226.4(d)(2) are met; 10) tax payment services; 11) surveys; 12) flood certification; 13) pest infestation and flood determination; and 14) federal housing administration upfront mortgage insurance, veterans administration funding fee, guaranteed rural housing loan guarantee fee or upfront premium private mortgage insurance at a percentage rate, as set by the director biannually, equal to the highest up-front government mortgage insurance percentage rate or United States department of veterans affairs funding fee percentage rate;

(2) all compensation, including yield spread premiums, paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction;

(3) the cost of all premiums financed by the creditor, directly or indirectly, for any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the creditor, directly or indirectly, for any debt cancellation or suspension agreement or contract, except that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the creditor; and

(4) for open-end loans, the points and fees included in Paragraphs (1) through (3) of this subsection that are known at or before closing plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line;

N. "rate threshold" means:

(1) for a first lien mortgage home loan, an interest rate equal to seven percentage points over the yield on treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the loan is made; and

(2) for a subordinate mortgage lien, an interest rate equal to nine percentage points over the yield on treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the loan is made;

O. "servicer" means a person who collects or receives payments, including principal, interest and trust items such as hazard insurance, property taxes and other amounts due, on behalf of a note holder or investor in accordance with the terms of a home loan, and includes working with a borrower on behalf of a note holder or investor, when the borrower is in financial hardship or default, to modify either temporarily or permanently the terms of an existing home loan;

P. "total points and fees" means the result obtained by subtracting the sum of the conventional prepayment penalties and the bona fide discount points paid from the sum of the points and fees, except that if the sum of the conventional prepayment penalties and the bona fide discount points paid exceeds two points, then only the amount that represents two points shall be subtracted; and

Q. "total points and fees threshold" means:

(1) for a home loan in which the total principal loan amount is twenty thousand dollars (\$20,000) or more, an amount equal to five percent of the total principal loan amount; and

(2) for a home loan in which the total principal loan amount is less than twenty thousand dollars (\$20,000), an amount equal to the lesser of one thousand dollars (\$1,000) or eight percent of the total principal loan amount.

History: Laws 2003, ch. 436, § 3; 2009, ch. 122, § 55.

58-21A-4. Prohibited practices and provisions regarding home loans.

A. No creditor shall finance, directly or indirectly, credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, provided that nothing in this subsection prohibits the payment or receipt of insurance premiums or debt cancellation or suspension fees calculated on the unpaid balance of a home loan and paid on a monthly basis.

B. No creditor shall knowingly and intentionally engage in the unfair act or practice of flipping a home loan. As used in this subsection, "flipping a home loan" means the making of a home loan to a borrower that refinances an existing home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan and the borrower's circumstances.

C. No creditor shall make a home loan without documenting and considering the borrower's reasonable ability to repay that loan pursuant to its terms. The borrower's ability to repay shall be demonstrated 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. The provisions of this subsection shall not apply to a home loan originated pursuant to a government streamline program or a streamline program administered by a government-sponsored enterprise, to a reverse mortgage insured as part of a government program or to loss mitigation activities of a home loan servicer or lender with which the borrower has a current relationship, so long as each of these exceptions, as applicable, provides the borrower with a reasonable, tangible net benefit.

D. No creditor shall make a home loan without determining the borrower's reasonable ability to pay the costs set forth in this subsection. In the case of an adjustable rate home loan, the reasonable ability to pay shall be determined based on a fully indexed rate and repayment schedule that achieves full amortization over the life of the home loan. The costs, as applicable, to be used in determining the borrower's reasonable ability to pay include principal, interest, real estate taxes, property insurance, property assessments, mortgage insurance premiums and other scheduled long-term monthly debt payments.

E. No creditor shall make or originate an adjustable rate home loan in which caps on payment increases may be less than that necessary to reduce principal and amortize the loan over the entire term of the loan regardless of interest rate adjustments resulting in negative amortization.

F. No creditor shall make or originate a home loan that includes terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

G. No creditor shall pay a contractor under a home-improvement contract from the proceeds of a home loan unless:

(1) the creditor is presented with a signed and dated completion certificate showing that the home improvements have been completed; or

(2) the instrument is payable jointly to the borrower and the contractor, or at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the creditor and the contractor prior to the disbursement.

H. No creditor shall charge a borrower any fees or other charges, other than those that are bona fide, reasonable and actual, to modify, renew, extend or amend a home loan.

I. No creditor shall charge a borrower more than seventy-five dollars (\$75.00) to defer any payment due under the terms of a home loan.

J. No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a home loan that refinances all or any portion of the existing loan or debt.

K. No creditor shall make a home loan that provides for a late payment fee except as follows:

(1) the late payment fee shall not be in excess of five percent of the amount of the payment past due;

(2) the late payment fee shall only be assessed for a payment past due for fifteen days or more;

(3) the late payment fee shall not be imposed more than once with respect to a single late payment, and no late payment fee shall be charged with respect to a subsequent payment that would have been a full payment but for the previous default or the imposition of the previous late payment fee;

(4) no late payment fee shall be charged unless the creditor notifies the borrower within forty-five days following the date the payment was due that a late payment fee has been imposed for a particular late payment. A late payment fee that the creditor has collected shall be reimbursed if the borrower presents proof of having made a timely payment; and

(5) a creditor shall treat each payment as posted on the same business day as it was received by the creditor, servicer, creditor's agent for making payments or at the address provided to the borrower by the creditor, servicer or creditor's agent for making payments.

L. No creditor shall make a home loan that contains a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness, provided that this provision does not prohibit acceleration of a loan in good faith due to a borrower's failure to abide by the material terms of the loan.

M. No creditor shall make or originate a home loan that contains a provision that requires a penalty or premium for prepayment of the balance or any portion of the principal of the indebtedness.

N. No creditor shall make or originate a home loan that includes or uses one or more of the following lending practices:

(1) making a home loan primarily based upon the foreclosure or liquidation value of the borrower's collateral rather than on the borrower's ability to repay the home loan according to its terms;

(2) making or originating an adjustable rate home loan, except a home equity line of credit, where the interest rate and payment may change more frequently than annually during the term of the loan;

(3) making an adjustable rate home loan, except a home equity line of credit, where:

(a) the initial interest rate may be increased by more than two percent for loans with initial periods less than five years and six percent for loans with initial periods greater than or equal to five years;

(b) a periodic interest rate may be increased by more than two percent; and

(c) a lifetime interest rate cap is more than six percent over the initial rate;

(4) advertising terms of home loans, including interest rates, margins, discount points, fees, commissions or other material facts, including limitations on the home loans, unless the creditor is able to make the advertised home loans available to a reasonable number of qualified applicants;

(5) misrepresenting a borrower's credit rating;

(6) misrepresenting, inflating or fabricating, or encouraging a borrower to misrepresent, inflate or fabricate, the source or amount of a borrower's actual income or assets, other than allowable grossed-up income not to exceed the twenty-five percent per agency guidelines established by rule by the director, in the application or underwriting process of a home loan; and

(7) making a home loan with an eighty percent or higher loan-to-value ratio for an owner-occupied residence if the creditor has failed to establish an escrow account for the payment of real estate taxes and property insurance.

History: Laws 2003, ch. 436, § 4; 2009, ch. 122, § 56.

58-21A-5. Limitations and prohibited practices for high-cost home loans.

A. No creditor or mortgage loan originator making a high-cost home loan shall directly or indirectly finance any points or fees in excess of two percent of the principal loan amount.

B. No creditor shall make a high-cost home loan that contains a provision that increases the interest rate after default, provided that this provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents if the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

C. Without regard to whether a borrower is acting individually or on behalf of others similarly situated, a provision of a high-cost home loan agreement that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly or more dilatory for the resolution of a dispute than a judicial forum where the borrower may otherwise

properly bring a claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void.

D. No creditor or mortgage loan originator shall make a high-cost home loan without first receiving certification from a third-party, nonprofit counselor approved by the United States department of housing and urban development, the New Mexico mortgage finance authority or the director of the financial institutions division of the regulation and licensing department that the borrower has received counseling on the advisability of the loan transaction.

E. A creditor or mortgage loan originator shall not make a high-cost home loan unless the creditor has given the following notice, or a substantially similar notice, in writing, to the borrower, acknowledged in writing and signed by the borrower not later than the time the notice is required under the notice provision contained in 12 C.F.R. s.226.31(c):

NOTICE TO BORROWER

YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH CREDITOR OR BROKER YOU SELECT.

IF YOU ACCEPT THE TERMS OF THIS LOAN, THE CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE LOAN.

YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED COUNSELORS IS AVAILABLE BY CONTACTING THE NEW MEXICO REGULATION AND LICENSING DEPARTMENT.

YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR CREDITOR ABOUT THESE SERVICES.

ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.

History: Laws 2003, ch. 436, § 5; 2009, ch. 122, § 57.

58-21A-6. Default; notice; right to cure.

A. Before an action is filed to foreclose or collect money due pursuant to a home loan or before other action is taken to seize or transfer ownership of property subject to a home loan, the creditor or creditor's assignee of the loan shall deliver to the borrower a notice of the right to cure the default informing the borrower of:

- (1) the nature of the default;

(2) the borrower's right to cure the default by paying the sum of money required, provided that a creditor or assignee shall accept any partial payment made or tendered in response to the notice. If the amount necessary to cure the default will change within thirty days of the notice, due to the application of a daily interest rate or the addition of late fees, as allowed by the Home Loan Protection Act, the notice shall give sufficient information to enable the borrower to calculate the amount at any point within the thirty-day period;

(3) the date by which the borrower may cure the default to avoid a court action, acceleration and initiation of foreclosure or other action to seize the property, which date shall not be less than thirty days after the date the notice is delivered, and the name and address and telephone number of a person to whom the payment or tender shall be made;

(4) that if the borrower does not cure the default by the date specified, the creditor or assignee may file an action for money due or take steps to terminate the borrower's ownership in the property by requiring payment in full of the home loan and commencing a foreclosure proceeding or other action to seize the property; and

(5) the name and address and the telephone number of a person whom the borrower may contact if the borrower disagrees with the assertion that a default has occurred or the correctness of the calculation of the amount required to cure the default.

B. If a creditor or assignee asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the home loan, the borrower, or anyone authorized to act on the borrower's behalf, may, at any time prior to the time title is transferred by means of foreclosure, by judicial proceeding and sale or otherwise, cure the default, and reinstate the home loan. Cure of the default shall reinstate the borrower to the same position as if the default had not occurred and shall nullify, as of the date of the cure, an acceleration of any obligation under the home loan arising from the default.

C. To cure a default under this section, a borrower shall not be required to pay any charge, fee or penalty attributable to the exercise of the right to cure a default, other than the fees specifically allowed by this subsection. The borrower shall not be liable for any attorney fees relating to the default that are incurred by the creditor or assignee prior to or during the thirty-day period set forth in Subsection A of this section, nor for any such fees in excess of one hundred dollars (\$100) that are incurred by the creditor or assignee after the expiration of the thirty-day period but prior to the time the creditor or assignee files a foreclosure or other judicial action or takes other action to seize or transfer ownership of the real estate. After the creditor or assignee files a foreclosure or other judicial action or takes other action to seize or transfer ownership of the real estate, the borrower shall only be liable for attorney fees that are reasonable and actually incurred by the creditor or assignee, based on a reasonable hourly rate and a reasonable number of hours.

D. If a default is cured prior to the initiation of any action to foreclose or to seize the residence, the creditor or assignee shall not institute a proceeding or other action for that default. If a default is cured after the initiation of any action, the creditor or assignee shall take such steps as are necessary to terminate the action.

E. A creditor or a creditor's assignee of a home loan that has the legal right to foreclose shall, in a foreclosure, use the judicial foreclosure procedures provided by law. In such a proceeding, the borrower may assert the nonexistence of a default and any other claim or defense to acceleration and foreclosure, including any based on a violation of the Home Loan Protection Act, though no such claim or defense shall be deemed a compulsory counterclaim.

History: Laws 2003, ch. 436, § 6; 2009, ch. 122, § 58.

58-21A-7. Repealed.

58-21A-8. Subterfuge prohibited.

No person shall, with the intent to avoid the application or provisions of the Home Loan Protection Act [[58-21A-1](#) NMSA 1978]:

- A. divide a loan transaction into separate parts;
- B. structure a home loan transaction as an open-end loan when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan; or
- C. perform any other subterfuge.

History: Laws 2003, ch. 436, § 8.

58-21A-9. Civil action.

A. A borrower harmed by a violation of the Home Loan Protection Act [[58-21A-1](#) NMSA 1978] may bring a civil action to recover:

- (1) actual damages, including consequential and incidental damages;
- (2) statutory damages equal to two times the finance charge paid under the loan and forfeiture of the remaining interest under the loan;
- (3) punitive damages, when the violation was malicious or reckless;
- (4) costs and reasonable attorney fees; and
- (5) injunctive, declaratory and such other equitable relief as the court deems appropriate in an action to enforce compliance with the Home Loan Protection Act.

B. The civil action and remedies provided in this section are not exclusive and are in addition to any other action or remedies available to a borrower under applicable law.

C. A creditor is not liable in an action brought pursuant to this section if:

- (1) within thirty days of the home loan closing and prior to receiving any notice from the borrower of the violation, the creditor has made appropriate restitution to the borrower, and appropriate adjustments are made to the loan; or
- (2) the violation was not intentional and resulted from a bona fide error in fact notwithstanding the maintenance of procedures reasonably adopted to avoid such errors and within sixty days of the loan closing and prior to receiving any notice from the borrower of the violation, the borrower is notified of the violation, appropriate restitution is made to the borrower and appropriate adjustments are made to the loan.

History: Laws 2003, ch. 436, § 9.

58-21A-10. Preemption.

Counties and municipalities, including home rule counties and municipalities, are prohibited from enacting and enforcing ordinances, resolutions or rules regulating financial or lending activities or imposing reporting requirements or any other obligations upon creditors regarding home loans that are subject to the Home Loan Protection Act [[58-21A-1](#) NMSA 1978].

History: Laws 2003, ch. 436, § 10.

58-21A-11. Actions based on home loans.

A. Notwithstanding any other provision of law, any person who purchases or is otherwise assigned a high-cost home loan shall be subject to all affirmative claims and any defenses with respect to the loan that the borrower could assert against the original creditor of the loan;

provided that this subsection shall not apply if the purchaser or assignee demonstrates by a preponderance of the evidence that a reasonable person exercising reasonable due diligence could not determine that the mortgage was a high-cost home loan. A purchaser or assignee has exercised such due diligence if the purchaser or assignee:

(1) has in place at the time of the purchase or assignment of the subject loans, policies that expressly prohibit its purchase or acceptance of an assignment of any high-cost home loans;

(2) requires by contract that a seller or assignor of the home loans to the purchaser or assignee represents and warrants to the purchaser or assignee that either:

(a) the seller or assignor will not sell or assign any high-cost home loans to the purchaser or assignee; or

(b) that such seller or assignor is the beneficiary of such a representation and warranty from a previous seller or assignor; and

(3) exercises reasonable due diligence at the time of purchase or assignment of home loans or within a reasonable period of time thereafter intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high-cost home loans; or

(4) satisfies the requirements in Paragraphs (1) and (2) of this subsection and establishes that a reasonable person exercising ordinary due diligence could not determine, based on the documentation required by the federal Truth in Lending Act and the itemization of the amount financed and other disclosure disbursements, that the loan was a high-cost home loan.

B. Notwithstanding any other law to the contrary, a borrower acting only in an individual capacity may assert against the creditor or any subsequent holder or assignee of the home loan:

(1) within six years of the closing of a high-cost home loan, a violation of the Home Loan Protection Act [[58-21A-1](#) NMSA 1978] in connection with the loan as an original action;

(2) at any time during the term of a high-cost home loan, any defense, claim or counterclaim, or action to enjoin foreclosure or to preserve or obtain possession of the dwelling that secures the loan, including but not limited to a violation of the Home Loan Protection Act, after an action to collect on the home loan or foreclose on the collateral securing the home loan has been initiated or the debt arising from the home loan has been accelerated or the home loan has become sixty days in default; or

(3) within three years of the closing of a home loan, a violation of Subsection B of Section 4 [[58-21A-4](#) NMSA 1978] of the Home Loan Protection Act as a defense, claim or counterclaim or as an action to enjoin foreclosure or to preserve or obtain possession of the dwelling that secures the loan, after an action to collect on the home loan or foreclose on the collateral securing the home loan has been initiated or the debt arising from the home loan has been accelerated or the home loan has become sixty days in default.

C. In an action, claim or counterclaim brought pursuant to Subsection B of this section, the borrower may recover only amounts required to reduce or extinguish the borrower's liability under the home loan plus amounts required to recover costs and reasonable attorney fees.

D. Nothing in this section shall limit the substantive rights, remedies or procedural rights available to a borrower against a creditor, assignee or holder that are otherwise provided by law.

History: Laws 2003, ch. 436, § 11.

58-21A-12. Application of Unfair Practices Act.

A violation of the Home Loan Protection Act [[58-21A-1](#) NMSA 1978] constitutes an unfair or deceptive trade practice pursuant to the Unfair Practices Act [[57-12-1](#)NMSA 1978].

History: Laws 2003, ch. 436, § 12.

58-21A-13. Attorney general; enforcement of rules.

The financial institution division of the regulation and licensing department shall enforce the provisions of the Home Loan Protection Act [[58-21A-1](#) NMSA 1978] and, after consulting with the attorney general and considering similar rules of the federal housing administration and the federal department of veterans affairs, shall adopt rules required pursuant to Subsection H of Section 5 [[58-21A-5](#) NMSA 1978] of the Home Loan Protection Act and such other rules as are necessary to implement that act.

History: Laws 2003, ch. 436, § 13.

58-21A-14. Liberal interpretation.

The Home Loan Protection Act [[58-21A-1](#) NMSA 1978] shall be liberally construed to carry out its purpose.

History: Laws 2003, ch. 436, § 14.