

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 488 Session of
2007

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

SENATOR D. WHITE, BANKING AND INSURANCE, AS AMENDED,
DECEMBER 4, 2007

AN ACT

1 Amending the act of December 12, 1980 (P.L.1179, No.219),
2 entitled "An act to define and regulate secondary mortgage
3 loans and providing penalties," further providing for
4 definitions, for license requirements and exemptions, for
5 application for license, for annual license fee, for issuance
6 of license, for license duration, for transfer of license,
7 for powers conferred on licensees, for licensee requirements,
8 for licensee limitations, for prepayment, for open-end loans,
9 for authority of Secretary of Banking, for surrender of
10 license, for suspension, for scope of act, for foreclosure,
11 for penalties, for preservation of existing powers and for
12 exclusions from act.

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

15 Section 1. The definitions of "broker's agent," "open-end
16 loan," "person," "secondary mortgage loan broker" and
17 "sponsoring broker" in section 2 of the act of December 12, 1980
18 (P.L.1179, No.219), known as the Secondary Mortgage Loan Act,
19 added July 7, 1989 (P.L.222, No.36) and June 26, 1995 (P.L.73,
20 No.15), are amended and the section is amended by adding
21 definitions to read:

22 Section 2. Definitions.

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

4 * * *

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

7 "BANKING INSTITUTION." A STATE-CHARTERED BANK, BANK AND
8 TRUST COMPANY, SAVINGS BANK OR PRIVATE BANK, NATIONAL BANK,
9 FEDERALLY-CHARTERED OR STATE-CHARTERED SAVINGS ASSOCIATION OR A
10 SUBSIDIARY OF ANY OF THE ENTITIES UNDER THIS DEFINITION.

11 * * *

12 "Branch." An office or other place of business located in
13 this Commonwealth or any other state, other than the principal
14 place of business, where a person engages in the secondary
15 mortgage loan business which falls under the scope of this act.

16 ["Broker's agent." A category of secondary mortgage loan
17 broker's license that is issued to individuals who broker
18 secondary mortgage loans exclusively to one licensed secondary
19 mortgage loan broker, designated as a sponsoring broker, and who
20 are not employees of such sponsoring broker.]

21 "Consumer discount company." A licensee under the act of
22 April 8, 1937 (P.L.262, No.66), known as the "Consumer Discount
23 Company Act."

24 "Department." The Department of Banking of the Commonwealth.

25 * * *

26 "Mortgage originator." An individual not licensed as a
27 secondary mortgage lender or secondary mortgage loan broker
28 under this act who solicits, accepts or offers to accept
29 secondary mortgage loan applications, or negotiates secondary
30 mortgage loan terms, in other than a clerical or ministerial

1 capacity. The term does not include directors, partners or
2 ultimate equitable owners of 10% or more of a licensee.

3 "Open-end loan." A secondary mortgage loan made by a
4 secondary mortgage lender licensee under this act pursuant to an
5 agreement between the licensee and the borrower whereby:

6 (1) the licensee may permit the borrower to obtain
7 advances of money from the licensee from time to time or the
8 licensee may advance money on behalf of the borrower from
9 time to time as directed by the borrower;

10 (2) the amount of each advance, interest and permitted
11 charges and costs are debited to the borrower's account and
12 payments and other credits are credited to the same account;

13 (3) interest is computed on the unpaid principal balance
14 or balances of the account outstanding from time to time;

15 (4) the borrower has the privilege of paying the account
16 in full at any time without prepayment penalty or, if the
17 account is not in default, in monthly installments of fixed
18 or determinable amounts as provided in the agreement; and

19 (5) the agreement expressly states that it covers open-
20 end loans pursuant to this act.

21 "Person." An individual, association, joint venture or joint
22 stock company, partnership, limited partnership, limited
23 partnership association, limited liability company, a business
24 corporation, nonprofit corporation, or any other group of
25 individuals however organized.

26 "Primary market." The market wherein secondary mortgage
27 loans are originated between a lender and a borrower.

28 "Principal place of business." The primary office of the
29 licensee located in this Commonwealth which is staffed on a
30 full-time basis and at which books, records, accounts and

1 documents are to be maintained.

2 "Secondary mortgage lender." A person who directly or
3 indirectly originates and closes secondary mortgage loans with
4 its own funds in the primary market for consideration.

5 "Secondary mortgage loan broker." [A person who in the
6 ordinary course of business, for a fee, directly or indirectly
7 negotiates or arranges for others a secondary mortgage loan.] A
8 person who directly or indirectly negotiates or places secondary
9 mortgage loans for others in the primary market for
10 consideration.

11 * * *

12 "Secondary mortgage loan business." A person is deemed to be
13 engaged in the secondary mortgage loan business in this
14 Commonwealth if:

15 (1) the person advertises, causes to be advertised,
16 solicits, negotiates or arranges in the ordinary course of
17 business, offers to make or makes more than two secondary
18 mortgage loans in a calendar year in this Commonwealth,
19 whether directly or by any person acting for his benefit, but
20 this provision shall not prohibit advertising or solicitation
21 by a licensee under a general corporate name, logo or
22 trademark; or

23 (2) the person in the ordinary course of business
24 becomes the subsequent holder of more than two promissory
25 notes or mortgages, indentures or any other similar
26 instruments or documents received in a calendar year in
27 connection with a secondary mortgage loan; provided, however,
28 that a person will not be deemed to be engaged in the
29 secondary mortgage loan business if such person becomes the
30 subsequent holder of two or more promissory notes or

mortgages, indentures or any other similar instruments or documents received in a calendar year in connection with a secondary mortgage loan solely as an investment and such person is not otherwise in the business of making or servicing such loans.

* * *

"Service a mortgage loan." The collection or remittance of payments for another or the right to collect or remit payments for another of principal, interest, taxes, insurance and any other payments pursuant to a secondary mortgage loan.

["Sponsoring broker." A licensed secondary mortgage loan broker who negotiates or arranges secondary mortgage loans on behalf of a broker's agent and provides indemnification of such broker's agent in order to protect borrowers from monetary damages which may be a result of doing business with a broker's agent.]

Section 2. Section 3 of the act, amended July 7, 1989 (P.L.222, No.36) and June 26, 1995 (P.L.73, No.15), is amended to read:

Section 3. License requirements and exemptions.

[(a) (1) No person shall engage in the business of making secondary mortgage loans in this Commonwealth except a business corporation organized under the laws of this Commonwealth or any other state, after first obtaining a license from the secretary in accordance with the provisions of this act.

(2) No person shall engage in the business of being a secondary mortgage loan broker until after first obtaining a license from the secretary in accordance with the provisions of this act.

1 (3) A State-chartered or National bank, bank and trust
2 company, savings bank, private bank, savings association or
3 savings and loan association, having its principal place of
4 business in this Commonwealth, or an individual making loans
5 to family members, shall not be required to be licensed under
6 this act in order to make loans secured by real property
7 under this act.

8 (4) Any agency or instrumentality of the United States
9 Government or a corporation otherwise created by an act of
10 the United States Congress which engages in the business of
11 purchasing secondary mortgage loans shall not be required to
12 be licensed under this act in order to purchase secondary
13 mortgage loans from licensees under this act. This shall
14 include but not be limited to the Federal National Mortgage
15 Association and the Federal Home Loan Mortgage Corporation.

16 (5) For the purpose of this act, a person is deemed to
17 be engaged in the secondary mortgage loan business in the
18 Commonwealth if:

19 (i) such person advertises, causes to be advertised,
20 solicits, negotiates or arranges in the ordinary course
21 of business, offers to make or makes more than two
22 secondary mortgage loans in a calendar year in this
23 Commonwealth, whether directly or by any person acting
24 for his benefit, but this provision shall not prohibit
25 advertising or solicitation by a licensee under a general
26 corporate name, logo or trade mark; or

27 (ii) such person in the ordinary course of business
28 becomes the subsequent holder of more than two promissory
29 notes or mortgages, indentures or any other similar
30 instruments or documents received in a calendar year in

1 connection with a secondary mortgage loan, provided,
2 however, that a person will not be deemed to be engaged
3 in the secondary mortgage loan business if such person
4 becomes the subsequent holder of two or more promissory
5 notes or mortgages, indentures or any other similar
6 instruments or documents received in a calendar year in
7 connection with a secondary mortgage loan solely as an
8 investment and such person is not otherwise in the
9 business of making or servicing such loans.

10 (b) A real estate broker licensed pursuant to the provisions
11 of the law of this Commonwealth or an attorney authorized to
12 practice law in this Commonwealth shall not be required to
13 obtain a license to arrange a secondary mortgage loan in the
14 normal course of the business of a real estate broker or
15 attorney.

16 (c) A secondary mortgage loan broker who can demonstrate to
17 the satisfaction of the secretary that he does not accept
18 advance fees shall be exempt from the capital requirement of
19 section 4(b).

20 (d) A person who is deemed to be engaged in the secondary
21 mortgage loan business solely because he negotiates or arranges
22 secondary mortgage loans for others need not obtain a secondary
23 mortgage loan license but shall be required to be licensed as a
24 secondary mortgage loan broker.

25 (e) A secondary mortgage loan broker who is an individual
26 exempt from the capital requirement of section 4(b) and who can
27 also demonstrate to the satisfaction of the secretary that he
28 solicits secondary mortgage loan applications exclusively for
29 one secondary mortgage loan broker may apply for a broker's
30 agent license subject to the requirements in section 4(d).]

1 (a) On and after the effective date of this section, no
2 person shall engage in the secondary mortgage loan business in
3 this Commonwealth without a license as provided for in this act.
4 A mortgage originator may not engage in the secondary mortgage
5 loan business unless the mortgage originator is employed and
6 supervised by a licensed secondary mortgage lender or secondary
7 mortgage loan broker.

8 (b) (1) A secondary mortgage lender may act as a secondary
9 mortgage loan broker without a separate secondary mortgage
10 loan broker license and, if licensed as an individual, may
11 perform the services of a mortgage originator without a
12 separate mortgage originator license.

13 (2) A person licensed as a secondary mortgage loan
14 broker may only perform the services of a secondary mortgage
15 loan broker. If a secondary mortgage loan broker is licensed
16 as an individual, a secondary mortgage loan broker may
17 perform the services of a mortgage originator without a
18 separate mortgage originator license.

19 (c) The following persons shall not be required to be
20 licensed under this act in order to conduct the secondary
21 mortgage loan business but shall be subject to the provisions of
22 this act as specifically provided in this section:

23 ~~(1) A State chartered bank, bank and trust company,~~ <—
24 ~~savings bank, private bank or national bank, a State or~~
25 ~~federally chartered savings and loan association, a federally~~
26 ~~chartered savings bank or a State or Federal chartered credit~~
27 ~~union.~~

28 (1) A BANKING INSTITUTION OR A FEDERALLY CHARTERED OR <—
29 STATE-CHARTERED CREDIT UNION IF THE PRIMARY REGULATOR OF THE
30 BANKING INSTITUTION OR FEDERALLY CHARTERED OR STATE-CHARTERED

1 CREDIT UNION SUPERVISES THE BANKING INSTITUTION OR FEDERALLY
2 CHARTERED OR STATE-CHARTERED CREDIT UNION.

3 (2) An attorney authorized to practice law in this
4 Commonwealth, who acts as a secondary mortgage loan broker in
5 negotiating or placing a mortgage loan in the normal course
6 of legal practice.

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

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

18 (5) Any agency or instrumentality of a State or local
19 government, the District of Columbia or any territory of the
20 United States, including the Pennsylvania Housing Finance
21 Agency and other government housing finance agencies.

22 ~~(6) Except for consumer discount companies, subsidiaries~~ <—
23 ~~and affiliates of the following institutions: State chartered~~
24 ~~banks, bank and trust companies, savings banks, private~~
25 ~~banks, savings and loan associations and credit unions or~~
26 ~~national banks, federally chartered savings and loan~~
27 ~~associations, federally chartered savings banks and federally~~
28 ~~chartered credit unions, and such subsidiaries and affiliates~~
29 ~~of institutions enumerated in this paragraph shall:~~

30 (6) EXCEPT FOR CONSUMER DISCOUNT COMPANIES, AFFILIATES <—

1 OF BANKING INSTITUTIONS AND SUBSIDIARIES AND AFFILIATES OF
2 FEDERALLY CHARTERED OR STATE-CHARTERED CREDIT UNIONS. THE
3 SUBSIDIARIES AND AFFILIATES OF BANKING INSTITUTIONS AND
4 FEDERALLY-CHARTERED OR STATE-CHARTERED CREDIT UNIONS SHALL:

5 (i) Be subject to the provisions of sections 10, 16
6 and 22(b), excluding section 10(a)(1) and (b)(1).

7 (ii) Deliver as required to the department annually
8 copies of financial reports made to all supervisory
9 agencies.

10 (iii) Be registered with the department.

11 (7) Employees of a secondary mortgage lender or
12 secondary mortgage loan broker licensee, to the extent that
13 such employees are not otherwise required to be licensed as
14 mortgage originators.

15 (8) Any person who makes a secondary mortgage loan to an
16 employee of that person as an employment benefit, given he
17 does not hold himself out to the public as a secondary
18 mortgage lender.

19 (9) Employees of excepted persons enumerated in this
20 section.

21 (d) This act shall not apply to secondary mortgage loans
22 made for business or commercial purposes.

23 Section 3. Section 4 of the act, amended July 7, 1989
24 (P.L.222, No.36) and June 26, 1995 (P.L.73, No.15), is amended
25 to read:

26 Section 4. Application for license.

27 (a) An application for a secondary mortgage [loan] lender
28 license or a secondary mortgage loan broker license shall be on
29 a form provided by the [secretary. Among other things, the]
30 department. The application shall set forth the following:

1 (1) The full name, corporate title and personal
2 residence address of each officer and director of the
3 proposed licensee corporation or the full name and address of
4 each owner of the proposed broker license if it is not a
5 corporation.

6 (2) Any or all other business entities in which an
7 equity or creditor interest is held by an officer or director
8 of the proposed licensee corporation or by any owner of the
9 proposed broker licensee if it is not a corporation.

10 (3) The dollar amount of such equity or creditor
11 holdings.

12 (4) Whether or not funds are or will be interchanged
13 between the licensee and such business entities.

14 (5) The address or addresses where the secondary
15 mortgage loan business is to be conducted.

16 (6) Any other information that may be required by the
17 department.

18 (a.1) In the case of a mortgage originator, the application
19 shall include the following:

20 (1) The name of the applicant.

21 (2) The name of the employer licensee of the applicant
22 and location of the employer licensee to which the applicant
23 is assigned.

24 (3) Any other information that may be required by the
25 department.

26 (b) [The] An applicant for a secondary mortgage [loan]
27 lender license shall have a minimum legal capitalization of
28 \$200,000. At the time of applying for a license under this act,
29 and at all times thereafter, the minimum paid in legal capital
30 shall be \$200,000. [An applicant for a secondary mortgage loan

1 broker license shall have a minimum legal capitalization of
2 \$25,000 at the time of applying for a license under this act and
3 at all times thereafter.]

4 (b.1) An applicant for a secondary mortgage loan broker
5 license shall have a minimum legal capitalization of \$25,000 at
6 the time of applying for a license under this act and at all
7 times thereafter. A secondary mortgage loan broker who can
8 demonstrate to the satisfaction of the secretary that he does
9 not accept advance fees shall be exempt from the capital
10 requirement of this section.

11 (c) (1) If the applicant is [a foreign corporation] not a
12 resident of this Commonwealth, said [corporation] applicant
13 shall be authorized to do business in this Commonwealth in
14 accordance with the law of this Commonwealth regulating
15 corporations[. Such corporations shall file with the
16 application an irrevocable] and other entities conducting
17 business in this Commonwealth and shall maintain at least one
18 office in this Commonwealth which is the office that shall be
19 licensed as the principal place of business for the purposes
20 of this act.

21 (2) An applicant shall file with the application an
22 irrevocable consent, duly acknowledged, that suits and
23 actions may be commenced against such [licensee] person in
24 the courts of this Commonwealth by the service of process or
25 any pleading upon the [secretary] department in the usual
26 manner provided for service of process and pleadings by the
27 statutes and court rule of this Commonwealth. Said consent
28 shall provide that such service shall be as valid and binding
29 as if service had been made personally upon the [licensee]
30 person in this Commonwealth. In all cases where process or

1 pleadings are served upon the [secretary] department pursuant
2 to the provisions of this section, such process or pleadings
3 shall be served in duplicate, one of which shall be filed in
4 the [office of the secretary] department and the other shall
5 be forwarded by the [secretary] department, by certified or
6 registered mail, return receipt, to the last known principal
7 place of business of the [licensee] person to whom such
8 process or pleadings is directed.

9 [(d) The applicant for a secondary mortgage loan broker
10 license may apply for a broker's agent license subject to the
11 following:

12 (1) The applicant must be an individual.

13 (2) The applicant must be exempt from the capital
14 requirement of subsection (b) by satisfying the secretary
15 that no advance fees whatsoever are accepted or collected,
16 and no fees may be accepted or collected from borrowers.

17 (3) The applicant must demonstrate to the satisfaction
18 of the secretary that he solicits secondary mortgage loan
19 applications exclusively for one licensed secondary mortgage
20 loan broker known as the sponsoring broker.

21 (4) The principal office location of the holder of a
22 broker's agent license must be a Pennsylvania-licensed
23 principal or branch place of business of the sponsoring
24 broker.

25 (5) The holder of a broker's agent license, if he uses
26 advertising to solicit or obtain customers for his secondary
27 mortgage loan brokerage business, may not advertise in his
28 own name alone but shall advertise his own name only in
29 conjunction with the name of the sponsoring broker.]

30 (d.1) A mortgage originator shall be an employee of a single

secondary mortgage lender or secondary mortgage loan broker
licensed under this act. This licensee shall directly supervise,
control and maintain responsibility for the acts and omissions
of the mortgage originator. A mortgage originator shall be
assigned to a licensed location of the employer licensee.

[(e) The sponsoring broker shall enter into an
indemnification agreement in a form provided by the secretary to
protect borrowers from any monetary damages which may result
from doing business with a broker's agent.]

(f) (1) In order to obtain a license under this act, 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 secondary
mortgage loan business and the provisions of this act, 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
(Public Law 93-533, 88 Stat. 1724), the Truth in Lending Act
(Public Law 90-321, 15 U.S.C. § 1601 et seq.) and the Equal
Credit Opportunity Act (Public Law 90-321, 88 Stat. 1521).

(2) In order to maintain a license:

(i) A secondary mortgage lender or secondary
mortgage loan broker 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

1 demonstrate to the satisfaction of the department that he
2 has attended a minimum of six hours of continuing
3 education each year.

4 (3) The department shall delineate the requirements for
5 prequalification education and testing and continuing
6 education by regulation, including by permitting in-house
7 prequalification education and testing and continuing
8 education. The department may review and approve education
9 programs and providers to satisfy the education requirements.
10 The department may charge providers of education programs a
11 fee, to be determined by the department, for department
12 review of education programs and providers.

13 (g) All applicants and licensees shall be required to
14 provide the department with written notice of the change in any
15 information contained in an application for a license or for any
16 renewal of a license within ten days of an applicant or licensee
17 becoming aware of such change.

18 (h) Licenses shall be issued for terms of 12 months and may
19 be renewed by the department each year on a schedule set by the
20 department upon application by the licensee and the payment of
21 any and all applicable renewal fees. The licensee shall
22 demonstrate to the department that it is conducting the
23 secondary mortgage loan business in accordance with the
24 requirements of this act and that the directors, officers,
25 partners, employees, agents and ultimate equitable owners of 10%
26 or more of the licensee continue to meet all of the initial
27 requirements for licensure required by this act unless otherwise
28 determined by the department.

29 Section 4. Section 5 of the act, amended June 26, 1995
30 (P.L.73, No.15), is amended to read:

1 Section 5. Annual license fee.

2 [An applicant shall pay to the secretary at the time an
3 application is filed an initial license fee of \$500 for the
4 principal place of business and an additional initial license
5 fee of \$50 for each branch office in this Commonwealth, except
6 an applicant for a broker's agent license shall pay to the
7 secretary at the time an application is filed an initial license
8 fee of \$250. On or before July 1 of each year and thereafter, a
9 licensee shall pay a license renewal fee of \$200 for the
10 principal place of business and an additional license renewal
11 fee of \$25 for each branch office in this Commonwealth.
12 Notwithstanding the provision of section 603-A(6) of the act of
13 April 9, 1929 (P.L.177, No.175), known as "The Administrative
14 Code of 1929," a broker's agent licensee shall pay an annual
15 license renewal fee of \$200. 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 secretary shall be entitled to recover any cost of
18 investigation in excess of license or renewal fees from the
19 licensee, or from any person who is not licensed under this act
20 but presumed to be engaged in business contemplated by this
21 act.]

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

24 (1) For secondary mortgage lenders, \$1,500 for the
25 principal place of business in this Commonwealth and an
26 additional fee of \$1,500 for each branch office.

27 (2) For secondary mortgage loan brokers, \$1,000 for the
28 principal place of business in this Commonwealth and an
29 additional fee of \$250 for each branch office.

30 (3) For mortgage originators, ~~\$200~~ \$100.

<—

1 (b) Prior to each annual renewal of a license, a licensee
2 shall pay to the department a license renewal fee as follows:

3 (1) For secondary mortgage lenders, \$750 for the
4 principal place of business in this Commonwealth and an
5 additional fee of \$750 for each branch office.

6 (2) For secondary mortgage loan brokers, \$500 for the
7 principal place of business in this Commonwealth and an
8 additional fee of \$250 for each branch office.

9 (3) For mortgage originators, \$200.

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

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

16 Section 5. Section 6 of the act is amended to read:

17 Section 6. Issuance of license.

18 [(a) Within 60 days after an application is received, the
19 secretary shall either issue a license or, for any reason for
20 which he may suspend, revoke or refuse to renew a license as
21 provided for by section 19, refuse to issue a license.

22 (b) If the secretary refuses to issue a license, he shall
23 notify the applicant, in writing, of his denial, the reason
24 therefor and of the applicant's right to appeal from such action
25 to the Commonwealth Court of Pennsylvania. An appeal from the
26 secretary's refusal to approve an application for a license may
27 be filed within 30 days of notice thereof.]

28 (a) Within 60 days after a complete application is received,
29 the department shall either issue a license or, for any reason
30 for which the department may suspend, revoke or refuse to renew

1 a license as provided for by section 19, refuse to issue a
2 license. Upon receipt of an application for license, the
3 department shall conduct such investigation of the applicant or
4 a director, officer, partner, employee, agent or ultimate
5 equitable owner of 10% or more of the applicant as it deems
6 necessary. The 60-day time limit specified in this subsection
7 may be extended by the department for an additional 30 days if
8 the department determines that such extension is necessary. The
9 department shall provide written notification to any applicant
10 whose application review has been extended and include the final
11 date by which a decision shall be rendered regarding the
12 application.

13 (b) If the department refuses to issue a license, it shall
14 notify the applicant in writing of the denial and the reason
15 therefor and of the applicant's right to appeal from such action
16 to the secretary. An appeal from the department's refusal to
17 approve an application for a license shall be filed by the
18 applicant within 30 days of notice thereof.

19 (c) Each license issued by the [secretary] department shall
20 specify:

21 (1) The name and address of the licensee, the address so
22 specified to be that of the licensee's principal place of
23 business within this Commonwealth.

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

28 (3) Such other information as the secretary shall
29 require in order to carry out the purposes of this act.

30 (d) (1) The department may deny a license if it finds that

1 the applicant or any person who is a director, officer,
2 partner, agent, employee or ultimate equitable owner of 10%
3 or more of the applicant has been convicted of a crime of
4 moral turpitude or felony in any jurisdiction or of a crime
5 which, if convicted in this Commonwealth, would constitute a
6 crime of moral turpitude or felony under the laws of this
7 Commonwealth. For the purposes of this act, a person shall be
8 deemed to have been convicted of a crime if the person:

9 (i) shall have pleaded guilty or nolo contendere to
10 a charge thereof before a court or Federal magistrate; 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 plea 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 act shall be deemed to be a
20 "covered license" within the meaning of section 405 of the
21 act of May 15, 1933 (P.L.565, No.111), known as the
22 "Department of Banking Code." The department shall notify a
23 licensee if a covered individual within the meaning of
24 section 405 of the "Department of Banking Code" that is or
25 will be employed or contracted by the licensee has a criminal
26 background that renders the employee unfit for employment in
27 the secondary mortgage loan business.

28 (e) The department may deny a license or otherwise restrict
29 a license if it finds that the applicant or any person who is a
30 director, officer, partner, agent, employee or ultimate

equitable owner of 10% or more of the applicant:

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

(2) is the subject of an order of the department;

(3) has violated or failed to comply with any provision of this act or any regulation, statement of policy or order of the department;

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

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

(f) The department may impose conditions on the issuance of any license under this act. If the department determines that conditions imposed upon a licensee have not been fulfilled, the department may take any action authorized under this act against such licensee that the department deems necessary. In the case of mortgage originator applicants, the department may issue mortgage originator licenses effective immediately upon receipt of an application, which licenses shall be conditional licenses issued under this subsection.

Section 6. Sections 7 and 8 of the act are amended to read:

Section 7. License duration.

A license issued by the secretary shall:

(1) Be renewed [on June 30 of each year upon payment of the annual renewal fee, and after a determination by the

1 secretary that the licensee is conducting his business in
2 accordance with the provisions of this act] upon completion
3 of the requirements of section 4(h). No refund of any portion
4 of the license fee shall be made if the license is
5 voluntarily surrendered to the [secretary] department or
6 suspended or revoked by the [secretary] department prior to
7 its expiration date.

8 (2) Be immediately invalid if the licensee's [corporate
9 charter is voided in accordance with the provisions of any
10 law of this Commonwealth or any other state.] authority to
11 conduct business is voided under any law of this Commonwealth
12 or any other state, unless the licensee demonstrates to the
13 satisfaction of the department that the applicable court or
14 governmental entity was clearly erroneous in voiding the
15 licensee's authority to conduct business.

16 Section 8. Transfer of license.

17 A license shall not be assignable by operation of law or
18 otherwise [without the written consent of the secretary].

19 Section 7. Section 9 of the act, amended July 7, 1989
20 (P.L.222, No.36) and June 26, 1995 (P.L.73, No.15), is amended
21 to read:

22 Section 9. Powers conferred on licensees.

23 (a) All secondary mortgage [loan] lender licensees shall
24 have power and authority:

25 (1) To make a secondary mortgage loan repayable in
26 installments, and charge, contract for and receive thereon
27 interest at a percentage rate not exceeding 1.85% per month.
28 No interest shall be paid, deducted or received in advance,
29 except that interest from the date of disbursement of funds
30 to the borrower to the first day of the following month shall

1 be permitted in the event the first installment payment is
2 more than 30 days after the date of disbursement. Interest
3 shall not be compounded and shall be computed only on unpaid
4 principal balances. However, the inclusion of earned interest
5 in a new note shall not be considered compounding. For the
6 purpose of computing interest, a month shall be any period of
7 30 consecutive days.

8 (2) To collect fees or premiums for title examination,
9 abstract of title, title insurance, credit reports, surveys,
10 appraisals, notaries, postage (including messenger and
11 express carrier), tax service or other costs or fees actually
12 related to the processing of a secondary mortgage loan
13 application or granting of a secondary mortgage loan, when
14 such fees are actually paid or incurred by the licensee and
15 to collect fees or charges prescribed by law which actually
16 are or will be paid to public officials for determining the
17 existence of or for perfecting or releasing or satisfying any
18 security related to the loan and include these in the
19 principal of the secondary mortgage loan.

20 (3) To collect reasonable attorney's fees, of an
21 attorney licensed to practice in this Commonwealth, upon the
22 execution of the secondary mortgage loan provided that such
23 fees represent actual fees charged the licensee in connection
24 with said mortgage loan and said fees are evidenced by a
25 statement for services rendered addressed to the licensee and
26 include these in the principal of the secondary mortgage
27 loan.

28 (4) To collect reasonable attorney's fees, of an
29 attorney licensed to practice in the Commonwealth, in the
30 collection of a delinquent second mortgage loan and any court

1 costs and fees actually incurred in the collection of such
2 loan account.

3 (5) To provide credit life, credit accident and health
4 and credit unemployment insurance. A borrower shall not be
5 compelled to purchase credit life, credit accident and health
6 or credit unemployment insurance as a condition of the
7 granting of a secondary mortgage loan and all contracts
8 utilized shall reflect a clear disclosure that the purchase
9 of credit life, credit accident and health or credit
10 unemployment insurance is not a prerequisite to obtaining a
11 loan; if, however, the borrower elects to obtain credit life,
12 credit accident and health or credit unemployment insurance,
13 the borrower shall consent thereto in writing. If borrowers
14 desire joint-life or joint accident and health insurance, all
15 such borrowers shall consent thereto in writing. Such
16 insurance shall be obtained from an insurance company
17 authorized by the laws of Pennsylvania to conduct business in
18 this Commonwealth. Any benefit or return to the licensee from
19 the sale or provision of such insurance shall not be included
20 in the computation of the maximum charge authorized under
21 this section and shall not be deemed a violation of this act
22 when the insurance is written pursuant to the laws of this
23 Commonwealth governing insurance.

24 (6) To require credit property insurance on security
25 against reasonable risks of loss, damage and destruction. The
26 amount and term of such insurance shall be reasonable in
27 relation to the amount and term of the loan contract and the
28 value of the security. A licensee shall not require property
29 insurance if to the licensee's knowledge, the borrower at the
30 time the loan is made has valid and collectible insurance

1 covering the property to be insured and has furnished a loss
2 payable endorsement sufficient for the protection of the
3 licensee. Such insurance shall be obtained from an insurance
4 company authorized by the laws of Pennsylvania to conduct
5 business in this Commonwealth. Any benefit or return to the
6 licensee from the sale or provision of credit insurance shall
7 not be included in the computation of the maximum charge
8 authorized under this section and shall not be deemed a
9 violation of this act when the insurance is written pursuant
10 to the laws of this Commonwealth governing insurance. The
11 premium for any credit insurance may be included in the
12 principal amount of the secondary mortgage loan requested by
13 the borrower. However, such premiums shall be disclosed as a
14 separate item on the face of the principal contract document
15 and the licensee's individual borrower ledger records. No
16 licensee shall grant any secondary mortgage loan on the
17 condition, agreement or understanding that the borrower
18 contract with any specific person or organization for
19 insurance services as agent, broker or underwriter.

20 (7) To collect a fee for a subsequent dishonored check
21 or instrument taken in payment, not to exceed the service
22 charge permitted to be imposed under 18 Pa.C.S. § 4105(e)(3)
23 (relating to bad checks).

24 (8) To charge and collect an application fee not
25 exceeding 3% of the original principal amount of the loan.
26 The fee shall be fully earned at the time the loan is made
27 and may be added to the principal amount of the loan. No
28 application fee may be collected on subsequent advances made
29 pursuant to an open-end loan if the full fee of 3% of the
30 credit limit was collected at the time the loan was made.

(9) To charge and collect a delinquency charge of \$20 or 10% of each payment, whichever is higher, for a payment which is in default for more than 15 days.

(b) All secondary mortgage loan broker licensees shall have power and authority:

(1) To collect title examination, credit report, and appraisal fees actually related to the granting of a secondary mortgage loan when such fees are actually paid or incurred by the licensee, and to include the fees in the principal of the secondary mortgage loan which is being negotiated or arranged.

(2) To charge a reasonable broker's fee as determined by regulation of the Department of Banking if the fee is disclosed to the person for whom the loan is being negotiated or arranged.

Section 8. Section 10 of the act, amended December 17, 1986 (P.L.1696, No.203), July 7, 1989 (P.L.222, No.36), July 2, 1992 (P.L.387, No.82) and June 26, 1995 (P.L.73, No.15), is amended to read:

Section 10. Licensee requirements: records; reports; examinations; receipts; information to be furnished borrower.

(a) A secondary mortgage [loan] lender licensee shall:

(1) Conspicuously display [its license] at each licensed place of business[.] its license and copies of licenses of all mortgage originators assigned to that location. In the case of a mortgage originator, the license shall be maintained in the immediate possession of the licensee whenever the licensee is engaged in the mortgage loan business.

1 (2) Maintain at its principal place of business in this
2 Commonwealth, at a branch location or at such place within or
3 outside this Commonwealth, if agreed to by the [secretary,]
4 department either the original or a copy of the following
5 instruments, documents, accounts, books and records:

6 (i) Promissory note, contractual agreement, document
7 or instrument evidencing each borrower's secondary
8 mortgage loan indebtedness.

9 (ii) Mortgage, indenture or any other similar
10 instrument or document which creates a lien on the real
11 property which is taken as security for a secondary
12 mortgage loan.

13 (iii) Credit life and accident and health and
14 property insurance policy or a certificate of insurance
15 where such insurance is obtained in accordance with this
16 act.

17 (iv) Appraisal or search, where utilized.

18 (v) Individual ledger card or any other form of
19 record which shows all installment payments made by the
20 borrower and all other charges or credits to the
21 borrower's account.

22 (vi) Individual file in which the borrower's
23 application for a loan and any correspondence, including
24 collection letters, memorandums, notes or any other
25 written information pertaining to the borrower's account,
26 shall be kept.

27 (vii) A general ledger containing all asset,
28 liability and capital accounts, or a trial balance of the
29 same accounts, which shall be maintained on a 60-day
30 current basis. In addition thereto, a disbursements

1 register, checkbook and related records as required by
2 the secretary shall be maintained on a current workday
3 basis.

4 (viii) A loan closing statement indicating the date,
5 amount and recipient of all loan proceeds, signed by the
6 borrowers to evidence approval of distribution of loan
7 proceeds and to acknowledge receipt of a copy of the loan
8 closing statement.

9 (ix) Such information as the department may require.

10 [(3) Annually, before May 1, file a report with the <—
11 {secretary} ~~department~~ which shall set forth such information <—
12 as the secretary shall require concerning the business
13 conducted as a licensee during the preceding calendar year.
14 The report shall be in writing, under oath and on a form
15 provided by the {secretary.} ~~department. Licensees failing to~~ <—
16 ~~file the required report by May 1 shall be subject to a~~
17 ~~penalty of \$100 for each day after May 1 until the report is~~
18 ~~filed.~~

19 (3) ANNUALLY, ON A DATE DETERMINED BY THE DEPARTMENT, <—
20 FILE WITH THE DEPARTMENT A REPORT WHICH SHALL SET FORTH THE
21 INFORMATION AS THE DEPARTMENT SHALL REQUIRE CONCERNING THE
22 BUSINESS CONDUCTED AS A LICENSEE DURING THE PRECEDING
23 CALENDAR YEAR. THE REPORT SHALL BE ON A FORM PROVIDED BY THE
24 DEPARTMENT. LICENSEES FAILING TO FILE THE REQUIRED REPORT AT
25 THE DATE REQUIRED BY THE DEPARTMENT MAY BE SUBJECT TO A
26 PENALTY OF \$100 FOR EACH DAY AFTER THE DUE DATE THE REPORT IS
27 NOT FILED.

28 (4) Be subject to an examination by the [secretary]
29 department at [least once every two calendar years] the
30 discretion of the department, at which time the [secretary]

1 department shall have free access, during regular business
2 hours, to the licensee's place or places of business in this
3 Commonwealth and to all instruments, documents, accounts,
4 books and records which pertain to the licensee's secondary
5 mortgage loan business. However, the [secretary] department
6 may examine the licensee at any time if the [secretary]
7 department deems such action necessary or desirable. The cost
8 of any such examination shall be borne by the licensee.

9 (5) Give to the borrower a copy of the promissory note
10 evidencing the loan and any second mortgage instrument or
11 other document evidencing the loan signed by the borrower.

12 (6) Give to the borrower written evidence of credit
13 life, credit and accident and health, credit unemployment and
14 property insurance, if any.

15 (7) When a payment is made in cash on account of a
16 secondary mortgage loan, give to the borrower at the time
17 such payment is actually received, a written receipt which
18 shall show the account number or other identification mark or
19 symbol, date, amount paid and upon request of the borrower
20 the unpaid balance of the account prior to and after the cash
21 payment.

22 (8) Upon written request from the borrower, give or
23 forward to the borrower within ten days from the date of
24 receipt of such request, a written statement of the
25 borrower's account which shall show the dates and amounts of
26 all installment payments credited to the borrower's account,
27 the dates, amounts and an explanation of all other charges or
28 credits to the account and the unpaid balance thereof. A
29 licensee shall not be required to furnish more than two such
30 statements in any 12-month period.

1 (9) Include in all advertisements language indicating
2 the licensee is licensed by the department.

3 (10) In regard to mortgage originators:

4 (i) Maintain supervision and control of, and
5 responsibility for, the acts and omissions of all
6 mortgage originators employed by the licensee.

7 (ii) Maintain a list of all current and former
8 mortgage originators employed by the licensee and the
9 dates of such employment.

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

19 (b) A secondary mortgage loan broker licensee shall:

20 (1) Conspicuously display [its license] at each licensed
21 place of business[.] its license and copies of licenses of
22 all mortgage originators assigned to that location. In the
23 case of a mortgage originator, the license shall be
24 maintained in the immediate possession of the licensee
25 whenever the licensee is engaged in the mortgage loan
26 business.

27 [(2) Annually, before May 1, file with the {secretary} <—
28 ~~department~~ a report which shall set forth such information as
29 the {secretary} ~~department~~ shall require concerning the <—
30 business conducted as a licensee during the preceding

1 calendar year. The report shall be in writing, under oath and
2 on a form provided by the secretary.] ~~Licensees failing to~~ <—
3 ~~file the required report by May 1 shall be subject to a~~
4 ~~penalty of \$100 for each day after May 1 until the report is~~
5 ~~filed.~~

6 (2) ANNUALLY, ON A DATE DETERMINED BY THE DEPARTMENT, <—
7 FILE WITH THE DEPARTMENT A REPORT WHICH SHALL SET FORTH THE
8 INFORMATION AS THE DEPARTMENT SHALL REQUIRE CONCERNING THE
9 BUSINESS CONDUCTED AS A LICENSEE DURING THE PRECEDING
10 CALENDAR YEAR. THE REPORT SHALL BE ON A FORM PROVIDED BY THE
11 DEPARTMENT. LICENSEES FAILING TO FILE THE REQUIRED REPORT AT
12 THE DATE REQUIRED BY THE DEPARTMENT MAY BE SUBJECT TO A
13 PENALTY OF \$100 FOR EACH DAY AFTER THE DUE DATE THE REPORT IS
14 NOT FILED.

15 (3) Be subject to an examination by the [secretary]
16 department at [least once every two calendar years] the
17 discretion of the department, at which time the [secretary]
18 department shall have free access, during regular business
19 hours, to the licensee's place or places of business in this
20 Commonwealth and to all instruments, documents, accounts,
21 books and records which pertain to the licensee's secondary
22 mortgage loan broker business. The [secretary] department may
23 examine the licensee's place of business at any time if the
24 [secretary] department deems such action necessary or
25 desirable. The cost of any examination shall be borne by the
26 licensee.

27 (c) The licensee's accounting records must be constructed
28 and maintained in compliance with generally accepted accounting
29 principles and all of the aforementioned instruments, documents,
30 accounts, books and records shall be kept separate and apart

1 from the records of any other business conducted by the licensee
2 and shall be preserved and kept available for investigation or
3 examination by the [secretary] department for at least two years
4 after a secondary mortgage loan has been paid in full, but in
5 the case of an open-end loan the two-year period is measured
6 from the date of each entry. The provisions of this section
7 shall not apply to any instrument, document, account, book or
8 record which is assigned, sold or transferred to another
9 secondary mortgage loan licensee nor shall the two-year
10 requirement apply to an instrument or document which must be
11 returned to the borrower at the time a secondary mortgage loan
12 is paid in full.

13 (d) If copies of instruments, documents, accounts, books or
14 records are maintained under subsection (a)(2) or (b)(3), they
15 may be photostatic, microfilm, optically imaged, magnetic or
16 electronic copies or copies provided in some other manner
17 approved by the [secretary] department.

18 Section 9. Section 11 of the act, amended July 7, 1989
19 (P.L.222, No.36) and June 26, 1995 (P.L.73, No.15), is amended
20 to read:

21 Section 11. Licensee limitations.

22 (a) A [secondary mortgage loan licensee and a secondary
23 mortgage loan broker] licensee shall not:

24 (1) Transact any business subject to the provisions of
25 this act under any other name except that designated in its
26 license or registered or otherwise qualified as a fictitious
27 business name. A mortgage originator may not use any name
28 other than the mortgage originator's personal legal name. A
29 licensee[, other than a broker's agent,] who changes its name
30 or place of business shall [immediately] notify the

1 [secretary who] department within ten days of the change
2 which shall issue a certificate, if appropriate, to the
3 licensee, which shall specify the licensee's new name or
4 address. [A broker's agent who changes its name or place of
5 business shall notify the secretary in writing at least 15
6 days prior to making such change in name or place of
7 business.]

8 (2) [Charge] In the case of a secondary mortgage lender
9 or secondary mortgage loan broker, charge, contract for,
10 collect or receive charges, fees, premiums, commissions or
11 other considerations in excess of those authorized by the
12 provisions of this act.

13 (3) Unless the secondary mortgage lender licensee shall
14 retain responsibility for servicing the loan, assign, sell or
15 transfer a secondary mortgage loan to any person except a
16 secondary mortgage lender licensee or a person excepted from
17 the licensing provisions of this act in accordance with
18 section 3 hereof without written permission of the
19 [secretary] department.

20 (4) Advertise, cause to be advertised or otherwise
21 solicit whether orally, in writing, by telecast, by broadcast
22 or in any other manner[:]

23 (i) That it is licensed by, or that its business is
24 under the supervision of, the Commonwealth of
25 Pennsylvania or the Department of Banking except that a
26 licensee may advertise that it is "licensed pursuant to
27 the Secondary Mortgage Loan Act," provided, however, that
28 for the purpose of raising capital, no such advertisement
29 shall be permitted if it is to be used in connection with
30 a public solicitation for such funds except as otherwise

1 required by the act of December 5, 1972 (P.L.1280,
2 No.284), known as the "Pennsylvania Securities Act of
3 1972," or regulations promulgated under said acts, to be
4 disclosed in any prospectus.

5 (ii) Any] any statement or representation which is
6 false, misleading or deceptive.

7 (5) Conduct any business other than any business
8 regulated by the [secretary] department in any place of
9 business licensed pursuant to this act [if the secretary
10 determines such other business to be inappropriate] without
11 at least 90 days' prior written notification to the
12 department.

13 (6) Require a borrower to pay, to the licensee or any
14 other person, a broker's fee, finder's fee, commission,
15 premium or any other charges for obtaining, procuring or
16 placing of a secondary mortgage loan, except as provided in
17 this act. This restriction shall not prohibit a secondary
18 mortgage [loan] lender licensee from paying a fee to a
19 secondary mortgage loan broker in connection with the
20 placement or procurement of a secondary mortgage loan, nor
21 prohibit a borrower from requesting or directing a licensee
22 to pay such a fee from the proceeds of a loan or include it
23 in the amount to be financed.

24 (7) In the case of a mortgage originator:

25 (i) Accept any fees from consumers in the mortgage
26 originator's own name. A mortgage originator may accept
27 fees payable to the mortgage originator's employer
28 licensee and fees payable to third-party entities on
29 behalf of the mortgage originator's employer licensee. A
30 mortgage originator may not accept advance fees payable

1 to the mortgage originator's employer licensee unless
2 such licensee is authorized to collect advance fees under
3 this act.

4 (ii) Fail to include in all advertising the name of
5 the mortgage originator's employer.

6 (b) Nothing contained in this act shall prohibit any
7 licensee from closing any loans made under the provisions of
8 this act in the offices of attorneys-at-law licensed by and
9 located in this Commonwealth or of title insurance companies or
10 agencies licensed by and located in this Commonwealth.

11 Section 10. Sections 12 and 15 of the act, amended June 26,
12 1995 (P.L.73, No.15), are amended to read:

13 Section 12. Prepayment.

14 (a) A secondary mortgage lender licensee shall permit a
15 borrower to pay partially or wholly any contract or any
16 installment on a contract, without penalty, prior to the due
17 date.

18 (b) When a secondary mortgage loan is paid in full the
19 secondary mortgage lender licensee shall:

20 (1) Cancel any insurance provided by the licensee in
21 connection with the loan and refund to the borrower, in
22 accordance with regulations promulgated by the Pennsylvania
23 Insurance Department, any unearned portion of the premium for
24 such insurance.

25 (2) Stamp or write on the face of the loan agreement or
26 promissory note evidencing the borrower's secondary mortgage
27 loan indebtedness "Paid in Full" or "Cancelled", the date
28 paid and, within 60 days, return the loan agreement or
29 promissory note to the borrower.

30 (3) Release any lien on real property and cancel the

1 same of record and, at the time the loan agreement or
2 promissory note evidencing the borrower's secondary mortgage
3 loan indebtedness is returned, deliver to the borrower such
4 good and sufficient assignments, releases or any other
5 certificate, instrument or document as may be necessary to
6 vest the borrower with complete evidence of title, insofar as
7 the applicable secondary mortgage loan is concerned, to the
8 real property.

9 Section 15. Open-end loans.

10 (a) A secondary mortgage lender licensee may make open-end
11 loans and may contract for and receive thereon interest and
12 charges set forth in section 9.

13 (b) A secondary mortgage lender licensee shall not compound
14 interest by adding any unpaid interest authorized by this
15 section to the unpaid principal balance of the borrower's
16 account: Provided, however, That the unpaid principal balance
17 may include the additional charges authorized by section 9.

18 (c) Interest authorized by this section shall be deemed not
19 to exceed the maximum interest permitted by this act if such
20 interest is computed in each billing cycle by any of the
21 following methods:

22 (1) by converting the monthly rate to a daily rate and
23 multiplying such daily rate by the applicable portion of the
24 daily unpaid principal balance of the account, in which case
25 the daily rate shall be 1/30 of the monthly rate;

26 (2) by multiplying the monthly rate by the applicable
27 portion of the average monthly unpaid principal balance of
28 the account in the billing cycle, in which case the average
29 daily unpaid principal balance is the sum of the amount
30 unpaid each day during the cycle divided by the number of

1 days in the cycle; or

2 (3) by converting the monthly rate to a daily rate and
3 multiplying such daily rate by the average daily unpaid
4 principal balance of the account in the billing cycle, in
5 which case the daily rate shall be 1/30 of the monthly rate.

6 (d) For all of the above methods of computation, the billing
7 cycle shall be monthly and the unpaid principal balance on any
8 day shall be determined by adding to any balance unpaid as of
9 the beginning of that day all advances and other permissible
10 amounts charged to the borrower and deducting all payments and
11 other credits made or received that day.

12 (e) The borrower may at any time pay all or any part of the
13 unpaid balance in his account without prepayment penalty; or, if
14 the account is not in default, the borrower may pay the unpaid
15 principal balance in monthly installments. Minimum monthly
16 payment requirements shall be determined by the secondary
17 mortgage lender licensee and set forth in the secondary mortgage
18 open-end loan agreement.

19 (f) A secondary mortgage lender licensee may contract for
20 and receive the fees, costs and expenses permitted by this act
21 on other secondary mortgage loans, subject to all the conditions
22 and restrictions set forth, with the following variations:

23 (1) If credit life or disability insurance is provided
24 and if the insured dies or becomes disabled when there is an
25 outstanding open-end loan indebtedness, the insurance shall
26 be sufficient to pay the total balance of the loan due on the
27 date of the borrower's death in the case of credit life
28 insurance, or all minimum payments which become due on the
29 loan during the covered period of disability in the case of
30 credit disability insurance. The additional charge for credit

1 life insurance or credit disability insurance shall be
2 calculated in each billing cycle by applying the current
3 monthly premium rate for such insurance, as such rate may be
4 determined by the Insurance Commissioner, to the unpaid
5 balances in the borrower's account, using any of the methods
6 specified in subsection (c) for the calculation of loan
7 charges.

8 (2) No credit life or disability insurance written in
9 connection with a secondary mortgage open-end loan shall be
10 cancelled by the licensee because of delinquency of the
11 borrower in the making of the required minimum payments on
12 the loan unless one or more of such payments is past due for
13 a period of 90 days or more; and the licensee shall advance
14 to the insurer the amounts required to keep the insurance in
15 force during such period, which amounts may be debited to the
16 borrower's account.

17 (3) The amount, terms and conditions of any insurance
18 against loss or damage to property must be reasonable in
19 relation to character and value of the property insured and
20 the maximum anticipated amount of credit to be extended.

21 (g) Notwithstanding any other provisions in this act to the
22 contrary, a secondary mortgage lender licensee may retain any
23 security interest in real or personal property until the open-
24 end account is terminated, provided that if there is no
25 outstanding balance in the account and there is no commitment by
26 the licensee to make advances, the licensee shall within ten
27 days following written demand by the borrower deliver to the
28 borrower a release of the mortgage or a request for reconveyance
29 of the deed of trust on any real property taken as security for
30 a loan and a release of any security interest in personal

1 property. The licensee shall include on all billing statements
2 provided in connection with an open-end credit loan a statement
3 that the licensee retains a security interest in the borrower's
4 real property whenever such security interest has not been
5 released.

6 (h) Paragraphs (7) and (8) of subsection (a) of section 10,
7 sections 12 and 13 shall not apply to open-end loans.

8 (i) A secondary mortgage lender licensee may charge,
9 contract for, receive or collect on any revolving loan account
10 an annual fee not to exceed \$50 per year.

11 Section 11. Section 16 of the act, amended July 7, 1989
12 (P.L.222, No.36), is amended to read:

13 Section 16. Authority of [Secretary of Banking] department.

14 [The secretary shall have authority to:

15 (1) Issue rules and regulations governing the
16 capitalization, public funding and the records to be
17 maintained by licensees, and such general rules and
18 regulations and orders as may be necessary for insuring the
19 proper conduct of the business and for the enforcement of
20 this act.

21 (2) Examine any instrument, document, account, book,
22 record or file for a licensee or any other person, or make
23 such other investigations as he shall deem necessary to
24 administer the provisions of this act.

25 (3) Conduct administrative hearings on any matter
26 pertaining to this act, issue subpoenas to compel the
27 attendance of witnesses and the production of instruments,
28 documents, accounts, books and records at any such hearing,
29 which may be retained by the secretary until the completion
30 of all proceedings in connection with which they were

1 produced, and administer oaths and affirmations to any person
2 whose testimony is required. In the event a person fails to
3 comply with a subpoena issued by the secretary or to testify
4 on any matter concerning which he may be lawfully
5 interrogated, on application by the secretary, the
6 Commonwealth Court may issue an order requiring the
7 attendance of such person, the production of instruments,
8 documents, accounts, books or records or the giving of
9 testimony.]

10 (a) The department shall have the 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 act.
15 Pursuant to this authority, the department may remove any
16 instrument, document, account, book, record or file of a
17 licensee to a location outside of the licensee's office
18 location. The costs of the examination shall be borne by the
19 licensee or the entity subject to the examination.

20 (2) Conduct administrative hearings on any matter
21 pertaining to this act, 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. The department may administer oaths and
28 affirmations to persons 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 act,
17 regardless of whether such costs are in excess of license
18 fees or 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 secondary
21 mortgage loan business by licensees, the issuance and renewal
22 of licenses and the enforcement of this act.

23 (6) Prohibit or permanently remove an individual
24 responsible for a violation of this act from working in his
25 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 act.

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

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

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

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

19 (f) An order issued against a licensee is applicable to the
20 mortgage originators employed by the licensee.

21 Section 12. Sections 18 and 19 of the act are amended to
22 read:

23 Section 18. Surrender of license.

24 Upon satisfying the [secretary] department that all creditors
25 have been paid or that other arrangements satisfactory to the
26 creditors and the [secretary] department have been made, a
27 licensee may surrender its license to the [secretary] department
28 by delivering its license to the [secretary] department with
29 written notice that the license is being voluntarily surrendered
30 but such an action by a licensee shall not affect the licensee's

1 civil or criminal liability for acts committed prior to the date
2 on which the license was surrendered.

3 Section 19. Suspension; revocation or refusal.

4 [(a) The secretary may suspend, revoke or refuse to renew
5 any license issued pursuant to this act after giving 30 days
6 written notice forwarded to the licensee's principal place of
7 business, by registered or certified mail, return receipt,
8 stating the contemplated action and the reason therefor, if he
9 shall find, after the licensee has had an opportunity to be
10 heard, that the licensee has:

11 (1) Made any material misstatement in his application.

12 (2) Failed to comply with or violated any provision of
13 this act or any rule, regulation or order promulgated by the
14 secretary pursuant thereto.

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

20 (b) The secretary may subsequently reinstate a license which
21 has been suspended or revoked or renew a license which he had
22 previously refused to renew if the condition which warranted the
23 original action has been corrected, and he has reason to believe
24 that such condition is not likely to occur again and that the
25 licensee is worthy of such reinstatements.]

26 (a) The department may suspend, revoke or refuse to renew
27 any license issued pursuant to this act, if any fact or
28 condition exists or is discovered which, if it had existed or
29 had been discovered at the time of filing of the application for
30 such license, would have warranted the department in refusing to

issue such license or if a licensee or director, officer,
partner, employee or owner of a licensee has:

(1) Made any false or material misstatement in an
application or any report or submission required by this act
or any department regulation, statement of policy or order.

(2) Failed to comply with or violated any provision of
this act or any regulation, statement of policy or order
promulgated or issued by the department pursuant to this act.

(3) If licensed under section 4(b.1), accepted an
advance fee without establishing or maintaining the capital
required by section 4(b.1).

(4) Become insolvent; the liabilities of the applicant
or licensee exceed the assets of the applicant or licensee or
that the applicant or licensee cannot meet the obligations of
the applicant or licensee as they mature or is in such
financial condition that the applicant or licensee cannot
continue in business with safety to the customers of the
applicant or licensee.

(5) Engaged in dishonest, fraudulent or illegal
practices or conduct in any business or unfair or unethical
practices or conduct in connection with the secondary
mortgage loan business.

(6) Been convicted of or pleaded guilty or nolo
contendere to a crime of moral turpitude or felony.

(7) Permanently or temporarily been enjoined by a court
of competent jurisdiction from engaging in or continuing any
conduct or practice involving any aspect of the secondary
mortgage loan business.

(8) Become the subject of an order of the department
denying, suspending or revoking a license under the

1 provisions of this act.

2 (9) Become the subject of a United States Postal Service
3 fraud order.

4 (10) Failed to comply with the requirements of this act
5 to make and keep records prescribed by regulation, statement
6 of policy or order of the department, to produce such records
7 required by the department or to file any financial reports
8 or other information the department by regulation, statement
9 of policy or order may require.

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

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

16 (13) Failed to complete the qualifying or continuing
17 education as required by section 4(f).

18 (14) In the case of a secondary mortgage lender or
19 secondary mortgage loan broker, conducted the secondary
20 mortgage loan business through an unlicensed mortgage
21 originator.

22 (15) Failed to comply with the terms of any agreement
23 under which the department authorizes a licensee to maintain
24 records at a place other than the licensee's principal place
25 of business.

26 (b) The department may subsequently reinstate a license
27 which has been suspended or revoked or renew a license which had
28 previously been refused for renewal if the condition which
29 warranted the original action has been corrected and the
30 department has reason to believe that such condition is not

1 likely to occur again and the licensee satisfies the
2 requirements of this act.

3 Section 13. Section 20 of the act, amended July 2, 1992
4 (P.L.387, No.82) and June 26, 1995 (P.L.73, No.15), is amended
5 to read:

6 Section 20. Scope of act.

7 (a) The provisions of this act shall apply to any secondary
8 mortgage loan [(except loans secured by real property made
9 pursuant to a license issued under any other law of this
10 Commonwealth)] which:

11 (1) is negotiated, offered, or otherwise transacted
12 within this Commonwealth, in whole or in part, whether by the
13 ultimate lender or any other person;

14 (2) is made or executed within this Commonwealth; or

15 (3) notwithstanding the place of execution, is secured
16 by real property located in this Commonwealth.

17 (a.1) The provisions of this act shall apply to any person
18 who engages in the secondary mortgage loan business in this
19 Commonwealth.

20 (b) Notwithstanding subsection (a), the secretary may
21 license a branch office in another state provided that the
22 licensee maintains a place of business in this Commonwealth
23 which is licensed under the provisions of this act.

24 [(c) Nothing contained in this act shall prohibit any
25 licensee from closing any loans made under the provisions of
26 this act in the offices of attorneys-at-law licensed by and
27 located in this Commonwealth or of title insurance companies or
28 agencies licensed by and located in this Commonwealth.

29 (d) If a secondary mortgage loan is made in good faith in
30 conformity with an interpretation of this act by the appellate

1 courts of the Commonwealth or in compliance with a rule,
2 regulation, order, interpretation or other issuance promulgated
3 by the secretary, no provisions of this act imposing any penalty
4 shall apply, notwithstanding that, after such contract is made,
5 such interpretation, rule or regulation is amended, rescinded or
6 determined by judicial or other authority to be invalid for any
7 reason.]

8 Section 14. Section 21 of the act is amended to read:

9 Section 21. Foreclosure, default, confession of judgment.

10 With regard to foreclosure, default, right to cure a default
11 and confession of judgment, nothing contained in this act shall
12 be deemed to supersede section 403, 404 or 407 of the act of
13 January 30, 1974 (P.L.13, No.6), referred to as the Loan
14 Interest and Protection Law, which shall apply to all loans made
15 pursuant to this act. The lien granted or provided in connection
16 with a secondary mortgage loan shall not be deemed to constitute
17 a sale of the property with regard to any prior existing lien,
18 for the purpose of permitting foreclosure of or execution on
19 such prior lien.

20 Section 15. Section 22 of the act, amended June 26, 1995
21 (P.L.73, No.15), is amended to read:

22 Section 22. Penalties.

23 [(a) Any person who is not licensed by the secretary or
24 exempted from the licensing requirements in accordance with the
25 provisions of this act and who shall engage in the business of
26 negotiating or making secondary mortgage loans and charge,
27 collect, contract for or receive interest, fees, premiums,
28 charges or other considerations which aggregate in excess of the
29 interest that the lender would otherwise be permitted by law to
30 charge if not licensed under this act on the amount actually

1 loaned or advanced, or on the unpaid principal balances when the
2 contract is payable by stated installments, shall be guilty of a
3 misdemeanor, and upon conviction thereof, shall be sentenced to
4 pay a fine of not less than \$500 or more than \$5,000, and/or
5 undergo imprisonment not less than six months nor more than
6 three years, in the discretion of the court. This subsection
7 shall not apply to real property secured loans made by a
8 licensee under the act of April 8, 1937 (P.L.262, No.66), known
9 as the "Consumer Discount Company Act."

10 (b) Except as the result of unintentional error, a
11 corporation licensed under the provisions of this act or any
12 director, officer, employee or agent who shall violate any
13 provision of this act or shall direct or consent to such
14 violations, shall be subject to a fine of \$2,000 for the first
15 offense, and for each subsequent offense a like fine and/or
16 suspension of license. A licensee shall have no liability for
17 unintentional error if within 15 days after discovering an error
18 the licensee notifies the person concerned of the error and
19 makes adjustments in the account as necessary to assure that the
20 person will not be required to pay any interest, fees, premiums,
21 charges or other considerations which aggregate in excess of the
22 charges permitted under this act.

23 (b.1) A sponsoring broker or broker's agent who violates any
24 provision of this act shall be subject to a fine to be levied by
25 the Department of Banking of up to \$2,000 for each offense.

26 (c) If a contract is made in good faith in conformity with
27 an interpretation of this act by the appellate courts of the
28 Commonwealth or in compliance with a rule or regulation
29 officially promulgated by the secretary no provision of this
30 section imposing any penalty shall apply, notwithstanding that

1 after such contract is made, such interpretation, rule or
2 regulation is amended, rescinded, or determined by judicial or
3 other authority to be invalid for any reason.

4 (d) The lien granted or provided in connection with a
5 secondary mortgage loan shall not be deemed to constitute a sale
6 of the property with regard to any prior existing lien, for the
7 purpose of permitting foreclosure of or execution on such prior
8 lien.]

9 (a) Any person who is not licensed by the department or is
10 not exempted from the licensing requirements in accordance with
11 the provisions of this act and who engages in the secondary
12 mortgage loan business commits a felony of the third degree.

13 (b) Any person who is subject to the provisions of this act,
14 even though not licensed hereunder, or any person who is not
15 licensed by the department or is not exempt from the licensing
16 requirements, who violates any of the provisions to which it is
17 subject shall be subject to a fine levied by the department or
18 commission of up to \$10,000 for each offense.

19 (c) Any person licensed under this act or any director,
20 officer, employee or agent of a licensee who violates this act
21 or directs or consents to such violations shall be subject to a
22 fine levied by the department of up to \$10,000 for each offense.

23 Section 16. Sections 23 and 24 of the act are repealed:

24 [Section 23. Preservation of existing powers.

25 Nothing in this act shall be construed as restricting the
26 powers otherwise conferred by law upon financial institutions,
27 such as State and national banks, State and Federal savings and
28 loan associations, savings banks and insurance companies, to
29 engage in the secondary mortgage business as defined in section
30 2, and no such financial institution, in exercising any power

1 otherwise so conferred upon it, shall be subject to any
2 provision of this act. A State-chartered or national bank, bank
3 and trust company, savings bank or savings and loan association
4 located in this State shall have all the powers of a licensee
5 under this act but shall not be subject to the license
6 requirement or any other provision of this act relating to the
7 requirements imposed on licensees.

8 Section 24. Exclusions from act.

9 No provisions of this act shall apply to Federally-chartered
10 or State-chartered credit unions.]

11 Section 17. This act shall take effect in 90 days.