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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 488 Session of 2007

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

REFERRED TO BANKING AND INSURANCE, MARCH 15, 2007

AN ACT

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

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

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

Section 2. Definitions.

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

* * *

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

* * *

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

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

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

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

* * *

"Mortgage originator." An individual not licensed as a secondary mortgage lender or secondary mortgage loan broker under this act who solicits, accepts or offers to accept secondary mortgage loan applications, or negotiates secondary mortgage loan terms, in other than a clerical or ministerial capacity. The term does not include directors, partners or ultimate equitable owners of 10% or more of a licensee.

"Open-end loan." A secondary mortgage loan made by a secondary mortgage lender licensee under this act pursuant to an

agreement between the licensee and the borrower whereby:

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

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

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

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

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

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

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

"Principal place of business." The primary office of the licensee located in this Commonwealth which is staffed on a full-time basis and at which books, records, accounts and documents are to be maintained.

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

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

* * *

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

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

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

(3) A State-chartered or National bank, bank and trust company, savings bank, private bank, savings association or savings and loan association, having its principal place of business in this Commonwealth, or an individual making loans

to family members, shall not be required to be licensed under this act in order to make loans secured by real property under this act.

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

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

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

(ii) such person in the ordinary course of business becomes the subsequent holder of more than two promissory notes or mortgages, indentures or any other similar instruments or documents received in a calendar year in connection with a secondary mortgage loan, provided, however, that a person will not be deemed to be engaged in the secondary mortgage loan business if such person becomes the 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.

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

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

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

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

(a) On and after the effective date of this section, no person shall engage in the secondary mortgage loan business in this Commonwealth without a license as provided for in this act. A mortgage originator may not engage in the secondary mortgage

loan business unless the mortgage originator is employed and supervised by a licensed secondary mortgage lender or secondary mortgage loan broker.

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

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

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

(1) A State-chartered bank, bank and trust company, savings bank, private bank or national bank, a State or federally chartered savings and loan association, a federally chartered savings bank or a State or Federal chartered credit union.

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

(3) A person who either originates or negotiates fewer than three secondary mortgage loans in a calendar year in this Commonwealth unless he is otherwise deemed to be engaged

in the secondary mortgage loan business.

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

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

(6) Except for consumer discount companies, subsidiaries and affiliates of the following institutions: State-chartered banks, bank and trust companies, savings banks, private banks, savings and loan associations and credit unions or national banks, federally chartered savings and loan associations, federally chartered savings banks and federally chartered credit unions, and such subsidiaries and affiliates of institutions enumerated in this paragraph shall:

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

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

(iii) Be registered with the department.

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

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

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

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

Section 3. Section 4 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 4. Application for license.

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

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

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

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

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

(5) The address or addresses where the secondary

mortgage loan business is to be conducted.

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

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

(1) The name of the applicant.

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

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

(b) [The] An applicant for a secondary mortgage [loan] lender license shall have a minimum legal capitalization of $200,000. At the time of applying for a license under this act, and at all times thereafter, the minimum paid in legal capital shall be $200,000. [An applicant for a secondary mortgage loan broker license shall have a minimum legal capitalization of $25,000 at the time of applying for a license under this act and at all times thereafter.]

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

(c) (1) If the applicant is [a foreign corporation] not a resident of this Commonwealth, said [corporation] applicant shall be authorized to do business in this Commonwealth in accordance with the law of this Commonwealth regulating

corporations[. Such corporations shall file with the application an irrevocable] and other entities conducting business in this Commonwealth and shall maintain at least one office in this Commonwealth which is the office that shall be licensed as the principal place of business for the purposes of this act.

(2) An applicant shall file with the application an irrevocable consent, duly acknowledged, that suits and actions may be commenced against such [licensee] person in the courts of this Commonwealth by the service of process or any pleading upon the [secretary] department in the usual manner provided for service of process and pleadings by the statutes and court rule of this Commonwealth. Said consent shall provide that such service shall be as valid and binding as if service had been made personally upon the [licensee] person in this Commonwealth. In all cases where process or pleadings are served upon the [secretary] department pursuant to the provisions of this section, such process or pleadings shall be served in duplicate, one of which shall be filed in the [office of the secretary] department and the other shall be forwarded by the [secretary] department, by certified or registered mail, return receipt, to the last known principal place of business of the [licensee] person to whom such process or pleadings is directed.

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

(1) The applicant must be an individual.

(2) The applicant must be exempt from the capital requirement of subsection (b) by satisfying the secretary

that no advance fees whatsoever are accepted or collected, and no fees may be accepted or collected from borrowers.

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

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

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

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

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

(g) All applicants and licensees shall be required to provide the department with written notice of the change in any

information contained in an application for a license or for any renewal of a license within ten days of an applicant or licensee becoming aware of such change.

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

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

Section 5. Annual license fee.

[An applicant shall pay to the secretary at the time an application is filed an initial license fee of $500 for the principal place of business and an additional initial license fee of $50 for each branch office in this Commonwealth, except an applicant for a broker's agent license shall pay to the secretary at the time an application is filed an initial license fee of $250. On or before July 1 of each year and thereafter, a licensee shall pay a license renewal fee of $200 for the principal place of business and an additional license renewal fee of $25 for each branch office in this Commonwealth. Notwithstanding the provision of section 603-A(6) of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," a broker's agent licensee shall pay an annual

license renewal fee of $200. No abatement of any license fee shall be made if the license is issued for a period of less than one year. The secretary 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 act but presumed to be engaged in business contemplated by this act.]

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

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

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

(3) For mortgage originators, $200.

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

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

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

(3) For mortgage originators, $200.

(c) 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 a licensee fee shall be made if the

license is issued for a period of less than one year.

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

Section 6. Issuance of license.

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

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

(a) Within 60 days after a complete application is received, the department shall either issue a license or, for any reason for which the department may suspend, revoke or refuse to renew a license as provided for by section 19, refuse to issue a license. Upon receipt of an application for license, the department shall conduct such investigation of the applicant or a director, officer, partner, employee, agent or ultimate equitable owner of 10% or more of the applicant as it deems necessary. The 60-day time limit specified in this subsection may be extended by the department for an additional 30 days if the department determines that such extension is necessary. The department shall provide written notification to any applicant whose application review has been extended and include the final date by which a decision shall be rendered regarding the application.

(b) If the department refuses to issue a license, it shall notify the applicant in writing of the denial and the reason

therefor and of the applicant's right to appeal from such action to the secretary. An appeal from the department's refusal to approve an application for a license shall be filed by the applicant within 30 days of notice thereof.

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

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

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

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

(d) (1) The department may deny a license if it finds that the applicant or any person who is a director, officer, partner, agent, employee or ultimate equitable owner of 10% or more of the applicant has been convicted of a crime of moral turpitude or felony in any jurisdiction or of a crime which, if convicted in this Commonwealth, would constitute a crime of moral turpitude or felony under the laws of this Commonwealth. For the purposes of this act, a person shall be deemed to have been convicted of a crime if the person:

(i) shall have pleaded guilty or nolo contendere to a charge thereof before a court or Federal magistrate; or

(ii) shall have been found guilty thereof by the decision or judgment of a court or Federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof,

unless the plea of guilty or nolo contendere or the decision, judgment or verdict shall have been set aside, vacated, reversed or otherwise abrogated by lawful judicial process.

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

(e) The department may deny a license or otherwise restrict a license if it finds that the applicant or any person who is a 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 secretary that the licensee is conducting his business in accordance with the provisions of this act] upon completion of the requirements of section 4(h). No refund of any portion of the license fee shall be made if the license is voluntarily surrendered to the [secretary] department or suspended or revoked by the [secretary] department prior to its expiration date.

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

licensee's authority to conduct business.

Section 8. Transfer of license.

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

Section 7. Section 9 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 9. Powers conferred on licensees.

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

(1) To make a secondary mortgage loan repayable in installments, and charge, contract for and receive thereon interest at a percentage rate not exceeding 1.85% per month. No interest shall be paid, deducted or received in advance, except that interest from the date of disbursement of funds to the borrower to the first day of the following month shall be permitted in the event the first installment payment is more than 30 days after the date of disbursement. Interest shall not be compounded and shall be computed only on unpaid principal balances. However, the inclusion of earned interest in a new note shall not be considered compounding. For the purpose of computing interest, a month shall be any period of 30 consecutive days.

(2) To collect fees or premiums for title examination, abstract of title, title insurance, credit reports, surveys, appraisals, notaries, postage (including messenger and express carrier), tax service or other costs or fees actually related to the processing of a secondary mortgage loan application or granting of a secondary mortgage loan, when such fees are actually paid or incurred by the licensee and

to collect fees or charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the loan and include these in the principal of the secondary mortgage loan.

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

(4) To collect reasonable attorney's fees, of an attorney licensed to practice in the Commonwealth, in the collection of a delinquent second mortgage loan and any court costs and fees actually incurred in the collection of such loan account.

(5) To provide credit life, credit accident and health and credit unemployment insurance. A borrower shall not be compelled to purchase credit life, credit accident and health or credit unemployment insurance as a condition of the granting of a secondary mortgage loan and all contracts utilized shall reflect a clear disclosure that the purchase of credit life, credit accident and health or credit unemployment insurance is not a prerequisite to obtaining a loan; if, however, the borrower elects to obtain credit life, credit accident and health or credit unemployment insurance, the borrower shall consent thereto in writing. If borrowers desire joint-life or joint accident and health insurance, all

such borrowers shall consent thereto in writing. Such insurance shall be obtained from an insurance company authorized by the laws of Pennsylvania to conduct business in this Commonwealth. Any benefit or return to the licensee from the sale or provision of such insurance shall not be included in the computation of the maximum charge authorized under this section and shall not be deemed a violation of this act when the insurance is written pursuant to the laws of this Commonwealth governing insurance.

(6) To require credit property insurance on security against reasonable risks of loss, damage and destruction. The amount and term of such insurance shall be reasonable in relation to the amount and term of the loan contract and the value of the security. A licensee shall not require property insurance if to the licensee's knowledge, the borrower at the time the loan is made has valid and collectible insurance covering the property to be insured and has furnished a loss payable endorsement sufficient for the protection of the licensee. Such insurance shall be obtained from an insurance company authorized by the laws of Pennsylvania to conduct business in this Commonwealth. Any benefit or return to the licensee from the sale or provision of credit insurance shall not be included in the computation of the maximum charge authorized under this section and shall not be deemed a violation of this act when the insurance is written pursuant to the laws of this Commonwealth governing insurance. The premium for any credit insurance may be included in the principal amount of the secondary mortgage loan requested by the borrower. However, such premiums shall be disclosed as a separate item on the face of the principal contract document

and the licensee's individual borrower ledger records. No licensee shall grant any secondary mortgage loan on the condition, agreement or understanding that the borrower contract with any specific person or organization for insurance services as agent, broker or underwriter.

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

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

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

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

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

(iii) Credit life and accident and health and property insurance policy or a certificate of insurance

where such insurance is obtained in accordance with this act.

(iv) Appraisal or search, where utilized.

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

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

(vii) A general ledger containing all asset, liability and capital accounts, or a trial balance of the same accounts, which shall be maintained on a 60-day currented basis. In addition thereto, a disbursements register, checkbook and related records as required by the secretary shall be maintained on a current workday basis.

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

(ix) Such information as the department may require.

(3) Annually, before May 1, file a report with the [secretary] department which shall set forth such information as the secretary shall require concerning the business conducted as a licensee during the preceding calendar year. The report shall be in writing, under oath and on a form

provided by the [secretary.] department. Licensees failing to file the required report by May 1 shall be subject to a penalty of $100 for each day after May 1 until the report is filed.

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

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

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

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

(8) Upon written request from the borrower, give or forward to the borrower within ten days from the date of

receipt of such request, a written statement of the borrower's account which shall show the dates and amounts of all installment payments credited to the borrower's account, the dates, amounts and an explanation of all other charges or credits to the account and the unpaid balance thereof. A licensee shall not be required to furnish more than two such statements in any 12-month period.

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

(10) In regard to mortgage originators:

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

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

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

(b) A secondary mortgage loan broker 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.

(2) Annually, before May 1, file with the [secretary] department a report which shall set forth such information as the [secretary] department shall require concerning the business conducted as a licensee during the preceding calendar year. The report shall be in writing, under oath and on a form provided by the secretary. Licensees failing to file the required report by May 1 shall be subject to a penalty of $100 for each day after May 1 until the report is filed.

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

(c) The licensee's accounting records must be constructed and maintained in compliance with generally accepted accounting principles and all of the aforementioned instruments, documents, accounts, books and records shall be kept separate and apart from the records of any other business conducted by the licensee and shall be preserved and kept available for investigation or

examination by the [secretary] department for at least two years after a secondary mortgage loan has been paid in full, but in the case of an open-end loan the two-year period is measured from the date of each entry. The provisions of this section shall not apply to any instrument, document, account, book or record which is assigned, sold or transferred to another secondary mortgage loan licensee nor shall the two-year requirement apply to an instrument or document which must be returned to the borrower at the time a secondary mortgage loan is paid in full.

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

Section 9. Section 11 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 11. Licensee limitations.

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

(1) Transact any business subject to the provisions of this act under any other name except that designated in its license or registered or otherwise qualified as a fictitious business name. A mortgage originator may not use any name other than the mortgage originator's personal legal name. A licensee[, other than a broker's agent,] who changes its name or place of business shall [immediately] notify the [secretary who] department within ten days of the change which shall issue a certificate, if appropriate, to the

licensee, which shall specify the licensee's new name or address. [A broker's agent who changes its name or place of business shall notify the secretary in writing at least 15 days prior to making such change in name or place of business.]

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

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

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

(i) That it is licensed by, or that its business is under the supervision of, the Commonwealth of Pennsylvania or the Department of Banking except that a licensee may advertise that it is "licensed pursuant to the Secondary Mortgage Loan Act," provided, however, that for the purpose of raising capital, no such advertisement shall be permitted if it is to be used in connection with a public solicitation for such funds except as otherwise required by the act of December 5, 1972 (P.L.1280, No.284), known as the "Pennsylvania Securities Act of

1972," or regulations promulgated under said acts, to be disclosed in any prospectus.

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

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

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

(7) In the case of a mortgage originator:

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

this act.

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

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

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

Section 12. Prepayment.

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

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

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

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

(3) Release any lien on real property and cancel the same of record and, at the time the loan agreement or promissory note evidencing the borrower's secondary mortgage

loan indebtedness is returned, deliver to the borrower such good and sufficient assignments, releases or any other certificate, instrument or document as may be necessary to vest the borrower with complete evidence of title, insofar as the applicable secondary mortgage loan is concerned, to the real property.

Section 15. Open-end loans.

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

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

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

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

(2) by multiplying the monthly rate by the applicable portion of the average monthly unpaid principal balance of the account in the billing cycle, in which case the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(3) by converting the monthly rate to a daily rate and

multiplying such daily rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the daily rate shall be 1/30 of the monthly rate.

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

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

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

(1) If credit life or disability insurance is provided and if the insured dies or becomes disabled when there is an outstanding open-end loan indebtedness, the insurance shall be sufficient to pay the total balance of the loan due on the date of the borrower's death in the case of credit life insurance, or all minimum payments which become due on the loan during the covered period of disability in the case of credit disability insurance. The additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current

monthly premium rate for such insurance, as such rate may be determined by the Insurance Commissioner, to the unpaid balances in the borrower's account, using any of the methods specified in subsection (c) for the calculation of loan charges.

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

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

(g) Notwithstanding any other provisions in this act to the contrary, a <u>secondary mortgage lender</u> licensee may retain any security interest in real or personal property until the open-end account is terminated, provided that if there is no outstanding balance in the account and there is no commitment by the licensee to make advances, the licensee shall within ten days following written demand by the borrower deliver to the borrower a release of the mortgage or a request for reconveyance of the deed of trust on any real property taken as security for a loan and a release of any security interest in personal property. The licensee shall include on all billing statements provided in connection with an open-end credit loan a statement

that the licensee retains a security interest in the borrower's real property whenever such security interest has not been released.

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

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

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

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

[The secretary shall have authority to:

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

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

(3) Conduct administrative hearings on any matter pertaining to this act, issue subpoenas to compel the attendance of witnesses and the production of instruments, documents, accounts, books and records at any such hearing, which may be retained by the secretary until the completion of all proceedings in connection with which they were produced, and administer oaths and affirmations to any person whose testimony is required. In the event a person fails to

comply with a subpoena issued by the secretary or to testify on any matter concerning which he may be lawfully interrogated, on application by the secretary, the Commonwealth Court may issue an order requiring the attendance of such person, the production of instruments, documents, accounts, books or records or the giving of testimony.]

(a) The department shall have the authority to:

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

(2) Conduct administrative hearings on any matter pertaining to this act, issue subpoenas to compel the attendance of witnesses and the production of instruments, documents, accounts, books and records at any such hearing. The instruments, documents, accounts, books and records may be retained by the department until the completion of all proceedings in connection with which the materials were produced. The department may administer oaths and affirmations to persons whose testimony is required. In the event a person fails to comply with a subpoena issued by the department or to testify on a matter concerning which he may be lawfully interrogated, on application by the department, the Commonwealth Court may issue an order requiring the

attendance of the person, the production of instruments, documents, accounts, books and records and the giving of testimony.

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

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

(5) Issue regulations, statements of policy or orders as may be necessary for the proper conduct of the secondary mortgage loan business by licensees, the issuance and renewal of licenses and the enforcement of this act.

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

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

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

(9) Impose such other conditions as the department deems

appropriate.

(b) A person aggrieved by a decision of the 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) 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 act.

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

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

Section 18. Surrender of license.

Upon satisfying the [secretary] department that all creditors have been paid or that other arrangements satisfactory to the creditors and the [secretary] department have been made, a licensee may surrender its license to the [secretary] department by delivering its license to the [secretary] department with written notice that the license is being voluntarily surrendered but such an action by a licensee shall not affect the licensee's civil or criminal liability for acts committed prior to the date on which the license was surrendered.

Section 19. Suspension; revocation or refusal.

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

(1) Made any material misstatement in his application.

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

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

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

(a) The department may suspend, revoke or refuse to renew any license issued pursuant to this act, if any fact or condition exists or is discovered which, if it had existed or had been discovered at the time of filing of the application for 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 provisions of this act.

(9) Become the subject of a United States Postal Service

fraud order.

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

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

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

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

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

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

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

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

Section 20. Scope of act.

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

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

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

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

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

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

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

(d) If a secondary mortgage loan is made in good faith in conformity with an interpretation of this act by the appellate courts of the Commonwealth or in compliance with a rule, regulation, order, interpretation or other issuance promulgated

by the secretary, no provisions of this act imposing any penalty shall apply, notwithstanding that, after such contract is made, such interpretation, rule or regulation is amended, rescinded or determined by judicial or other authority to be invalid for any reason.]

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

Section 21. Foreclosure, default, confession of judgment.

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

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

Section 22. Penalties.

[(a) Any person who is not licensed by the secretary or exempted from the licensing requirements in accordance with the provisions of this act and who shall engage in the business of negotiating or making secondary mortgage loans and charge, collect, contract for or receive interest, fees, premiums, charges or other considerations which aggregate in excess of the interest that the lender would otherwise be permitted by law to charge if not licensed under this act on the amount actually loaned or advanced, or on the unpaid principal balances when the contract is payable by stated installments, shall be guilty of a

misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not less than $500 or more than $5,000, and/or undergo imprisonment not less than six months nor more than three years, in the discretion of the court. This subsection shall not apply to real property secured loans made by a licensee under the act of April 8, 1937 (P.L.262, No.66), known as the "Consumer Discount Company Act."

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

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

(c) If a contract is made in good faith in conformity with an interpretation of this act by the appellate courts of the Commonwealth or in compliance with a rule or regulation officially promulgated by the secretary no provision of this section imposing any penalty shall apply, notwithstanding that after such contract is made, such interpretation, rule or regulation is amended, rescinded, or determined by judicial or

other authority to be invalid for any reason.

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

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

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

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

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

[Section 23. Preservation of existing powers.

Nothing in this act shall be construed as restricting the powers otherwise conferred by law upon financial institutions, such as State and national banks, State and Federal savings and loan associations, savings banks and insurance companies, to engage in the secondary mortgage business as defined in section 2, and no such financial institution, in exercising any power otherwise so conferred upon it, shall be subject to any provision of this act. A State-chartered or national bank, bank

and trust company, savings bank or savings and loan association located in this State shall have all the powers of a licensee under this act but shall not be subject to the license requirement or any other provision of this act relating to the requirements imposed on licensees.

Section 24. Exclusions from act.

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

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