

IMPAC MORTGAGE HOLDINGS INC  
Form S-8  
July 01, 2004

As filed with the Securities and Exchange Commission on July 1, 2004

Registration No. 333- \_\_\_\_\_

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM S-8**  
**Registration Statement**

*Under*

*The Securities Act of 1933*

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**IMPAC MORTGAGE HOLDINGS, INC.**

(Exact name of registrant as specified in its charter)

**Maryland**  
(State or other jurisdiction of  
incorporation or organization)

**33-0675505**  
(I.R.S. Employer  
Identification No.)

**1401 Dove Street, Newport Beach, California 92660**

(Address of principal executive offices)

**(949) 475-3600**

(Registrant's telephone number, including area code)

**Impac Companies 401(k) Savings Plan**

(formerly known as the Impac Funding Corporation 401(k) Profit Sharing Plan)

(Full Title of the plans)

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**Ronald M. Morrison**

**General Counsel**

**1401 Dove Street**

**Newport Beach, California 92660**

**(949) 475-3600**

(Name, Address, and Telephone Number, Including Area Code, of Agent for Service)

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*Copies to:*

**Thomas J. Poletti, Esq.**

**Katherine J. Blair, Esq.**

**Kirkpatrick & Lockhart LLP**

**10100 Santa Monica Boulevard**

**Seventh Floor**

**Los Angeles, CA 90067**

**Telephone: (310) 552-5000**

**Facsimile: (310) 552-5001**

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**CALCULATION OF REGISTRATION FEE**

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Title of Securities to be Registered	Amount	Proposed	Proposed	Amount of
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	to be Registered (1)(2)	Maximum Offering Price per Share (4)	Maximum Aggregate Offering Price (4)	Registration Fee (5)
Common Stock, \$0.01 par value per share (3)	500,000 shares	\$ 22.55	\$ 11,275,000	\$ 1,428.54
Plan Interests	(5)	(5)	(5)	(5)

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- (1) Shares will be purchased on the open market unless the Company makes the determination to deliver newly issued shares. The Company presently has no intention to make such a determination.
  - (2) This Registration Statement covers an indeterminate number of shares of Common Stock which may be issuable by reason of stock splits, stock dividends or similar transactions pursuant to Rule 416 of the Securities Act of 1933, as amended.
  - (3) Includes certain preferred stock purchase rights associated with the shares of Common Stock pursuant to the Rights Agreement, as amended, dated October 7, 1998.
  - (4) Estimated in accordance with Rule 457(c) and (h) under the Securities Act of 1933, as amended, solely for the purpose of calculating the total registration fee. Computation based upon the average of the high and low prices of the Common Stock as reported on the New York Stock Exchange on June 25, 2004.
  - (5) Pursuant to Rule 416(c) of the Securities Act of 1933, this Registration Statement covers an indeterminate amount of plan interests to be offered or sold pursuant to the Impac Companies 401(k) Savings Plan.
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**PART I**

**Information Required in the Section 10(a) Prospectus**

The information required by Part I of Form S-8 is included in documents sent or given to participants in the Plan in accordance with Rule 428 under the Securities Act of 1933, as amended, and the Note to Part I of Form S-8.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents filed by the Registrant with the Securities and Exchange Commission, or SEC, (File No. 1-14100) are incorporated herein by reference:

The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2003, as filed on March 15, 2004;

The Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2004, as filed on May 4, 2004;

The Registrant's Current Reports on Form 8-K (other than information furnished pursuant to Item 9 or Item 12 thereof) filed on January 30, 2004, February 6, 2004, May 10, 2004, May 13, 2004, and May 27, 2004;

The description of the Registrant's common stock contained in the Registrant's registration statement on Form 8-A, including all amendments and reports filed for the purpose of updating such description; and

The description of the Registrant's preferred stock purchase rights contained in the Registrant's registration statement on Form 8-A, as amended, including all amendments and reports filed for the purpose of updating such description.

The Registrant incorporates by reference the documents listed above and any documents subsequently filed with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the filing of a post-effective amendment, except for information furnished under Item 9 or Item 12 of Form 8-K, which is not deemed filed and not incorporated by reference herein, which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in the Registration Statement and to be part thereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

The Maryland General Corporation Law, as amended from time to time, permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgment as being material to the cause of action. The Registrant's charter contains such a provision which eliminates such liability to the maximum extent permitted by Maryland law.

The Registrant's charter authorizes the Registrant, to the maximum extent permitted by Maryland law, to obligate it to indemnify and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (1) any present or former director or officer or (2) any individual who, while a director of Impac Mortgage Holdings, Inc. and at the Registrant's request, serves or has served another corporation, real estate investment trust partnership, joint venture, trust, employee benefit plan or any other enterprise as a director, officer, partner or trustee of such corporation, real estate investment trust partnership, joint venture, trust, employee benefit plan or other enterprise from and against any claim or liability to which such person may become subject or which such person may incur by reason of his status as a present or former director or officer of Impac Mortgage Holdings, Inc. The Registrant's bylaws obligate it, to the maximum extent permitted by Maryland law, to indemnify and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (1) any present or former director or officer

who is made a party to the proceeding by reason of his service in that capacity or (2) any individual who, while a director of Impac Mortgage Holdings, Inc. and at the Registrant's request, serves or has served another corporation, real estate investment trust partnership, joint venture, trust, employee benefit plan or any other enterprise as a director, officer, partner or trustee of such corporation, real estate investment trust partnership, joint venture, trust, employee benefit plan or other enterprise and who is made a party to the proceeding by reason of his service in that capacity. The Registrant's charter and bylaws also permit it to indemnify and advance expenses to any person who served a predecessor of Impac Mortgage Holdings, Inc. in any of the capacities described above and to any of the Registrant's employees or agents or a predecessor of Impac Mortgage Holdings, Inc.

The Maryland General Corporation Law requires a corporation (unless its charter provides otherwise, which the Registrant's charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he is made a party by reason of his service in that capacity. Maryland law permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service in those or other capacities unless it is established that (1) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (2) the director or officer actually received an improper personal benefit in money, property or services or (3) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, under Maryland law, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, the Maryland law permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of (1) a written affirmation by the director or officer of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation and (2) a written undertaking by him or on his behalf to repay the amount paid or reimbursed by the corporation if it shall ultimately be determined that the standard of conduct was not met.

In addition, the Registrant has entered into Indemnification Agreements with its officers and directors pursuant to which it has agreed to indemnify such individuals and to advance expenses incurred in defending any action or proceeding. The Registrant maintains for the benefit of our officers and directors, officers and directors' insurance.

**Item 7. Exemption From Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

**Exhibit**

**Number**

- |        |   |
|--------|---|
| 4.1    | Form of Stock Certificate of the Company (incorporated by reference to the corresponding exhibit number to the Registrant's Registration Statement on Form S-11, as amended (File No. 33-96670), filed with the Securities and Exchange Commission on September 7, 1995). |
| 4.2    | Rights Agreement between the Registrant and BankBoston, N.A. (incorporated by reference to exhibit 4.2 of the Registrant's Registration Statement on Form 8-A as filed with the Securities and Exchange Commission on October 14, 1998).                                  |
| 4.2(a) | Amendment No. 1 to Rights Agreement between the Registrant and BankBoston, N.A. (incorporated by reference to exhibit 4.2(a) of the Registrant's Registration Statement on Form 8-A/A as filed with the Securities and Exchange Commission on December 23, 1998).         |
| 5.1*   |   |
| 5.2    | ERISA Qualification Undertaking.  |
| 23.1   | Consent of KPMG LLP.  |
| 24.1   | Power of Attorney (contained on signature page).  |

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Impac Companies 401(k) Savings Plan (formerly known as the Impac Funding Corporation 401(k) Profit Sharing Plan).

\* No opinion of counsel required. No original issuance of shares involved.

**Item 9. Undertakings**

(a) The Registrant hereby undertakes:

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- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement
  - (i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
  - (ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and
  - (iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided; however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Sections 13 or 15(d) of the Exchange Act of 1934 that are incorporated by reference in the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The Registrant hereby undertakes, for the purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Newport Beach, State of California, on this 30th day of June, 2004.

**IMPAC MORTGAGE HOLDINGS, INC.**

By: /s/ Richard J. Johnson  
 Richard J. Johnson, Executive Vice  
 President and Chief Financial Officer

**POWER OF ATTORNEY**

We, the undersigned officers and directors of Impac Mortgage Holdings, Inc., do hereby constitute and appoint Joseph R. Tomkinson or Richard J. Johnson, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution for him in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Names</u>	<u>Title</u>	<u>Date</u>
/s/ JOSEPH R. TOMKINSON <hr/> <b>Joseph R. Tomkinson</b>	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	June 30, 2004
/s/ WILLIAM S. ASHMORE <hr/> <b>William S. Ashmore</b>	President and Director	June 30, 2004
/s/ RICHARD J. JOHNSON <hr/> <b>Richard J. Johnson</b>	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	June 30, 2004
/s/ CRAIG A. GOLDING <hr/>	Vice President and Controller	June 30, 2004

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**Craig A. Golding**

Director

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**James Walsh**

Director

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**Frank P. Filippis**

/s/ STEPHAN R. PEERS

Director

June 30, 2004

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**Stephan R. Peers**

Director

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**William E. Rose**

/s/ LEIGH J. ABRAMS

Director

June 30, 2004

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**Leigh J. Abrams**

**The Plan.** Pursuant to the requirements of the Securities Act of 1933, as amended, the administrator of the Impac Companies 401(k) Savings Plan has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Newport Beach, State of California, on the 30th day of June, 2004.

EMPLOYEE COMPENSATION AND

BENEFITS COMMITTEE

By:         /s/ June Reifeiss        

Name:         June Reifeiss        

Title:         VP, Human Resources, authorized signatory

**EXHIBIT INDEX**

**Exhibit**

**Number**

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4.2	Rights Agreement between the Registrant and BankBoston, N.A. (incorporated by reference to exhibit 4.2 of the Registrant's Registration Statement on Form 8-A as filed with the Securities and Exchange Commission on October 14, 1998).
4.2(a)	Amendment No. 1 to Rights Agreement between the Registrant and BankBoston, N.A. (incorporated by reference to exhibit 4.2(a) of the Registrant's Registration Statement on Form 8.A/A as filed with the Securities and Exchange Commission on December 23, 1998).
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5.2	ERISA Qualification Undertaking.
23.1	Consent of KPMG LLP.
24.1	Power of Attorney (contained on signature page).
99.1	Impac Companies 401(k) Savings Plan (formerly known as the Impac Funding Corporation 401(k) Profit Sharing Plan).

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\* No opinion of counsel required. No original issuance of shares involved.