

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 487** Session of
2007

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

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

1 Section 302. Definitions.

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

5 * * *

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

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

12 * * *

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

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

18 * * *

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

22 * * *

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

30 ["Nonpurchase money mortgage loan." A mortgage loan the

1 proceeds of which are not used to finance the purchase of the
2 real property securing the mortgage loan.]

3 "Person." An individual, association, joint venture or
4 joint-stock company, partnership, limited partnership, limited
5 partnership association, limited liability company, business
6 corporation, nonprofit corporation, or any other group of
7 individuals, however organized.

8 * * *

9 Section 2. Sections 303, 304, 305, 306, 307, 308, 309 and
10 310 of the act, amended June 25, 2001 (P.L.621, No.55), are
11 amended to read:

12 Section 303. License requirements and exemptions.

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

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

28 (1) A mortgage banker may act as a mortgage broker or
29 loan correspondent without a separate mortgage broker or loan
30 correspondent license and, if licensed as an individual, may

1 perform the services of a mortgage originator without a
2 separate mortgage originator license.

3 (2) A loan correspondent may act as a mortgage broker
4 without a separate mortgage broker license and, if licensed
5 as an individual, may perform the services of a mortgage
6 originator without a separate mortgage originator license.

7 (3) A person licensed as a mortgage broker may only
8 perform the services of a mortgage broker. If a mortgage
9 broker is licensed as an individual, a mortgage broker may
10 perform the services of a mortgage originator without a
11 separate mortgage originator license.

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

16 [(1) A State-chartered bank, bank and trust company, <—
17 savings bank, private bank or national bank, a State or
18 federally chartered savings and loan association, a federally
19 chartered savings bank or a State or federally chartered
20 credit union.] <—

21 (1) A BANKING INSTITUTION OR A STATE OR FEDERALLY <—
22 CHARTERED CREDIT UNION IF THE PRIMARY REGULATOR OF THE
23 BANKING INSTITUTION OR STATE OR FEDERALLY CHARTERED CREDIT
24 UNION SUPERVISES THE BANKING INSTITUTION OR STATE OR
25 FEDERALLY CHARTERED CREDIT UNION.

26 (2) An attorney authorized to practice law in this
27 Commonwealth, who acts as a mortgage broker in negotiating or
28 placing a mortgage loan in the normal course of legal
29 practice.

30 [(3) A person licensed pursuant to the provisions of the

1 act of February 19, 1980 (P.L.15, No.9), known as the Real
2 Estate Licensing and Registration Act, who is principally
3 engaged in a third-party real estate brokerage business, but
4 only to the extent that he provides information, verbal or
5 written, to or negotiates or places a mortgage loan for a
6 buyer of real estate and is not compensated by the buyer or
7 any other person for providing such information or
8 negotiating or placing such mortgage loan. If he is
9 compensated for providing such information or negotiating or
10 placing such mortgage loan, he shall be subject to the
11 provisions of sections 308, 310, 311 and 314(b), excluding
12 section 308(a)(1).

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

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

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

22 (7) Any agency or instrumentality of the Federal
23 Government or a corporation otherwise created by an act of
24 the United States Congress, including, but not limited to,
25 the Federal National Mortgage Association, the Government
26 National Mortgage Association, the Veterans' Administration,
27 the Federal Home Loan Mortgage Corporation and the Federal
28 Housing Administration.

29 (8) [The] Any agency or instrumentality of State or
30 local government, the District of Columbia or any territory,

1 including the Pennsylvania Housing Finance Agency and other
2 government housing finance agencies.

3 (9) A licensee under the act of April 8, 1937 (P.L.262,
4 No.66), known as the Consumer Discount Company Act, except
5 that any such licensee who makes a mortgage loan other than
6 under the provisions of that act shall be subject to the
7 provisions of sections 304(b)(2) and (3), 308, 310 and
8 314(b), excluding section 308(a)(1). Employees of licensees
9 under the Consumer Discount Company Act that act as mortgage
10 originators shall be subject to the licensing requirements of
11 this chapter. Consumer discount companies that employ
12 mortgage originators shall be subject to the same
13 requirements as mortgage bankers in regard to the employment
14 and supervision of mortgage originators.

15 [(10) Except ~~for licensees described~~ ~~as provided~~ in <—
16 paragraph (9), subsidiaries and affiliates of the following
17 institutions: State-chartered banks, bank and trust
18 companies, savings banks, private banks, savings and loan
19 associations and credit unions or national banks, federally
20 chartered savings and loan associations, federally chartered
21 savings banks and federally chartered credit unions, except
22 that such subsidiaries and affiliates ~~of institutions~~ <—
23 ~~enumerated in this paragraph~~ shall: ENUMERATED IN THIS <—
24 PARAGRAPH SHALL:]_

25 (10) SUBSIDIARIES AND AFFILIATES OF STATE OR FEDERALLY
26 CHARTERED CREDIT UNIONS EXCEPT THAT THE SUBSIDIARIES AND
27 AFFILIATES SHALL:

28 (i) be subject to the provisions of sections 308,
29 309(a)(3), 310 and 314(b), excluding section 308(a)(1);

30 (ii) deliver as required to the department annually

1 copies of financial reports made to all supervisory
2 agencies; and

3 (iii) be registered with the department.

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

8 [(12) An insurance company, association or exchange
9 authorized to transact business in this Commonwealth under
10 the act of May 17, 1921 (P.L.682, No.284), known as The
11 Insurance Company Law of 1921, and any subsidiaries and
12 affiliates thereof, except that such subsidiaries and
13 affiliates 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 (13) Any person who makes a mortgage loan to an employee
21 of that person as an employment benefit, given that person
22 does not hold himself out to the public as a first mortgage
23 lender.

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

28 (15) A nonprofit corporation making not more than 12
29 mortgage loans a calendar year with its own funds, that shall
30 not include funds borrowed through warehouse lines of credit

1 or other sources for the purpose of making mortgage loans,
2 which loans are retained in the corporation's own portfolios
3 and not regularly sold to others and are made to promote and
4 advance the cultural traditions and lifestyles of bona fide
5 religious organizations provided that the corporation does
6 not hold itself out to the public as a first mortgage lender.

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

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

12 Section 304. Application for license.

13 (a) Contents.--An application for a license to act as a
14 mortgage banker, loan correspondent, mortgage broker or [limited
15 mortgage broker] mortgage originator shall be on such forms as
16 may be prescribed and provided by the department. [Each] In the
17 case of the mortgage banker, loan correspondent or mortgage
18 broker, the application shall include the address or addresses
19 where business is to be conducted, the full name, official title
20 and business address of each director and principal officer of
21 the business and any other information that may be required by
22 the department. In the case of a mortgage originator, the
23 application shall include the name of the applicant, the name of
24 the licensee employing the applicant and the location of the
25 employer licensee to which the applicant is assigned and any
26 other information that may be required by the department. An
27 applicant shall demonstrate to the department that policies and
28 procedures have been developed to receive and process customer
29 inquiries and grievances promptly and fairly.

30 (b) Mortgage banker's license.--The department shall issue a

1 mortgage banker's license applied for pursuant to this chapter
2 if the applicant establishes that he has met the following
3 conditions:

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

6 (i) Federal National Mortgage Association.

7 (ii) Federal Home Loan Mortgage Corporation.

8 (iii) Federal Housing Administration.

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

13 (3) That he has a minimum tangible net worth of \$250,000
14 at the time of application and will, at all times thereafter,
15 maintain such minimum net worth, provided, however, that
16 those applicants who were in business prior to June 20, 1990,
17 may be licensed with a minimum tangible net worth of \$100,000
18 if, in the opinion of the department, the applicant has
19 established that it has an otherwise adequate financial
20 structure and operating history.

21 (4) That he will maintain fidelity bond coverage in
22 accordance with the guidelines established by the Federal
23 National Mortgage Association or the Federal Home Loan
24 Mortgage Corporation.

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

29 (1) That he is eligible to and will obtain and maintain
30 a bond in the amount of \$100,000, in a form acceptable to the

1 department, prior to the issuance of the license, from a
2 surety company authorized to do business in this
3 Commonwealth. The bond shall run to the Commonwealth of
4 Pennsylvania and shall be for the use of the Commonwealth and
5 any person or persons who obtain a judgment against the loan
6 correspondent for failure to carry out the terms of any
7 provision for which advance fees are paid. No bond shall
8 comply with the requirements of this section unless it
9 contains a provision that it shall not be canceled for any
10 cause unless notice of intention to cancel is given to the
11 department at least 30 days before the day upon which
12 cancellation shall take effect.

13 (2) That he has a minimum tangible net worth of \$100,000
14 at the time of application and will, at all times thereafter,
15 maintain such minimum net worth.

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

23 Thereafter, for a period of one year, the applicant may
24 continue to be licensed with a minimum tangible net worth of
25 \$75,000. Following that period, the applicant may continue to
26 be licensed with a minimum tangible net worth of \$100,000.

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

28 (1) The department shall issue a mortgage broker's
29 license applied for pursuant to this chapter if the applicant
30 establishes that he is eligible to and will obtain and

1 maintain a bond in the amount of \$100,000, in a form
2 acceptable to the department, prior to the issuance of the
3 license, from a surety company authorized to do business in
4 this Commonwealth. The bond shall be a penal bond conditioned
5 on compliance with this chapter and subject to forfeiture by
6 the department and shall run to the Commonwealth of
7 Pennsylvania for its use. The bond shall also be for the use
8 of any person against the mortgage broker for failure to
9 carry out the terms of any provision for which advance fees
10 are paid. If such person is aggrieved, he may, with the
11 written assent of the department, recover advance fees and
12 costs from the bond by filing a claim with the surety company
13 or maintaining an action on the bond. In the alternative, an
14 aggrieved person may recover advance fees and costs by filing
15 a formal complaint against the mortgage broker with the
16 department which shall adjudicate the matter. Such an
17 adjudication shall be binding upon the surety company and
18 enforceable by the department in Commonwealth Court and by an
19 aggrieved person in any court. Any aggrieved person seeking
20 to recover advance fees and costs from a bond that has
21 already been forfeited by the department or which the
22 department is in the process of forfeiting may recover
23 payment on such bond if, after filing a petition with the
24 department, the department assents to his requested payment
25 or portion thereof. The department may pay the aggrieved
26 person from the bond proceeds it recovered in such case.
27 Nothing in this section shall be construed as limiting the
28 ability of any court or district justice to award to any
29 aggrieved person other damages, court costs and attorney fees
30 as permitted by law, but those claims that are not advance

1 fees or related costs may not be recovered from the bond. The
2 department, in its discretion, may assent to or order pro
3 rata or other recovery on the bond for any aggrieved person
4 if claims against the bond may or do exceed its full monetary
5 amount. No bond shall comply with the requirements of this
6 section unless it contains a provision that it shall not be
7 canceled for any cause unless notice of intention to cancel
8 is given to the department at least 30 days before the day
9 upon which cancellation shall take effect. Cancellation of
10 the bond shall not invalidate the bond regarding the period
11 of time it was in effect.

12 (2) Mortgage brokers who can demonstrate to the
13 satisfaction of the department that they do not accept
14 advance fees shall be exempt from the bond requirement of
15 this subsection.

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

22 (c.2) Mortgage originator license.--A mortgage originator
23 shall be an employee of a single mortgage banker, mortgage
24 broker or loan correspondent licensed under this chapter, which
25 licensee shall directly supervise, control and maintain
26 responsibility for the acts and omissions of the mortgage
27 originator. A mortgage originator shall be assigned to a
28 licensed location of the employer licensee.

29 (d) [Foreign corporation.--] Requirements for out-of-State
30 applicants.--

1 (1) If the applicant is [a foreign corporation] not a
2 resident of this Commonwealth, that [corporation] applicant
3 shall be authorized to do business in this Commonwealth in
4 accordance with the law of this Commonwealth regulating
5 corporations and other entities conducting business in this
6 Commonwealth and shall maintain at least one office in this
7 Commonwealth which is the office that shall be licensed as
8 the principal place of business for the purposes of this
9 chapter. [A foreign corporation which will act only in the
10 capacity of a] A wholesale table funder shall be exempt from
11 the requirement that it maintain at least one office in this
12 Commonwealth. [The corporation]

13 (2) An applicant shall file with the application an
14 irrevocable consent, duly acknowledged, that suits and
15 actions may be commenced against that [licensee] person in
16 the courts of this Commonwealth by the service of process of
17 any pleading upon the department in the usual manner provided
18 for service of process and pleadings by the statutes and
19 court rules of this Commonwealth. The consent shall provide
20 that this service shall be as valid and binding as if service
21 had been made personally upon the [licensee] person in this
22 Commonwealth. In all cases where process or pleadings are
23 served upon the department pursuant to the provisions of this
24 section, such process or pleadings shall be served in
25 triplicate; one copy shall be filed in the [Office of the
26 Secretary of Banking] department and the others shall be
27 forwarded by the department, by certified or registered mail,
28 return receipt requested, to the last known principal place
29 of business in the Commonwealth and to the [corporation's]
30 person's principal place of business.

1 [(e) Education.--To maintain a mortgage banker's, a loan
2 correspondent's or a mortgage broker's license, the applicant or
3 licensee shall demonstrate to the satisfaction of the secretary
4 that at least one individual from each licensed office has
5 attended a minimum of six hours of such continuing education
6 each year. To maintain a limited mortgage broker's license, the
7 licensee shall demonstrate to the satisfaction of the secretary
8 that he has attended at least two hours of continuing education
9 each year. The secretary shall delineate the requirements for
10 such continuing education by regulation within three years of
11 the effective date of this act. The secretary may review and
12 approve continuing education programs and providers to satisfy
13 the continuing education requirement. The secretary may charge
14 providers of continuing education programs a fee, to be
15 determined by the secretary, for department review of continuing
16 education programs and providers.]

17 (e) Education requirements.--

18 (1) In order to obtain a license under this chapter, an
19 applicant shall submit to the department with its application
20 evidence that the applicant or an officer of the applicant
21 has successfully completed a minimum of 12 hours of
22 instruction and a testing program regarding the first
23 mortgage loan business and the provisions of this chapter,
24 the act of January 30, 1974 (P.L.13, No.6), referred to as
25 the Loan Interest and Protection Law, and relevant Federal
26 law including the Real Estate Settlement Procedures Act of
27 1974 (88 Stat. 1724, 12 U.S.C. §§ 2601-2617), the Truth in
28 Lending Act (82 Stat. 146, 15 U.S.C. §§ 1601-1667f), and the
29 Equal Credit Opportunity Act (88 Stat. 1521, 15 U.S.C. §§
30 1691-1691f).

1 (2) In order to maintain a license:

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

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

13 (3) The department shall delineate the requirements for
14 prequalification education, testing and continuing education
15 by regulation, including by permitting in-house
16 prequalification education, testing and continuing education.
17 The department may review and approve education programs and
18 providers to satisfy the education requirements. The
19 department may charge providers of education programs a fee,
20 to be determined by the department, for department review of
21 education programs and providers.

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

27 (g) License renewals.--Licenses shall be issued for terms of
28 12 months and may be renewed by the department each year on a
29 schedule set by the department upon application by the licensee
30 and the payment of all applicable renewal fees. The licensee

1 shall demonstrate to the department that it is conducting the
2 first mortgage loan business in accordance with the requirements
3 of this chapter and that the directors, officers, partners,
4 employees, agents and ultimate equitable owners of 10% or more
5 of the licensee continue to meet all of the initial requirements
6 for licensure required by this chapter unless otherwise
7 determined by the department.

8 Section 305. Annual license fee.

9 [(a) General rule.--A mortgage banker, mortgage broker or
10 applicant shall pay to the department at the time an application
11 is filed an initial license fee for the principal place of
12 business and an additional license fee for each branch office as
13 provided for in section 603-A of the act of April 9, 1929
14 (P.L.177, No.175), known as The Administrative Code of 1929. On
15 or before July 1 of each year and thereafter, a licensee shall
16 pay a license renewal fee for the principal place of business
17 and an additional license renewal fee for each branch office as
18 provided for in section 603-A of The Administrative Code of
19 1929. An applicant for a license to operate as a loan
20 correspondent shall pay the department the same fee for the
21 initial license for principal place of business, each branch
22 office and annual license renewal as provided for mortgage
23 bankers licensed under section 603-A of The Administrative Code
24 of 1929. An applicant for a license to operate as a limited
25 mortgage broker shall pay to the department at the time an
26 application is filed an initial license fee of \$250. On or
27 before July 1 of each year thereafter, a limited mortgage broker
28 licensee shall pay a renewal fee of \$200.

29 (b) Recovery of costs.--No abatement of any license fee
30 shall be made if the license is issued for a period of less than

one year. The department shall be entitled to recover any cost of investigation in excess of license or renewal fees from the licensee or from any person who is not licensed under this chapter but who is presumed to be engaged in business contemplated by this chapter.]

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

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

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

(3) for mortgage originators, \$200.

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

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

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

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

<—

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

(d) No abatement of fee.--No abatement of a licensee fee

1 shall be made if the license is issued for a period of less than
2 one year.

3 Section 306. Issuance of license.

4 (a) Time limit.--Within 60 days after a complete application
5 is received, the department shall either issue a license or, for
6 any reason for which the department may suspend, revoke or
7 refuse to renew a license as provided for by section 313, refuse
8 to issue a license. Upon receipt of an application for license,
9 the department shall conduct such investigation of the applicant
10 or a director, officer, partner, employee, agent or ultimate
11 equitable owner of 10% or more of the applicant as it deems
12 necessary. [to determine that the applicant and its officers,
13 directors and principals are of good character and ethical
14 reputation.] The 60-day time limit specified in this subsection
15 may be extended by the department for an additional 30 days if
16 the department determines that such extension is necessary. The
17 department shall provide written notification to any applicant
18 whose application review has been extended and include the final
19 date by which a decision shall be rendered regarding the
20 application.

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

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

30 (1) The name and address of the licensee, the address so

1 specified to be that of the licensee's principal place of
2 business within this Commonwealth or, for a licensee acting
3 only in the capacity of a wholesale table funder, either in
4 or outside of this Commonwealth.

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

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

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

12 (1) The department may deny a license if it finds that
13 the applicant or any person who is a director, officer,
14 partner, agent, employee or ultimate equitable owner of 10%
15 or more of the applicant has been convicted of a
16 [misdemeanor] crime of moral turpitude or felony in any
17 jurisdiction or of a crime which, if convicted in this
18 Commonwealth, would constitute a [misdemeanor] crime of moral
19 turpitude or felony under the laws of this Commonwealth. For
20 the purposes of this chapter, a person shall be deemed to
21 have been convicted of a crime if the person:

22 (i) shall have pleaded guilty or nolo contendere to
23 a charge thereof before a court or Federal magistrate
24 [or]; or

25 (ii) shall have been found guilty thereof by the
26 decision or judgment of a court or Federal magistrate or
27 by the verdict of a jury, irrespective of the
28 pronouncement of sentence or the suspension thereof,
29 unless the pleas of guilty or nolo contendere or the
30 decision, judgment or verdict shall have been set aside,

1 vacated, reversed or otherwise abrogated by lawful
2 judicial process.

3 (2) A license under this chapter shall be deemed to be a
4 covered license within the meaning of section 405 of the act
5 of May 15, 1933 (P.L.565, No.111), known as the Department of
6 Banking Code. The department shall notify a licensee if a
7 covered individual within the meaning of section 405 of the
8 Department of Banking Code that is or will be employed or
9 contracted by the licensee has a criminal background that
10 renders the employee unfit for employment in the first
11 mortgage loan business.

12 (e) Denial of license for other reason.--The department may
13 deny a license or otherwise restrict a license if it finds
14 [that, within two years prior to or from the date of the
15 application,] the applicant or any person who is a director,
16 officer, partner, agent, employee or ultimate equitable owner of
17 10% or more of the applicant:

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

20 (2) is the subject of an order of the department;
21 [denying, suspending or revoking a license as a mortgage
22 banker, loan correspondent, mortgage broker or limited
23 mortgage broker; or]

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

27 (4) does not possess the financial responsibility,
28 character, reputation, integrity and general fitness to
29 command the confidence of the public and to warrant the
30 belief that the first mortgage loan business will be operated

1 lawfully, honestly, fairly and within the legislative intent
2 of this chapter and in accordance with the general laws of
3 this Commonwealth; or

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

6 (f) Imposing conditions on licenses.--The department may
7 impose conditions on the issuance of any license under this
8 chapter. If the department determines that conditions imposed
9 upon a licensee have not been fulfilled, the department may take
10 any action authorized under this chapter against such licensee
11 that the department deems necessary.

12 (g) Conditional licenses.--In the case of mortgage
13 originator applicants, the department may issue mortgage
14 originator licenses effective immediately upon receipt of an
15 application, which licenses shall be conditional licenses issued
16 under this subsection.

17 Section 307. License duration.

18 A license issued by the department shall:

19 (1) Be renewed on [July 1 of each year upon payment of
20 the annual renewal fee and after a determination that the
21 licensee is conducting business in accordance with the
22 provisions of this chapter is made by the department.]
23 completion of the requirements of section 304(g). No refund
24 of any portion of the license fee shall be made if the
25 license is voluntarily surrendered to the department or
26 suspended or revoked by the department prior to its
27 expiration date.

28 (2) Be immediately invalid if the [mortgage banker's
29 corporate charter is voided in accordance with the provisions
30 of any law of this Commonwealth or any other state.]

1 licensee's authority to conduct business is voided under any
2 law of this Commonwealth or any other state, unless the
3 licensee demonstrates to the satisfaction of the department
4 that the applicable court or governmental entity was clearly
5 erroneous in voiding the licensee's authority to conduct
6 business.

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

10 Section 308. Licensee requirements.

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

12 (1) [Conspicuously] In the case of a mortgage banker,
13 mortgage broker or loan correspondent, conspicuously display
14 [its license] at each licensed place of business[.] its
15 license and copies of the licenses of all mortgage
16 originators assigned to that location. In the case of a
17 mortgage originator, the license shall be maintained in the
18 immediate possession of the licensee whenever the licensee is
19 engaged in the mortgage loan business.

20 (2) Maintain, at its principal place of business within
21 this Commonwealth, or at such place within or outside this
22 Commonwealth if agreed to by the [Secretary of Banking or the
23 commission] department, either the original or a copy of such
24 books, accounts, records and documents, or electronic or
25 other similar access thereto, of the business conducted under
26 the license as may be prescribed by the department [or
27 commission] to enable [them] it to determine whether the
28 business of the licensee is being conducted in accordance
29 with the provisions of this chapter and the regulations,
30 statements of policy and orders[, rules and regulations]

1 issued under this chapter. The department, at its
2 determination, shall have free access to and authorization to
3 examine records maintained within or outside of this
4 Commonwealth. The costs of the examination, including travel
5 costs, shall be borne by the licensee. The [secretary]
6 department may deny or revoke the authority to maintain
7 records outside of this Commonwealth for good cause in the
8 interest of consumer protection for Commonwealth borrowers,
9 including for the licensee's failure to provide books,
10 accounts, records or documents to the department upon
11 request.

12 ~~(3) [Annually] In the case of a mortgage banker,~~ <—
13 ~~mortgage broker or loan correspondent, annually [(3)~~ <—
14 ANNUALLY, before May 1, file a report with the department or
15 commission which shall set forth such information as the
16 department or commission shall require concerning the
17 business conducted as a licensee during the preceding
18 calendar year. The report shall be in writing, under oath,
19 and on a form provided by the department.] ~~Licensees failing~~ <—
20 ~~to file the required report by May 1 shall be subject to a~~
21 ~~penalty of \$100 each day after May 1 until the report is~~
22 ~~filed.~~

23 (3) IN THE CASE OF A MORTGAGE BANKER, MORTGAGE BROKER OR <—
24 LOAN CORRESPONDENT, ANNUALLY, ON A DATE DETERMINED BY THE
25 DEPARTMENT, FILE A REPORT WITH THE DEPARTMENT WHICH SHALL SET
26 FORTH THE INFORMATION AS THE DEPARTMENT SHALL REQUIRE
27 CONCERNING THE BUSINESS CONDUCTED AS A LICENSEE DURING THE
28 PRECEDING CALENDAR YEAR. THE REPORT SHALL BE ON A FORM
29 PROVIDED BY THE DEPARTMENT. LICENSEES FAILING TO FILE THE
30 REQUIRED REPORT ON THE DATE REQUIRED BY THE DEPARTMENT MAY BE

1 SUBJECT TO A PENALTY OF \$100 FOR EACH DAY AFTER THE DUE DATE
2 THE REPORT IS NOT FILED.

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

15 (5) Comply with all provisions of the act of January 30,
16 1974 (P.L.13, No.6), referred to as the Loan Interest and
17 Protection Law, provided, however, that this shall not be
18 deemed an override of section 501 of the Depository
19 Institutions Deregulation and Monetary Control Act of 1980
20 (94 Stat. 161, 12 U.S.C. § 1735f-7a) or the Alternative
21 Mortgage Transaction Parity Act of 1982 (96 Stat. 1545, 12
22 U.S.C. § 3801 et seq.).

23 (6) Comply with the provisions of the act of December
24 23, 1983 (P.L.385, No.91), entitled "An act amending the act
25 of December 3, 1959 (P.L.1688, No.621), entitled, as amended,
26 'An act to promote the health, safety and welfare of the
27 people of the Commonwealth by broadening the market for
28 housing for persons and families of low and moderate income
29 and alleviating shortages thereof, and by assisting in the
30 provision of housing for elderly persons through the creation

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

29 (7) Provide for periodic accounting of any escrow
30 accounts held by the licensee to the borrowers not less than

1 annually, showing the amounts received from the borrower and
2 the amounts disbursed.

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

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

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

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

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

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

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

24 (10) Include in all advertisements language indicating
25 that the licensee is licensed by the department. In the case
26 of a mortgage originator, include in all advertising the name
27 of the mortgage originator's employer.

28 (11) Allow for the evidence of any insurance required in
29 connection with a loan by a policy or binder or a copy of
30 either.

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

3 (i) maintain supervision and control of, and
4 responsibility for, the acts and omissions of all
5 mortgage originators employed by the licensee;

6 (ii) maintain a list of all current and former
7 mortgage originators employed by the licensee and the
8 dates of such employment; and

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

18 (b) Accounting records.--[After the effective date of this
19 act, the] The licensee's accounting records must be constructed
20 and maintained in compliance with generally accepted accounting
21 principles [if the licensee is a mortgage banker or in such
22 manner] or as may be provided by regulation [for all other
23 licensees, and all]. All of the aforementioned instruments,
24 documents, accounts, books and records shall be kept separate
25 and apart from the records of any other business conducted by
26 the licensee and shall be preserved and kept available for
27 investigation or examination by the department [or commission]
28 for at least two years after a mortgage loan has been paid in
29 full. The provisions of this subsection shall not apply to any
30 instrument, document, account, book or record that is assigned,

1 sold or transferred to another person, nor shall the two-year
2 requirement apply to an instrument or document which must be
3 returned to a borrower at the time a mortgage loan is paid in
4 full.

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

12 [(d) Limited powers.--The powers conferred upon the
13 commission by this section, excluding subsection (a)(1), shall
14 only be exercised by the commission in relation to persons
15 licensed pursuant to the provisions of the act of February 19,
16 1980 (P.L.15, No.9), known as the Real Estate Licensing and
17 Registration Act, who are subject to this section under section
18 303(b)(3), and the exercise of such power by the commission in
19 relation to such persons shall be exclusive.]

20 Section 309. Licensee limitations.

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

22 (1) Transact any business subject to the provisions of
23 this chapter under any other name except those designated in
24 its license[.] or registered or otherwise qualified as a
25 fictitious name. A mortgage originator may not use any name
26 other than the mortgage originator's personal legal name. A
27 licensee that changes its name or place or places of business
28 shall [immediately] notify the department within ten days of
29 the change, which shall issue a certificate, if appropriate,
30 to the licensee which shall specify the licensee's new name

1 or address.

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

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

14 (4) In the case of a loan correspondent, service
15 mortgage loans.

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

25 (6) In the case of a mortgage originator, accept any
26 fees from consumers in the mortgage originator's own name. A
27 mortgage originator may accept fees payable to the mortgage
28 originator's employer licensee and fees payable to third-
29 party entities on behalf of the mortgage originator's
30 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 commission within 180 days after the effective date of this subsection.

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

(1) Examine any instrument, document, account, book,

1 record or file of a licensee or any other person, or make
2 such other investigation as may be necessary to administer
3 the provisions of this chapter.

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

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

26 (d) Limited powers.--The powers conferred upon the
27 commission by subsection (c) shall only be exercised by the
28 commission in relation to persons licensed pursuant to the
29 provisions of the act of February 19, 1980 (P.L.15, No.9), known
30 as the Real Estate Licensing and Registration Act, who are

1 subject to subsection (c) under section 303(b)(3) and the
2 exercise of such power by the commission in relation to such
3 persons shall be exclusive.]

4 (a) General authority.--The department shall have the
5 authority to:

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

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

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

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

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

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

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

24 (8) Issue cease and desist orders that are effective
25 immediately, subject to a hearing as specified in subsection
26 (b) within 14 days of the issuance of the order.

27 (9) Impose such other conditions as the department deems
28 appropriate.

29 (b) Hearings.--A person aggrieved by a decision of the
30 department may appeal the decision of the department to the

secretary. The appeal shall be conducted under 2 Pa.C.S Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

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

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

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

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

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

[Section 311. Fees.

(a) Certain fees prohibited.--No real estate broker or salesperson who has received a fee, commission or other valuable consideration in connection with the sale or transfer of real estate shall be paid or receive a fee or other compensation, directly or indirectly, for providing mortgage brokering services in connection with the origination of a mortgage loan relative to such sale or transfer of real estate, but such broker or salesperson may receive a fee in connection with such mortgage loan transaction which shall not exceed an amount as

1 established by the commission pursuant to this section.

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

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

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

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

29 (d) Licensing option.--A real estate broker or salesperson
30 who is also a bona fide mortgage broker, mortgage banker or loan

1 correspondent who holds himself out publicly as such shall have
2 the option of being licensed and regulated by the department, in
3 which case he shall not be subject to the fee limitations
4 provided for in this section or the rules and regulations
5 promulgated by the commission hereunder.

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

11 The real estate broker in this transaction who has
12 offered to assist me in obtaining a mortgage loan has
13 advised me of the following:

14 (1) He does not represent any particular mortgage
15 lender; or the name of the mortgage lender he represents
16 is.....

17 (2) I am not required to obtain the mortgage for the
18 purchase of the real estate from the mortgage banker whom
19 the broker represents.

20 (3) The real estate broker has a fiduciary
21 obligation to the seller, from whom he will receive a
22 commission.

23 (4) Should the real estate broker violate any of the
24 provisions of the Real Estate Licensing and Registration
25 Act or the Mortgage Bankers and Brokers Act I may file a
26 complaint with the Pennsylvania Real Estate Commission.]

27 Section 4. Sections 313 and 314 of the act, amended June 25,
28 2001 (P.L.621, No.55), are amended to read:

29 Section 313. Suspension, revocation or refusal.

30 (a) Departmental action.--The department may suspend, revoke

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

13 (1) Made any false or material misstatement in his
14 application or any report or submission required by this
15 chapter or department regulation, statement of policy or
16 order.

17 (2) Failed to comply with or violated any provision of
18 this chapter or any rule, regulation, statement of policy or
19 order promulgated or issued by the department pursuant to
20 this chapter.

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

24 (4) Become insolvent, meaning that the liabilities of
25 the applicant or licensee exceed the assets of the applicant
26 or licensee or that the applicant or licensee cannot meet the
27 obligations of the applicant or licensee as they mature, or
28 is in such financial condition that the applicant or licensee
29 cannot continue in business with safety to the customers of
30 the applicant or licensee.

1 (5) Engaged in dishonest, fraudulent or illegal
2 practices or conduct in any business or unfair or unethical
3 practices or conduct in connection with the mortgage
4 business.

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

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

14 (8) Permanently or temporarily been enjoined by a court
15 of competent jurisdiction from engaging in or continuing any
16 conduct or practice involving any aspect of the mortgage
17 business.

18 (9) Become the subject of an order of the department
19 denying, suspending or revoking a license [as a mortgage
20 banker, mortgage broker, limited mortgage broker or loan
21 correspondent] under the provisions of this chapter.

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

25 (11) Failed to comply with the requirements of this
26 chapter to make and keep records prescribed by [rule]
27 regulation, statement of policy or order of the department,
28 to produce such records required by the department or to file
29 any financial reports or other information the department by
30 [rule] regulation, statement of policy or order may require.

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

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

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

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

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

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

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

25 (18) Failed to comply with the terms of any agreement
26 under which the department authorizes a licensee to maintain
27 records at a place other than the licensee's principal place
28 of business.

29 (b) Reinstatement.--The department may subsequently
30 reinstate a license which has been suspended or revoked or renew

1 a license which had previously been refused for renewal if the
2 condition which warranted the original action has been corrected
3 and the department has reason to believe that such condition is
4 not likely to occur again and the licensee satisfies the
5 requirements of this chapter.

6 Section 314. Penalties.

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

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

24 (c) Violations by licensees.--Any person licensed under the
25 provisions of this chapter or any director, officer, employee or
26 agent of a licensee who shall violate the provisions of this
27 chapter or shall direct or consent to such violations shall be
28 subject to a fine levied by the department of up to [\$2,000]
29 \$10,000 for each offense.

30 [(d) Limited powers.--The powers conferred upon the

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

8 Section 5. Sections 316 and 317 of the act, amended June 25,
9 2001 (P.L.621, No.55) are repealed:

10 [Section 316. Referral fees.

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

18 Section 317. Real Estate Recovery Fund.

19 Any person injured by the wrongful act, default or
20 misrepresentation of a person engaged in the activities of a
21 mortgage broker who is exempt from licensure under this chapter
22 by virtue of being licensed pursuant to the act of February 19,
23 1980 (P.L.15, No.9), known as the Real Estate Licensing and
24 Registration Act, shall be entitled to seek recovery from the
25 Real Estate Recovery Fund established by the Real Estate
26 Licensing and Registration Act notwithstanding the fact that
27 such wrongful act, default or misrepresentation occurred in
28 conjunction with mortgage-brokering activities subject, however,
29 to all other terms and conditions of the Real Estate Licensing
30 and Registration Act regarding recovery from that fund.]

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