

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 487 Session of
2007

INTRODUCED BY BROWNE, FERLO, BOSCOLA, PILEGGI, TOMLINSON,
ERICKSON, FUMO, RHOADES, COSTA AND BAKER, MARCH 15, 2007

REFERRED TO BANKING AND INSURANCE, MARCH 15, 2007

AN ACT

1 Amending the act of December 22, 1989 (P.L.687, No.90), entitled
2 "An act providing for the regulation and licensing of
3 mortgage bankers and mortgage brokers; imposing additional
4 powers and duties on the Department of Banking and the State
5 Real Estate Commission; and providing penalties," further
6 providing for definitions, for license requirements and
7 exemptions, for application for license, for annual license
8 fee, for issuance of license, for license duration, for
9 licensee requirements, for licensee limitations, for
10 authority of department or commission, for fees, for
11 suspension, revocation or refusal, for penalties, for
12 referral fees and for Real Estate Recovery Fund.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. The definitions of "commission," "finder's fee,"
16 "limited mortgage broker," "nonpurchase money mortgage loan" and
17 "person" in section 302 of the act of December 22, 1989
18 (P.L.687, No.90), known as the Mortgage Bankers and Brokers and
19 Consumer Equity Protection Act, amended June 25, 2001 (P.L.621,
20 No.55), are amended and the section is amended by adding
21 definitions to read:

22 Section 302. Definitions.

1 The following words and phrases when used in this chapter
2 shall have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 * * *

5 "Applicant." A person who applies for a license under this
6 chapter.

7 * * *

8 ["Commission." The State Real Estate Commission.

9 "Finder's fee" or "referral fee." Any payment of money or
10 other consideration for the referral of a mortgage loan to a
11 lender, but shall not include consideration paid for goods or
12 facilities actually furnished or services actually performed.]

13 * * *

14 ["Limited mortgage broker." An individual who directly or
15 indirectly negotiates or places nonpurchase money mortgage loans
16 for others in the primary market for consideration.]

17 * * *

18 "Mortgage originator." An individual not licensed as a
19 mortgage banker, mortgage broker or loan correspondent under
20 this chapter who solicits, accepts or offers to accept mortgage
21 loan applications or negotiates mortgage loan terms in other
22 than a clerical or ministerial capacity. The term does not
23 include directors, partners or ultimate equitable owners of 10%
24 or more of a licensee.

25 ["Nonpurchase money mortgage loan." A mortgage loan the
26 proceeds of which are not used to finance the purchase of the
27 real property securing the mortgage loan.]

28 "Person." An individual, association, joint venture or
29 joint-stock company, partnership, limited partnership, limited
30 partnership association, limited liability company, business

1 corporation, nonprofit corporation, or any other group of
2 individuals, however organized.

3 * * *

4 Section 2. Sections 303, 304, 305, 306, 307, 308, 309 and
5 310 of the act, amended June 25, 2001 (P.L.621, No.55), are
6 amended to read:

7 Section 303. License requirements and exemptions.

8 (a) License required.--On and after the effective date of
9 this act, no person shall [act as a mortgage banker, loan
10 correspondent, mortgage broker or limited mortgage broker]
11 engage in the first mortgage loan business in this Commonwealth
12 without a license as provided for in this chapter.[, provided,
13 however, that any person licensed as a mortgage banker may also
14 act as a loan correspondent or mortgage broker and any person
15 licensed as a loan correspondent may also act as a mortgage
16 broker without a separate license. A person licensed as a
17 mortgage broker may only perform the services of a mortgage
18 broker.] A mortgage originator may not engage in the first
19 mortgage loan business unless the mortgage originator is
20 employed and supervised by a licensed mortgage banker, mortgage
21 broker or loan correspondent.

22 (a.1) Licensed activity exceptions.--

23 (1) A mortgage banker may act as a mortgage broker or
24 loan correspondent without a separate mortgage broker or loan
25 correspondent license and, if licensed as an individual, may
26 perform the services of a mortgage originator without a
27 separate mortgage originator license.

28 (2) A loan correspondent may act as a mortgage broker
29 without a separate mortgage broker license and, if licensed
30 as an individual, may perform the services of a mortgage

1 originator without a separate mortgage originator license.

2 (3) A person licensed as a mortgage broker may only
3 perform the services of a mortgage broker. If a mortgage
4 broker is licensed as an individual, a mortgage broker may
5 perform the services of a mortgage originator without a
6 separate mortgage originator license.

7 (b) Exceptions.--The following persons shall not be required
8 to be licensed under this chapter in order to conduct the first
9 mortgage loan business but shall be subject to those provisions
10 of this chapter as specifically provided in this section:

11 (1) A State-chartered bank, bank and trust company,
12 savings bank, private bank or national bank, a State or
13 federally chartered savings and loan association, a federally
14 chartered savings bank or a State or federally chartered
15 credit union.

16 (2) An attorney authorized to practice law in this
17 Commonwealth, who acts as a mortgage broker in negotiating or
18 placing a mortgage loan in the normal course of legal
19 practice.

20 [(3) A person licensed pursuant to the provisions of the
21 act of February 19, 1980 (P.L.15, No.9), known as the Real
22 Estate Licensing and Registration Act, who is principally
23 engaged in a third-party real estate brokerage business, but
24 only to the extent that he provides information, verbal or
25 written, to or negotiates or places a mortgage loan for a
26 buyer of real estate and is not compensated by the buyer or
27 any other person for providing such information or
28 negotiating or placing such mortgage loan. If he is
29 compensated for providing such information or negotiating or
30 placing such mortgage loan, he shall be subject to the

1 provisions of sections 308, 310, 311 and 314(b), excluding
2 section 308(a)(1).

3 (4) A seller of a dwelling, if he has resided in the
4 dwelling at least one year and as part of the purchase price
5 receives a first mortgage executed by the purchaser.]

6 (5) A person who either originates or negotiates less
7 than three mortgage loans in a calendar year in this
8 Commonwealth unless he is otherwise deemed to be engaged in
9 the first mortgage loan business.

10 [(6) Builders, when obtaining mortgages for their own
11 construction or for the sale of their own construction.]

12 (7) Any agency or instrumentality of the Federal
13 Government or a corporation otherwise created by an act of
14 the United States Congress, including, but not limited to,
15 the Federal National Mortgage Association, the Government
16 National Mortgage Association, the Veterans' Administration,
17 the Federal Home Loan Mortgage Corporation and the Federal
18 Housing Administration.

19 (8) [The] Any agency or instrumentality of State or
20 local government, the District of Columbia or any territory,
21 including the Pennsylvania Housing Finance Agency and other
22 government housing finance agencies.

23 (9) A licensee under the act of April 8, 1937 (P.L.262,
24 No.66), known as the Consumer Discount Company Act, except
25 that any such licensee who makes a mortgage loan other than
26 under the provisions of that act shall be subject to the
27 provisions of sections 304(b)(2) and (3), 308, 310 and
28 314(b), excluding section 308(a)(1). Employees of licensees
29 under the Consumer Discount Company Act that act as mortgage
30 originators shall be subject to the licensing requirements of

1 this chapter. Consumer discount companies that employ
2 mortgage originators shall be subject to the same
3 requirements as mortgage bankers in regard to the employment
4 and supervision of mortgage originators.

5 (10) Except [for licensees described] as provided in
6 paragraph (9), subsidiaries and affiliates of the following
7 institutions: State-chartered banks, bank and trust
8 companies, savings banks, private banks, savings and loan
9 associations and credit unions or national banks, federally
10 chartered savings and loan associations, federally chartered
11 savings banks and federally chartered credit unions, except
12 that such subsidiaries and affiliates [of institutions
13 enumerated in this paragraph] shall:

14 (i) be subject to the provisions of sections 308,
15 309(a)(3), 310 and 314(b), excluding section 308(a)(1);

16 (ii) deliver as required to the department annually
17 copies of financial reports made to all supervisory
18 agencies; and

19 (iii) be registered with the department.

20 (11) Employees of a mortgage banker, mortgage broker and
21 loan correspondent licensee [or excepted persons acting for
22 their employers.] to the extent that such employees are not
23 otherwise required to be licensed as mortgage originators.

24 [(12) An insurance company, association or exchange
25 authorized to transact business in this Commonwealth under
26 the act of May 17, 1921 (P.L.682, No.284), known as The
27 Insurance Company Law of 1921, and any subsidiaries and
28 affiliates thereof, except that such subsidiaries and
29 affiliates shall:

30 (i) be subject to the provisions of sections 308,

309(a)(3), 310 and 314(b), excluding section 308(a)(1);

(ii) deliver as required to the department annually copies of financial reports made to all supervisory agencies; and

(iii) be registered with the department.]

(13) Any person who makes a mortgage loan to an employee of that person as an employment benefit, given that person does not hold himself out to the public as a first mortgage lender.

(14) Nonprofit corporations making mortgage loans to promote home ownership or improvements for the disadvantaged, given that the corporation does not hold itself out to the public as a first mortgage lender.

(15) A nonprofit corporation making not more than 12 mortgage loans a calendar year with its own funds, that shall not include funds borrowed through warehouse lines of credit or other sources for the purpose of making mortgage loans, which loans are retained in the corporation's own portfolios and not regularly sold to others and are made to promote and advance the cultural traditions and lifestyles of bona fide religious organizations provided that the corporation does not hold itself out to the public as a first mortgage lender.

(16) Employees of excepted persons enumerated in this section, unless otherwise provided in this subsection.

(c) Loans for business or commercial purposes.--This chapter shall not apply to mortgage loans made for business or commercial purposes.

Section 304. Application for license.

(a) Contents.--An application for a license to act as a mortgage banker, loan correspondent, mortgage broker or [limited

1 mortgage broker] mortgage originator shall be on such forms as
2 may be prescribed and provided by the department. [Each] In the
3 case of the mortgage banker, loan correspondent or mortgage
4 broker, the application shall include the address or addresses
5 where business is to be conducted, the full name, official title
6 and business address of each director and principal officer of
7 the business and any other information that may be required by
8 the department. In the case of a mortgage originator, the
9 application shall include the name of the applicant, the name of
10 the licensee employing the applicant and the location of the
11 employer licensee to which the applicant is assigned and any
12 other information that may be required by the department. An
13 applicant shall demonstrate to the department that policies and
14 procedures have been developed to receive and process customer
15 inquiries and grievances promptly and fairly.

16 (b) Mortgage banker's license.--The department shall issue a
17 mortgage banker's license applied for pursuant to this chapter
18 if the applicant establishes that he has met the following
19 conditions:

20 (1) That he is approved by or meets the current criteria
21 for approval of at least one of the following:

22 (i) Federal National Mortgage Association.

23 (ii) Federal Home Loan Mortgage Corporation.

24 (iii) Federal Housing Administration.

25 (2) That he maintains or is approved for, and will
26 continue to maintain as a licensee, a line of credit,
27 repurchase agreement or equivalent mortgage-funding
28 capability of not less than \$1,000,000.

29 (3) That he has a minimum tangible net worth of \$250,000
30 at the time of application and will, at all times thereafter,

1 maintain such minimum net worth, provided, however, that
2 those applicants who were in business prior to June 20, 1990,
3 may be licensed with a minimum tangible net worth of \$100,000
4 if, in the opinion of the department, the applicant has
5 established that it has an otherwise adequate financial
6 structure and operating history.

7 (4) That he will maintain fidelity bond coverage in
8 accordance with the guidelines established by the Federal
9 National Mortgage Association or the Federal Home Loan
10 Mortgage Corporation.

11 (b.1) Loan correspondent's license.--The department shall
12 issue a loan correspondent's license applied for pursuant to
13 this chapter if the applicant establishes that he has met the
14 following conditions:

15 (1) That he is eligible to and will obtain and maintain
16 a bond in the amount of \$100,000, in a form acceptable to the
17 department, prior to the issuance of the license, from a
18 surety company authorized to do business in this
19 Commonwealth. The bond shall run to the Commonwealth of
20 Pennsylvania and shall be for the use of the Commonwealth and
21 any person or persons who obtain a judgment against the loan
22 correspondent for failure to carry out the terms of any
23 provision for which advance fees are paid. No bond shall
24 comply with the requirements of this section unless it
25 contains a provision that it shall not be canceled for any
26 cause unless notice of intention to cancel is given to the
27 department at least 30 days before the day upon which
28 cancellation shall take effect.

29 (2) That he has a minimum tangible net worth of \$100,000
30 at the time of application and will, at all times thereafter,

1 maintain such minimum net worth.

2 (3) Notwithstanding subparagraph (ii), an applicant who
3 was in the business as a mortgage banker, mortgage broker or
4 otherwise authorized to engage in the first mortgage loan
5 business by the department prior to the effective date of
6 this section who files an application within 90 days after
7 the effective date of this section may be licensed for one
8 year with a minimum tangible net worth of \$50,000.

9 Thereafter, for a period of one year, the applicant may
10 continue to be licensed with a minimum tangible net worth of
11 \$75,000. Following that period, the applicant may continue to
12 be licensed with a minimum tangible net worth of \$100,000.

13 (c) Mortgage broker's license.--

14 (1) The department shall issue a mortgage broker's
15 license applied for pursuant to this chapter if the applicant
16 establishes that he is eligible to and will obtain and
17 maintain a bond in the amount of \$100,000, in a form
18 acceptable to the department, prior to the issuance of the
19 license, from a surety company authorized to do business in
20 this Commonwealth. The bond shall be a penal bond conditioned
21 on compliance with this chapter and subject to forfeiture by
22 the department and shall run to the Commonwealth of
23 Pennsylvania for its use. The bond shall also be for the use
24 of any person against the mortgage broker for failure to
25 carry out the terms of any provision for which advance fees
26 are paid. If such person is aggrieved, he may, with the
27 written assent of the department, recover advance fees and
28 costs from the bond by filing a claim with the surety company
29 or maintaining an action on the bond. In the alternative, an
30 aggrieved person may recover advance fees and costs by filing

1 a formal complaint against the mortgage broker with the
2 department which shall adjudicate the matter. Such an
3 adjudication shall be binding upon the surety company and
4 enforceable by the department in Commonwealth Court and by an
5 aggrieved person in any court. Any aggrieved person seeking
6 to recover advance fees and costs from a bond that has
7 already been forfeited by the department or which the
8 department is in the process of forfeiting may recover
9 payment on such bond if, after filing a petition with the
10 department, the department assents to his requested payment
11 or portion thereof. The department may pay the aggrieved
12 person from the bond proceeds it recovered in such case.
13 Nothing in this section shall be construed as limiting the
14 ability of any court or district justice to award to any
15 aggrieved person other damages, court costs and attorney fees
16 as permitted by law, but those claims that are not advance
17 fees or related costs may not be recovered from the bond. The
18 department, in its discretion, may assent to or order pro
19 rata or other recovery on the bond for any aggrieved person
20 if claims against the bond may or do exceed its full monetary
21 amount. No bond shall comply with the requirements of this
22 section unless it contains a provision that it shall not be
23 canceled for any cause unless notice of intention to cancel
24 is given to the department at least 30 days before the day
25 upon which cancellation shall take effect. Cancellation of
26 the bond shall not invalidate the bond regarding the period
27 of time it was in effect.

28 (2) Mortgage brokers who can demonstrate to the
29 satisfaction of the department that they do not accept
30 advance fees shall be exempt from the bond requirement of

1 this subsection.

2 [(c.1) Limited mortgage broker's license.--The department
3 shall issue a limited mortgage broker's license applied for
4 pursuant to this chapter if the applicant establishes that he is
5 an individual who operates from one location and maintains no
6 branch offices and can demonstrate to the satisfaction of the
7 department that he accepts or collects no advance fees.]

8 (c.2) Mortgage originator license.--A mortgage originator
9 shall be an employee of a single mortgage banker, mortgage
10 broker or loan correspondent licensed under this chapter, which
11 licensee shall directly supervise, control and maintain
12 responsibility for the acts and omissions of the mortgage
13 originator. A mortgage originator shall be assigned to a
14 licensed location of the employer licensee.

15 (d) [Foreign corporation.--] Requirements for out-of-State
16 applicants.--

17 (1) If the applicant is [a foreign corporation] not a
18 resident of this Commonwealth, that [corporation] applicant
19 shall be authorized to do business in this Commonwealth in
20 accordance with the law of this Commonwealth regulating
21 corporations and other entities conducting business in this
22 Commonwealth and shall maintain at least one office in this
23 Commonwealth which is the office that shall be licensed as
24 the principal place of business for the purposes of this
25 chapter. [A foreign corporation which will act only in the
26 capacity of a] A wholesale table funder shall be exempt from
27 the requirement that it maintain at least one office in this
28 Commonwealth. [The corporation]

29 (2) An applicant shall file with the application an
30 irrevocable consent, duly acknowledged, that suits and

actions may be commenced against that [licensee] person in the courts of this Commonwealth by the service of process of any pleading upon the department in the usual manner provided for service of process and pleadings by the statutes and court rules of this Commonwealth. The consent shall provide that this service shall be as valid and binding as if service had been made personally upon the [licensee] person in this Commonwealth. In all cases where process or pleadings are served upon the department pursuant to the provisions of this section, such process or pleadings shall be served in triplicate; one copy shall be filed in the [Office of the Secretary of Banking] department and the others shall be forwarded by the department, by certified or registered mail, return receipt requested, to the last known principal place of business in the Commonwealth and to the [corporation's] person's principal place of business.

[(e) Education.--To maintain a mortgage banker's, a loan correspondent's or a mortgage broker's license, the applicant or licensee shall demonstrate to the satisfaction of the secretary that at least one individual from each licensed office has attended a minimum of six hours of such continuing education each year. To maintain a limited mortgage broker's license, the licensee shall demonstrate to the satisfaction of the secretary that he has attended at least two hours of continuing education each year. The secretary shall delineate the requirements for such continuing education by regulation within three years of the effective date of this act. The secretary may review and approve continuing education programs and providers to satisfy the continuing education requirement. The secretary may charge providers of continuing education programs a fee, to be

determined by the secretary, for department review of continuing education programs and providers.]

(e) Education requirements.--

(1) In order to obtain a license under this chapter, an applicant shall submit to the department with its application evidence that the applicant or an officer of the applicant has successfully completed a minimum of 12 hours of instruction and a testing program regarding the first mortgage loan business and the provisions of this chapter, the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law, and relevant Federal law including the Real Estate Settlement Procedures Act of 1974 (88 Stat. 1724, 12 U.S.C. §§ 2601-2617), the Truth in Lending Act (82 Stat. 146, 15 U.S.C. §§ 1601-1667f), and the Equal Credit Opportunity Act (88 Stat. 1521, 15 U.S.C. §§ 1691-1691f).

(2) In order to maintain a license:

(i) A mortgage banker, mortgage broker or loan correspondent shall demonstrate to the satisfaction of the department that at least one individual from each licensed office that is not a mortgage originator, and all mortgage originators employed by the licensee, have attended a minimum of six hours of continuing education each year.

(ii) A mortgage originator licensee shall demonstrate to the satisfaction of the department that he has attended a minimum of six hours of continuing education each year.

(3) The department shall delineate the requirements for prequalification education, testing and continuing education

1 by regulation, including by permitting in-house
2 prequalification education, testing and continuing education.
3 The department may review and approve education programs and
4 providers to satisfy the education requirements. The
5 department may charge providers of education programs a fee,
6 to be determined by the department, for department review of
7 education programs and providers.

8 (f) Duty to update.--All applicants and licensees shall be
9 required to provide the department with written notice of the
10 change in any information contained in an application for a
11 license or for any renewal of a license within ten days of an
12 applicant or licensee becoming aware of such change.

13 (g) License renewals.--Licenses shall be issued for terms of
14 12 months and may be renewed by the department each year on a
15 schedule set by the department upon application by the licensee
16 and the payment of all applicable renewal fees. The licensee
17 shall demonstrate to the department that it is conducting the
18 first mortgage loan business in accordance with the requirements
19 of this chapter and that the directors, officers, partners,
20 employees, agents and ultimate equitable owners of 10% or more
21 of the licensee continue to meet all of the initial requirements
22 for licensure required by this chapter unless otherwise
23 determined by the department.

24 Section 305. Annual license fee.

25 [(a) General rule.--A mortgage banker, mortgage broker or
26 applicant shall pay to the department at the time an application
27 is filed an initial license fee for the principal place of
28 business and an additional license fee for each branch office as
29 provided for in section 603-A of the act of April 9, 1929

30 (P.L.177, No.175), known as The Administrative Code of 1929. On

1 or before July 1 of each year and thereafter, a licensee shall
2 pay a license renewal fee for the principal place of business
3 and an additional license renewal fee for each branch office as
4 provided for in section 603-A of The Administrative Code of
5 1929. An applicant for a license to operate as a loan
6 correspondent shall pay the department the same fee for the
7 initial license for principal place of business, each branch
8 office and annual license renewal as provided for mortgage
9 bankers licensed under section 603-A of The Administrative Code
10 of 1929. An applicant for a license to operate as a limited
11 mortgage broker shall pay to the department at the time an
12 application is filed an initial license fee of \$250. On or
13 before July 1 of each year thereafter, a limited mortgage broker
14 licensee shall pay a renewal fee of \$200.

15 (b) Recovery of costs.--No abatement of any license fee
16 shall be made if the license is issued for a period of less than
17 one year. The department shall be entitled to recover any cost
18 of investigation in excess of license or renewal fees from the
19 licensee or from any person who is not licensed under this
20 chapter but who is presumed to be engaged in business
21 contemplated by this chapter.]

22 (a) Initial application fees.--An applicant shall pay to the
23 department at the time an application is filed an initial
24 application fee as follows:

25 (1) for mortgage bankers and loan correspondents, \$1,500
26 for the principal place of business in this Commonwealth and
27 an additional fee of \$1,500 for each branch office;

28 (2) for mortgage brokers, \$1,000 for the principal place
29 of business in this Commonwealth and an additional fee of
30 \$250 for each branch office; or

1 (3) for mortgage originators, \$200.

2 (b) Renewal application fees.--Prior to each annual renewal
3 of a license, a licensee shall pay to the department a license
4 renewal fee as follows:

5 (1) for mortgage bankers and loan correspondents, \$750
6 for the principal place of business in this Commonwealth and
7 an additional fee of \$750 for each branch office;

8 (2) for mortgage brokers, \$500 for the principal place
9 of business in this Commonwealth and an additional fee of
10 \$250 for each branch office; or

11 (3) for mortgage originators, \$200.

12 (c) Fee limitation.--For a licensee that employs 50 or more
13 mortgage originators, the initial application fee and license
14 renewal fee shall be \$50 per mortgage originator, to a maximum
15 of \$10,000 total per year.

16 (d) No abatement of fee.--No abatement of a licensee fee
17 shall be made if the license is issued for a period of less than
18 one year.

19 Section 306. Issuance of license.

20 (a) Time limit.--Within 60 days after a complete application
21 is received, the department shall either issue a license or, for
22 any reason for which the department may suspend, revoke or
23 refuse to renew a license as provided for by section 313, refuse
24 to issue a license. Upon receipt of an application for license,
25 the department shall conduct such investigation of the applicant
26 or a director, officer, partner, employee, agent or ultimate
27 equitable owner of 10% or more of the applicant as it deems
28 necessary. [to determine that the applicant and its officers,
29 directors and principals are of good character and ethical
30 reputation.] The 60-day time limit specified in this subsection

1 may be extended by the department for an additional 30 days if
2 the department determines that such extension is necessary. The
3 department shall provide written notification to any applicant
4 whose application review has been extended and include the final
5 date by which a decision shall be rendered regarding the
6 application.

7 (b) Appeal of denial.--If the department refuses to issue a
8 license, it shall notify the applicant, in writing, of the
9 denial and the reason therefor and of the applicant's right to
10 appeal from such action to the [Commonwealth Court] secretary.
11 An appeal from the department's refusal to approve an
12 application for a license shall be filed by the applicant within
13 30 days of notice thereof.

14 (c) Contents of license.--Each license issued by the
15 department shall specify:

16 (1) The name and address of the licensee, the address so
17 specified to be that of the licensee's principal place of
18 business within this Commonwealth or, for a licensee acting
19 only in the capacity of a wholesale table funder, either in
20 or outside of this Commonwealth.

21 (2) The licensee's reference number, which may remain
22 the same from year to year despite variations in annual
23 license numbers which may result from the renewal of licenses
24 by mechanical techniques.

25 (3) Such other information as the department shall
26 require to carry out the purposes of this chapter.

27 (d) Denial of license due to conviction.--

28 (1) The department may deny a license if it finds that
29 the applicant or any person who is a director, officer,
30 partner, agent, employee or ultimate equitable owner of 10%

1 or more of the applicant has been convicted of a
2 [misdemeanor] crime of moral turpitude or felony in any
3 jurisdiction or of a crime which, if convicted in this
4 Commonwealth, would constitute a [misdemeanor] crime of moral
5 turpitude or felony under the laws of this Commonwealth. For
6 the purposes of this chapter, a person shall be deemed to
7 have been convicted of a crime if the person:

8 (i) shall have pleaded guilty or nolo contendere to
9 a charge thereof before a court or Federal magistrate
10 [or]; or

11 (ii) shall have been found guilty thereof by the
12 decision or judgment of a court or Federal magistrate or
13 by the verdict of a jury, irrespective of the
14 pronouncement of sentence or the suspension thereof,
15 unless the pleas of guilty or nolo contendere or the
16 decision, judgment or verdict shall have been set aside,
17 vacated, reversed or otherwise abrogated by lawful
18 judicial process.

19 (2) A license under this chapter shall be deemed to be a
20 covered license within the meaning of section 405 of the act
21 of May 15, 1933 (P.L.565, No.111), known as the Department of
22 Banking Code. The department shall notify a licensee if a
23 covered individual within the meaning of section 405 of the
24 Department of Banking Code that is or will be employed or
25 contracted by the licensee has a criminal background that
26 renders the employee unfit for employment in the first
27 mortgage loan business.

28 (e) Denial of license for other reason.--The department may
29 deny a license or otherwise restrict a license if it finds
30 [that, within two years prior to or from the date of the

1 application,] the applicant or any person who is a director,
2 officer, partner, agent, employee or ultimate equitable owner of
3 10% or more of the applicant:

4 (1) has had a license application or license issued by
5 the department denied, not renewed, suspended or revoked;

6 (2) is the subject of an order of the department;
7 [denying, suspending or revoking a license as a mortgage
8 banker, loan correspondent, mortgage broker or limited
9 mortgage broker; or]

10 (3) has violated or failed to comply with any provision
11 of this chapter or any [rule] regulation, statement of policy
12 or order of the department[.];

13 (4) does not possess the financial responsibility,
14 character, reputation, integrity and general fitness to
15 command the confidence of the public and to warrant the
16 belief that the first mortgage loan business will be operated
17 lawfully, honestly, fairly and within the legislative intent
18 of this chapter and in accordance with the general laws of
19 this Commonwealth; or

20 (5) has an outstanding debt to the Commonwealth or any
21 Commonwealth agency.

22 (f) Imposing conditions on licenses.--The department may
23 impose conditions on the issuance of any license under this
24 chapter. If the department determines that conditions imposed
25 upon a licensee have not been fulfilled, the department may take
26 any action authorized under this chapter against such licensee
27 that the department deems necessary.

28 (g) Conditional licenses.--In the case of mortgage
29 originator applicants, the department may issue mortgage
30 originator licenses effective immediately upon receipt of an

1 application, which licenses shall be conditional licenses issued
2 under this subsection.

3 Section 307. License duration.

4 A license issued by the department shall:

5 (1) Be renewed on [July 1 of each year upon payment of
6 the annual renewal fee and after a determination that the
7 licensee is conducting business in accordance with the
8 provisions of this chapter is made by the department.]
9 completion of the requirements of section 304(g). No refund
10 of any portion of the license fee shall be made if the
11 license is voluntarily surrendered to the department or
12 suspended or revoked by the department prior to its
13 expiration date.

14 (2) Be immediately invalid if the [mortgage banker's
15 corporate charter is voided in accordance with the provisions
16 of any law of this Commonwealth or any other state.]
17 licensee's authority to conduct business is voided under any
18 law of this Commonwealth or any other state, unless the
19 licensee demonstrates to the satisfaction of the department
20 that the applicable court or governmental entity was clearly
21 erroneous in voiding the licensee's authority to conduct
22 business.

23 (3) Not be assignable or transferable by operation of
24 law or [otherwise without the written consent of the
25 department] in any other fashion.

26 Section 308. Licensee requirements.

27 (a) Requirements on licensee.--A licensee shall:

28 (1) [Conspicuously] In the case of a mortgage banker,
29 mortgage broker or loan correspondent, conspicuously display
30 [its license] at each licensed place of business[.] its

1 license and copies of the licenses of all mortgage
2 originators assigned to that location. In the case of a
3 mortgage originator, the license shall be maintained in the
4 immediate possession of the licensee whenever the licensee is
5 engaged in the mortgage loan business.

6 (2) Maintain, at its principal place of business within
7 this Commonwealth, or at such place within or outside this
8 Commonwealth if agreed to by the [Secretary of Banking or the
9 commission] department, either the original or a copy of such
10 books, accounts, records and documents, or electronic or
11 other similar access thereto, of the business conducted under
12 the license as may be prescribed by the department [or
13 commission] to enable [them] it to determine whether the
14 business of the licensee is being conducted in accordance
15 with the provisions of this chapter and the regulations,
16 statements of policy and orders[, rules and regulations]
17 issued under this chapter. The department, at its
18 determination, shall have free access to and authorization to
19 examine records maintained within or outside of this
20 Commonwealth. The costs of the examination, including travel
21 costs, shall be borne by the licensee. The [secretary]
22 department may deny or revoke the authority to maintain
23 records outside of this Commonwealth for good cause in the
24 interest of consumer protection for Commonwealth borrowers,
25 including for the licensee's failure to provide books,
26 accounts, records or documents to the department upon
27 request.

28 (3) [Annually] In the case of a mortgage banker,
29 mortgage broker or loan correspondent, annually, before May
30 1, file a report with the department or commission which

1 shall set forth such information as the department or
2 commission shall require concerning the business conducted as
3 a licensee during the preceding calendar year. The report
4 shall be in writing, under oath, and on a form provided by
5 the department. Licensees failing to file the required report
6 by May 1 shall be subject to a penalty of \$100 each day after
7 May 1 until the report is filed.

8 (4) Be subject to examination by the department [or
9 commission] at the discretion of the department [or
10 commission] at which time the department [or commission]
11 shall have free access, during regular business hours, to the
12 licensee's place or places of business in this Commonwealth
13 and to all instruments, documents, accounts, books and
14 records which pertain to a licensee's first mortgage loan
15 business, whether maintained in or outside of this
16 Commonwealth. The department [or commission] may examine a
17 licensee at any time if the department [or commission] deems
18 such examination to be necessary or desirable. The cost of
19 any such examination shall be borne by the licensee.

20 (5) Comply with all provisions of the act of January 30,
21 1974 (P.L.13, No.6), referred to as the Loan Interest and
22 Protection Law, provided, however, that this shall not be
23 deemed an override of section 501 of the Depository
24 Institutions Deregulation and Monetary Control Act of 1980
25 (94 Stat. 161, 12 U.S.C. § 1735f-7a) or the Alternative
26 Mortgage Transaction Parity Act of 1982 (96 Stat. 1545, 12
27 U.S.C. § 3801 et seq.).

28 (6) Comply with the provisions of the act of December
29 23, 1983 (P.L.385, No.91), entitled "An act amending the act
30 of December 3, 1959 (P.L.1688, No.621), entitled, as amended,

1 'An act to promote the health, safety and welfare of the
2 people of the Commonwealth by broadening the market for
3 housing for persons and families of low and moderate income
4 and alleviating shortages thereof, and by assisting in the
5 provision of housing for elderly persons through the creation
6 of the Pennsylvania Housing Finance Agency as a public
7 corporation and government instrumentality; providing for the
8 organization, membership and administration of the agency,
9 prescribing its general powers and duties and the manner in
10 which its funds are kept and audited, empowering the agency
11 to make housing loans to qualified mortgagors upon the
12 security of insured and uninsured mortgages, defining
13 qualified mortgagors and providing for priorities among
14 tenants in certain instances, prescribing interest rates and
15 other terms of housing loans, permitting the agency to
16 acquire real or personal property, permitting the agency to
17 make agreements with financial institutions and Federal
18 agencies, providing for the purchase by persons of low and
19 moderate income of housing units, and approving the sale of
20 housing units, permitting the agency to sell housing loans,
21 providing for the promulgation of regulations and forms by
22 the agency, prescribing penalties for furnishing false
23 information, empowering the agency to borrow money upon its
24 own credit by the issuance and sale of bonds and notes and by
25 giving security therefor, permitting the refunding,
26 redemption and purchase of such obligations by the agency,
27 prescribing remedies of holders of such bonds and notes,
28 exempting bonds and notes of the agency, the income
29 therefrom, and the income and revenues of the agency from
30 taxation, except transfer, death and gift taxes; making such

1 bonds and notes legal investments for certain purposes; and
2 indicating how the act shall become effective,' providing for
3 homeowner's emergency assistance."

4 (7) Provide for periodic accounting of any escrow
5 accounts held by the licensee to the borrowers not less than
6 annually, showing the amounts received from the borrower and
7 the amounts disbursed.

8 (8) Refund all fees, other than those fees paid by the
9 licensee to a third party, paid by an applicant borrower when
10 a mortgage loan is not produced within the time specified by
11 the mortgage banker, loan correspondent[, or mortgage broker
12 [or limited mortgage broker] at the rate, term and overall
13 cost agreed to by the borrower, provided, however, that this
14 provision shall not apply when the failure to produce a loan
15 is due solely to the borrower's negligence, his refusal to
16 accept and close on a loan commitment or his refusal or
17 inability to provide information necessary for processing,
18 including, but not limited to, employment verifications and
19 verifications of deposits. The licensee shall disclose to the
20 borrower, in writing, at the time of a loan application which
21 fees paid or to be paid are nonrefundable.

22 (9) Ensure that all lock-in agreements shall be in
23 writing and shall contain at least the following provisions:

24 (i) The expiration date of the lock-in, if any.

25 (ii) The interest rate locked in, if any.

26 (iii) The discount points locked in, if any.

27 (iv) The [commitment] fee locked in, if any.

28 (v) The lock-in fee, if any.

29 (10) Include in all advertisements language indicating
30 that the licensee is licensed by the department. In the case

1 of a mortgage originator, include in all advertising the name
2 of the mortgage originator's employer.

3 (11) Allow for the evidence of any insurance required in
4 connection with a loan by a policy or binder or a copy of
5 either.

6 (12) In the case of a mortgage broker, mortgage lender
7 or mortgage loan correspondent:

8 (i) maintain supervision and control of, and
9 responsibility for, the acts and omissions of all
10 mortgage originators employed by the licensee;

11 (ii) maintain a list of all current and former
12 mortgage originators employed by the licensee and the
13 dates of such employment; and

14 (iii) in the event that a licensee has evidence that
15 a mortgage originator employed by the licensee has
16 engaged in any activity that is illegal or in violation
17 of this chapter or any regulation or statement of policy
18 promulgated pursuant to this chapter, the licensee shall
19 provide the department with written notification of such
20 evidence and the licensee's proposed corrective measures
21 within 30 days. A licensee shall not be liable to a
22 mortgage originator in connection with such notification.

23 (b) Accounting records.--[After the effective date of this
24 act, the] The licensee's accounting records must be constructed
25 and maintained in compliance with generally accepted accounting
26 principles [if the licensee is a mortgage banker or in such
27 manner] or as may be provided by regulation [for all other
28 licensees, and all]. All of the aforementioned instruments,
29 documents, accounts, books and records shall be kept separate
30 and apart from the records of any other business conducted by

1 the licensee and shall be preserved and kept available for
2 investigation or examination by the department [or commission]
3 for at least two years after a mortgage loan has been paid in
4 full. The provisions of this subsection shall not apply to any
5 instrument, document, account, book or record that is assigned,
6 sold or transferred to another person, nor shall the two-year
7 requirement apply to an instrument or document which must be
8 returned to a borrower at the time a mortgage loan is paid in
9 full.

10 (c) Copies.--If copies of instruments, documents, accounts,
11 books or records are maintained under subsection (a)(2), they
12 may be photostatic, microfilm or electronic copies or copies
13 provided in some other manner approved by the [Secretary of
14 Banking or the commission] department, as long as access to
15 information required by the [secretary or commission] department
16 exists electronically at all times within this Commonwealth.

17 [(d) Limited powers.--The powers conferred upon the
18 commission by this section, excluding subsection (a)(1), shall
19 only be exercised by the commission in relation to persons
20 licensed pursuant to the provisions of the act of February 19,
21 1980 (P.L.15, No.9), known as the Real Estate Licensing and
22 Registration Act, who are subject to this section under section
23 303(b)(3), and the exercise of such power by the commission in
24 relation to such persons shall be exclusive.]

25 Section 309. Licensee limitations.

26 (a) Prohibitions.--A licensee shall not:

27 (1) Transact any business subject to the provisions of
28 this chapter under any other name except those designated in
29 its license[.] or registered or otherwise qualified as a
30 fictitious name. A mortgage originator may not use any name

1 other than the mortgage originator's personal legal name. A
2 licensee that changes its name or place or places of business
3 shall [immediately] notify the department within ten days of
4 the change, which shall issue a certificate, if appropriate,
5 to the licensee which shall specify the licensee's new name
6 or address.

7 (2) Conduct any business other than any business
8 regulated by the department in any place of business licensed
9 pursuant to this chapter without at least 90 days' prior
10 written notification to the department.

11 (3) Disburse the proceeds of a mortgage loan in any form
12 other than cash, electronic fund transfer, certified check or
13 cashier's check where such proceeds are disbursed by the
14 licensee to a closing agent. This paragraph shall not be
15 construed as requiring a lender to utilize a closing agent
16 and shall not apply to disbursements by check directly from
17 the licensee's account payable to the borrower, borrower
18 designees or other parties due funds from the closing.

19 (4) In the case of a loan correspondent, service
20 mortgage loans.

21 (5) In the case of a mortgage broker or [limited
22 mortgage broker] mortgage originator, commit to close or
23 close mortgage loans in its own name, service mortgage loans,
24 enter into lock-in agreements or collect lock-in fees,
25 provided, however, that a mortgage broker or [limited
26 mortgage broker] mortgage originator can provide a lender's
27 lock-in agreement to a borrower on behalf of that lender and
28 collect lock-in fees on the lender's behalf payable to that
29 lender.

30 (6) In the case of a mortgage originator, accept any

fees from consumers in the mortgage originator's own name. A mortgage originator may accept fees payable to the mortgage originator's employer licensee and fees payable to third-party entities on behalf of the mortgage originator's employer licensee. A mortgage originator may not accept advance fees payable to the mortgage originator's employer licensee unless such licensee is authorized to collect advance fees under this chapter.

(b) Authority to close loans in attorneys' and title insurance companies or agencies' offices.--Nothing contained in this chapter shall prohibit any licensee or person exempt from licensure hereunder from closing any loans made under the provisions of this chapter in the offices of attorneys-at-law licensed by and located in this Commonwealth and title insurance companies or agencies licensed by and located in this Commonwealth.

Section 310. Authority of department or commission.

[(a) Department regulations.--Except as provided in subsection (b), the department shall have the authority to issue rules and regulations and orders as may be necessary for the proper conduct of the business of a mortgage banker, loan correspondent, a mortgage broker or limited mortgage broker and for the enforcement of this chapter, including, but not limited to, cease and desist orders, notices of fines and such other orders as the department in its discretion may issue.

(b) Joint regulations.--The department and the commission shall have the authority to jointly issue rules and regulations as may be necessary to carry out the purposes of sections 308, 310 and 314(b), excluding section 308(a)(1). Initial rules and regulations shall be jointly issued by the department and the

1 commission within 180 days after the effective date of this
2 subsection.

3 (c) Powers.--The department and the commission shall have
4 the authority to:

5 (1) Examine any instrument, document, account, book,
6 record or file of a licensee or any other person, or make
7 such other investigation as may be necessary to administer
8 the provisions of this chapter.

9 (2) Conduct administrative hearings on any matter
10 pertaining to this chapter, issue subpoenas to compel the
11 attendance of witnesses and the production of instruments,
12 documents, accounts, books and records at any such hearing,
13 which may be retained by the department or commission until
14 the completion of all proceedings in connection with which
15 they were produced, and administer oaths and affirmations to
16 any person whose testimony is required. In the event a person
17 fails to comply with a subpoena issued by the department or
18 commission or to testify on any matter concerning which he
19 may be lawfully interrogated, on application by the
20 department or commission, the Commonwealth Court may issue an
21 order requiring the attendance of such person, the production
22 of instruments, documents, accounts, books or records or the
23 giving of testimony.

24 (3) Request and receive any information or records of
25 any kind, including a report of criminal history record
26 information, from any Federal, State, local or foreign
27 government entity, regarding any applicant for a license,
28 licensee or any person related in any way to the business of
29 such applicant or licensee, at a cost to be paid by the
30 applicant or licensee.

1 (d) Limited powers.--The powers conferred upon the
2 commission by subsection (c) shall only be exercised by the
3 commission in relation to persons licensed pursuant to the
4 provisions of the act of February 19, 1980 (P.L.15, No.9), known
5 as the Real Estate Licensing and Registration Act, who are
6 subject to subsection (c) under section 303(b)(3) and the
7 exercise of such power by the commission in relation to such
8 persons shall be exclusive.]

9 (a) General authority.--The department shall have the
10 authority to:

11 (1) Examine any instrument, document, account, book,
12 record or file of a licensee or any person having a
13 connection to the licensee or make such other investigation
14 as may be necessary to administer the provisions of this
15 chapter. Pursuant to this authority, the department may
16 remove any instrument, document, account, book, record or
17 file of a licensee to a location outside of the licensee's
18 office location. The costs of the examination shall be borne
19 by the licensee or the entity subject to the examination.

20 (2) Conduct administrative hearings on any matter
21 pertaining to this chapter, issue subpoenas to compel the
22 attendance of witnesses and the production of instruments,
23 documents, accounts, books and records at any such hearing.
24 The instruments, documents, accounts, books and records may
25 be retained by the department until the completion of all
26 proceedings in connection with which the materials were
27 produced. A department official may administer oaths and
28 affirmations to a person whose testimony is required. In the
29 event a person fails to comply with a subpoena issued by the
30 department or to testify on a matter concerning which he may

1 be lawfully interrogated, on application by the department,
2 the Commonwealth Court may issue an order requiring the
3 attendance of the person, the production of instruments,
4 documents, accounts, books and records and the giving of
5 testimony.

6 (3) Request and receive information or records of any
7 kind, including reports of criminal history record
8 information from any Federal, state, local or foreign
9 government entity regarding an applicant for a license,
10 licensee or person related in any way to the business of the
11 applicant or licensee, at a cost to be paid by the applicant
12 or licensee.

13 (4) Require a licensee or nonlicensee to pay the
14 department's costs incurred while conducting an investigation
15 of the licensee or nonlicensee for purposes of issuance or
16 renewal of a license or for any violation of this chapter,
17 regardless of whether such costs are in excess of license or
18 renewal fees paid by a licensee.

19 (5) Issue regulations, statements of policy or orders as
20 may be necessary for the proper conduct of the first mortgage
21 loan business by licensees, the issuance and renewal of
22 licenses and the enforcement of this chapter.

23 (6) Prohibit or permanently remove an individual
24 responsible for a violation of this chapter from working in
25 his present capacity or in any other capacity related to
26 activities regulated by the department.

27 (7) Order a person to make restitution for actual
28 damages to consumers caused by any violation of this chapter.

29 (8) Issue cease and desist orders that are effective
30 immediately, subject to a hearing as specified in subsection

1 (b) within 14 days of the issuance of the order.

2 (9) Impose such other conditions as the department deems
3 appropriate.

4 (b) Hearings.--A person aggrieved by a decision of the
5 department may appeal the decision of the department to the
6 secretary. The appeal shall be conducted under 2 Pa.C.S Ch. 5
7 Subch. A (relating to practice and procedure of Commonwealth
8 agencies).

9 (c) Injunctions.--The department may maintain an action for
10 an injunction or other process against a person to restrain and
11 prevent the person from engaging in an activity violating this
12 chapter.

13 (d) Final orders.--A decision of the secretary shall be a
14 final order of the department and shall be enforceable in a
15 court of competent jurisdiction. The department may publish
16 final adjudications issued under this section, subject to
17 redaction or modification to preserve confidentiality.

18 (e) Appeals.--A person aggrieved by a decision of the
19 secretary may appeal the decision under 2 Pa.C.S. Ch. 7 Subch. A
20 (relating to judicial review of Commonwealth agency action).

21 (f) Orders affecting mortgage originators.--An order issued
22 against a licensee is applicable to the mortgage originators
23 employed by the licensee.

24 Section 3. Section 311 of the act, amended June 25, 2001
25 (P.L.621, No.55), is repealed:

26 [Section 311. Fees.

27 (a) Certain fees prohibited.--No real estate broker or
28 salesperson who has received a fee, commission or other valuable
29 consideration in connection with the sale or transfer of real
30 estate shall be paid or receive a fee or other compensation,

1 directly or indirectly, for providing mortgage brokering
2 services in connection with the origination of a mortgage loan
3 relative to such sale or transfer of real estate, but such
4 broker or salesperson may receive a fee in connection with such
5 mortgage loan transaction which shall not exceed an amount as
6 established by the commission pursuant to this section.

7 (b) Regulations.--The commission shall, within 180 days of
8 the effective date of this subsection, promulgate rules and
9 regulations establishing the maximum fees which a real estate
10 broker or salesperson may charge for services rendered in
11 connection with mortgage brokering services. Said fees shall:

12 (1) Be for actual services rendered in connection with
13 the origination of a mortgage loan.

14 (2) Be expressed in terms of dollars or as a percentage
15 of the mortgage loan being created.

16 (c) Formulation procedure.--Prior to the publication of any
17 notice of proposed rulemaking under this section, the commission
18 shall hold public hearings to afford any interested party,
19 including the department, full opportunity to present testimony,
20 comment thereon and make recommendations regarding the
21 formulation of such rules and regulations. The department shall
22 also have 30 days following the close of the hearings to submit
23 further comments and recommendations to the commission. The
24 procedure contained in this section shall be in addition to the
25 requirements contained in the act of June 25, 1982 (P.L.633,
26 No.181), known as the Regulatory Review Act, and shall not
27 affect any right the department may have to participate in the
28 rulemaking process following the commission's publication of
29 proposed rules and regulations as permitted by that act. In
30 establishing the maximum fees allowable, the commission shall

1 consider the nature of the services performed by the real estate
2 broker or salesperson and the time required for the performance
3 thereof.

4 (d) Licensing option.--A real estate broker or salesperson
5 who is also a bona fide mortgage broker, mortgage banker or loan
6 correspondent who holds himself out publicly as such shall have
7 the option of being licensed and regulated by the department, in
8 which case he shall not be subject to the fee limitations
9 provided for in this section or the rules and regulations
10 promulgated by the commission hereunder.

11 (e) Disclosure.--No real estate broker or salesperson shall
12 receive a fee, commission or other valuable consideration
13 pursuant to this section and the regulations promulgated
14 hereunder unless he makes the following written disclosure to
15 the buyer in at least ten-point boldface capital letters.

16 The real estate broker in this transaction who has
17 offered to assist me in obtaining a mortgage loan has
18 advised me of the following:

19 (1) He does not represent any particular mortgage
20 lender; or the name of the mortgage lender he represents
21 is.....

22 (2) I am not required to obtain the mortgage for the
23 purchase of the real estate from the mortgage banker whom
24 the broker represents.

25 (3) The real estate broker has a fiduciary
26 obligation to the seller, from whom he will receive a
27 commission.

28 (4) Should the real estate broker violate any of the
29 provisions of the Real Estate Licensing and Registration
30 Act or the Mortgage Bankers and Brokers Act I may file a

1 complaint with the Pennsylvania Real Estate Commission.]

2 Section 4. Sections 313 and 314 of the act, amended June 25,
3 2001 (P.L.621, No.55), are amended to read:

4 Section 313. Suspension, revocation or refusal.

5 (a) Departmental action.--The department may suspend, revoke
6 or refuse to renew any license issued pursuant to this chapter
7 [after giving 30 days' written notice forwarded to the
8 licensee's principal place of business, by registered or
9 certified mail, return receipt requested, stating the
10 contemplated action and the reason therefor, if the department
11 shall find, after the licensee has had an opportunity to be
12 heard, that the] if any fact or condition exists or is
13 discovered which, if it had existed or had been discovered at
14 the time of filing of the application for such license, would
15 have warranted the department in refusing to issue such license
16 or if a licensee or director, officer, partner, employee or
17 owner of a licensee has:

18 (1) Made any false or material misstatement in his
19 application or any report or submission required by this
20 chapter or department regulation, statement of policy or
21 order.

22 (2) Failed to comply with or violated any provision of
23 this chapter or any rule, regulation, statement of policy or
24 order promulgated or issued by the department pursuant to
25 this chapter.

26 (3) If licensed under section [304(c)] 304(b.1)(1)(i) or
27 (c), accepted an advance fee without having obtained the bond
28 required by section 304(b.1)(1)(i) or (c)(1).

29 (4) Become insolvent, meaning that the liabilities of
30 the applicant or licensee exceed the assets of the applicant

1 or licensee or that the applicant or licensee cannot meet the
2 obligations of the applicant or licensee as they mature, or
3 is in such financial condition that the applicant or licensee
4 cannot continue in business with safety to the customers of
5 the applicant or licensee.

6 (5) Engaged in dishonest, fraudulent or illegal
7 practices or conduct in any business or unfair or unethical
8 practices or conduct in connection with the mortgage
9 business.

10 (6) Been convicted of [a misdemeanor or of a] or plead
11 guilty or nolo contendere to a crime of moral turpitude
12 felony.

13 [(7) Filed an application for a license which, as of the
14 date the license was issued or as of the date of an order
15 denying, suspending or revoking a license, was incomplete in
16 any material respect or contained any statement that was, in
17 light of the circumstances under which it was made, false or
18 misleading with respect to any material fact.]

19 (8) Permanently or temporarily been enjoined by a court
20 of competent jurisdiction from engaging in or continuing any
21 conduct or practice involving any aspect of the mortgage
22 business.

23 (9) Become the subject of an order of the department
24 denying, suspending or revoking a license [as a mortgage
25 banker, mortgage broker, limited mortgage broker or loan
26 correspondent] under the provisions of this chapter.

27 (10) Become the subject of a United States Postal
28 Service fraud order [that is currently effective and was
29 issued within the last five years].

30 (11) Failed to comply with the requirements of this

chapter to make and keep records prescribed by [rule]
regulation, statement of policy or order of the department,
to produce such records required by the department or to file
any financial reports or other information the department by
[rule] regulation, statement of policy or order may require.

(12) Become the subject of an order of the department
denying, suspending or revoking a license under the
provisions of any other law administered by the department.

[(13) Failed to comply with a cease and desist order
entered after notice and opportunity for hearing and issued
by the department within the last five years.]

(14) Demonstrated negligence or incompetence in
performing any act for which the licensee is required to hold
a license under this chapter.

[(15) In the case of a limited mortgage broker,
negotiated or placed, either directly or indirectly, a
mortgage loan other than a nonpurchase money mortgage loan as
defined in this chapter.

The hearing and notice provisions of this section shall not
apply if the licensee's corporate charter is voided in
accordance with the provisions of any law of this or any other
state, in which event the department may suspend or revoke the
license.]

(16) Failed to complete the qualifying or continuing
education as required by section 304(e).

(17) In the case of a mortgage banker, loan
correspondent or mortgage broker, conducted the first
mortgage loan business through an unlicensed mortgage
originator.

(18) Failed to comply with the terms of any agreement

1 under which the department authorizes a licensee to maintain
2 records at a place other than the licensee's principal place
3 of business.

4 (b) Reinstatement.--The department may subsequently
5 reinstate a license which has been suspended or revoked or renew
6 a license which had previously been refused for renewal if the
7 condition which warranted the original action has been corrected
8 and the department has reason to believe that such condition is
9 not likely to occur again and the licensee satisfies the
10 requirements of this chapter.

11 Section 314. Penalties.

12 (a) Nonlicensees.--Any person who is not licensed by the
13 department or is not exempted from the licensing requirements in
14 accordance with the provisions of this chapter and who engages
15 in the first loan mortgage business [of a mortgage banker, loan
16 correspondent, mortgage broker or limited mortgage broker]
17 commits a felony of the third degree.

18 (b) Nonlicensees subject to the provisions of this
19 chapter.--Any person who is subject to the provisions of this
20 chapter, even though not licensed hereunder, or any person who
21 is not licensed by the department or is not exempt from the
22 licensing requirements, who violates any of the provisions to
23 which it is subject shall be subject to a fine levied by the
24 department or commission of up to [\$2,000] \$10,000 for each
25 offense. [Any such nonlicensed person who commits three or more
26 offenses may, at the discretion of the department or commission,
27 be prohibited from engaging in the first mortgage loan business
28 unless licensed under this chapter.]

29 (c) Violations by licensees.--Any person licensed under the
30 provisions of this chapter or any director, officer, employee or

1 agent of a licensee who shall violate the provisions of this
2 chapter or shall direct or consent to such violations shall be
3 subject to a fine levied by the department of up to [\$2,000]
4 \$10,000 for each offense.

5 [(d) Limited powers.--The powers conferred upon the
6 commission by subsection (b) shall only be exercised by the
7 commission in relation to persons licensed pursuant to the
8 provisions of the act of February 19, 1980 (P.L.15, No.9), known
9 as the Real Estate Licensing and Registration Act, who are
10 subject to subsection (b) under section 303(b)(3) and the
11 exercise of such power by the commission in relation to such
12 persons shall be exclusive.]

13 Section 5. Sections 316 and 317 of the act, amended June 25,
14 2001 (P.L.621, No.55) are repealed:

15 [Section 316. Referral fees.

16 Nothing in this chapter shall permit a real estate broker or
17 salesperson, who receives a fee, commission or other valuable
18 consideration relating to the sale of residential real property,
19 to be paid or receive a finder's fee or a referral fee for the
20 referral of a mortgage loan to a lender in connection with that
21 sale, whether or not the real estate broker or salesperson is
22 licensed and regulated by the department.

23 Section 317. Real Estate Recovery Fund.

24 Any person injured by the wrongful act, default or
25 misrepresentation of a person engaged in the activities of a
26 mortgage broker who is exempt from licensure under this chapter
27 by virtue of being licensed pursuant to the act of February 19,
28 1980 (P.L.15, No.9), known as the Real Estate Licensing and
29 Registration Act, shall be entitled to seek recovery from the
30 Real Estate Recovery Fund established by the Real Estate

1 Licensing and Registration Act notwithstanding the fact that
2 such wrongful act, default or misrepresentation occurred in
3 conjunction with mortgage-brokering activities subject, however,
4 to all other terms and conditions of the Real Estate Licensing
5 and Registration Act regarding recovery from that fund.]

6 Section 6. This act shall take effect in 60 days.