

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1425 Session of
1980

INTRODUCED BY SCHAEFER, KUSSE, KELLEY, SCANLON, PECORA AND
LEWIS, MAY 21, 1980

AS REPORTED FROM COMMITTEE ON BUSINESS AND COMMERCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, NOVEMBER 17, 1980

AN ACT

1 To define and regulate secondary mortgage loans and providing
2 penalties.

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1 "Licensee." A person who is licensed under this act or a
2 person excepted from licensing provisions of this act in
3 accordance with section 3 hereof.

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

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

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

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

16 (4) the borrower has the privilege of paying the account
17 in full at any time WITHOUT PREPAYMENT PENALTY or, if the <—
18 account is not in default, in monthly installments of fixed
19 or determinable amounts as provided in the agreement; and

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

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

27 "Secondary mortgage loan." A loan in an original principal
28 amount in excess of \$5,000 which is secured in whole or in part
29 by a lien upon any interest in real property created by a
30 security agreement, including a mortgage, indenture, or any

1 other similar instrument or document, which real property is
2 subject to ~~one or more prior liens~~ A PRIOR MORTGAGE and which is <—
3 used as a dwelling, including a dual purpose or combination type
4 dwelling which is also used as a business or commercial
5 establishment and has accommodations for not more than four
6 families, except that a loan which:

7 (1) is to be repaid in 90 days or less;

8 (2) is the result of the sale of a dwelling if title to
9 the dwelling is in name of the seller and the seller has
10 resided in said dwelling for at least one year and the buyer
11 is purchasing said dwelling for his own residence and, as
12 part of the purchase price, executes a second mortgage in
13 favor of the seller;

14 (3) is not subject to the maximum legal rate of interest
15 established by section 201 or section 301 of the act of
16 January 30, 1974 (P.L.13, No.6), referred to as the Loan
17 Interest and Protection Law, by reason of any of the
18 exemptions provided in section 301(f) of said act; or

19 (4) is made under any other law of the Commonwealth of
20 Pennsylvania;

21 shall not be subject to the provision of this act.

22 "Secretary." The Secretary of Banking of Pennsylvania
23 including his deputies, or any other salaried employee of the
24 Department of Banking appointed or designated by the secretary
25 to perform the functions required for the administration or
26 enforcement of this act.

27 Section 3. License ~~required~~ REQUIREMENTS AND EXEMPTIONS. <—

28 (a) On and after the effective date of this act, no person
29 shall engage in the business of making secondary mortgage loans
30 in this Commonwealth except a business corporation organized

1 under the laws of this Commonwealth or any other state, after
2 first obtaining a license from the secretary in accordance with
3 the provisions of this act. A State-chartered or National bank,
4 bank and trust company, savings bank, private bank, savings
5 association OR savings and loan association, ~~or credit union~~ <—
6 having its principal place of business in this Commonwealth
7 shall not be required to be licensed under this act in order to
8 make loans secured by real property under this act. ANY AGENCY <—
9 OR INSTRUMENTALITY OF THE UNITED STATES GOVERNMENT OR A
10 CORPORATION OTHERWISE CREATED BY AN ACT OF THE UNITED STATES
11 CONGRESS WHICH ENGAGES IN THE BUSINESS OF PURCHASING SECONDARY
12 MORTGAGE LOANS SHALL NOT BE REQUIRED TO BE LICENSED UNDER THIS
13 ACT IN ORDER TO PURCHASE SECONDARY MORTGAGE LOANS FROM LICENSEES
14 UNDER THIS ACT. THIS SHALL INCLUDE BUT NOT BE LIMITED TO THE
15 FEDERAL NATIONAL MORTGAGE ASSOCIATION AND THE FEDERAL HOME LOAN
16 MORTGAGE CORPORATION. For the purpose of this act, a person is
17 deemed to be engaged in the secondary mortgage loan business in
18 the Commonwealth if:

19 (1) such person advertises, causes to be advertised,
20 solicits, negotiates, arranges, offers to make or makes more
21 than ~~four~~ TWELVE secondary mortgage loans in a calendar year <—
22 in this Commonwealth, whether directly or by any person
23 acting for his benefit; or

24 (2) such person in the ordinary course of business
25 becomes the subsequent holder of more than ~~four~~ TWELVE <—
26 promissory notes or mortgages, indentures or any other
27 similar instruments or documents received in a calendar year
28 in connection with a secondary mortgage loan.

29 (b) A real estate broker licensed pursuant to the provisions
30 of the law of this Commonwealth or an attorney authorized to

1 practice law in this Commonwealth shall not be required to
2 obtain a license to arrange a secondary mortgage loan in the
3 normal course of the business of a real estate broker or
4 attorney.

5 Section 4. Application for license.

6 (a) An application for a secondary mortgage loan license
7 shall be on a form provided by the secretary. Among other
8 things, the application shall set forth the following:

9 (1) The full name, corporate title and personal
10 residence address of each officer and director of the
11 proposed licensee corporation.

12 (2) Any or all other business entities in which any
13 officer or director holds an equity or creditor interest.

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

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

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

20 (b) The applicant shall have a minimum legal capitalization
21 of \$200,000. At the time of applying for a license under this
22 act, and at all times thereafter, the minimum paid in legal
23 capital shall be \$200,000.

24 (c) If the applicant is a foreign corporation, said
25 corporation shall be authorized to do business in this
26 Commonwealth in accordance with the law of this Commonwealth
27 regulating corporations. Such corporations shall file with the
28 application an irrevocable consent, duly acknowledged, that
29 suits and actions may be commenced against such licensee in the
30 courts of this Commonwealth by the service of process or any

1 pleading upon the secretary in the usual manner provided for
2 service of process and pleadings by the statutes and court rule
3 of this Commonwealth. Said consent shall provide that such
4 service shall be as valid and binding as if service had been
5 made personally upon the licensee in this Commonwealth. In all
6 cases where process or pleadings are served upon the secretary
7 pursuant to the provisions of this section, such process or
8 pleadings shall be served in duplicate, one of which shall be
9 filed in the office of the secretary and the other shall be
10 forwarded by the secretary, by certified or registered mail,
11 return receipt, to the last known principal place of business of
12 the licensee to whom such process or pleadings is directed.

13 Section 5. Annual license fee.

14 An applicant shall pay to the secretary at the time an
15 application is filed an initial license fee of \$500 for the
16 principal place of business and an additional initial license
17 fee of \$50 for each branch office in this Commonwealth. On or
18 before July 1 of each year and thereafter, a licensee shall pay
19 a license renewal fee of \$200 for the principal place of
20 business and an additional license renewal fee of \$25 for each
21 branch office in this Commonwealth. No abatement of any license
22 fee shall be made if the license is issued for a period of less
23 than one year. The secretary shall be entitled to recover any
24 cost of investigation in excess of license or renewal fees from
25 the licensee, or from any person who is not licensed under this
26 act but presumed to be engaged in business contemplated by this
27 act.

28 Section 6. Issuance of license.

29 (a) Within 60 days after an application is received, the
30 secretary shall either issue a license or, for any reason for

1 which he may suspend, revoke or refuse to renew a license as
2 provided for by section 19, refuse to issue a license.

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

9 (c) Each license issued by the secretary shall specify:

10 (1) The name and address of the licensee, the address so
11 specified to be that of the licensee's principal place of
12 business.

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

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

19 Section 7. License duration.

20 A license issued by the secretary shall:

21 (1) Be renewed on June 30 of each year upon payment of
22 the annual renewal fee, and after a determination by the
23 secretary that the licensee is conducting his business in
24 accordance with the provisions of this act. No refund of any
25 portion of the license fee shall be made if the license is
26 voluntarily surrendered to the secretary or suspended or
27 revoked by the secretary prior to its expiration date.

28 (2) Be invalid if the licensee's corporate charter is
29 voided in accordance with the provisions of any law of this
30 Commonwealth or any other State.

1 Section 8. Transfer of license.

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

4 Section 9. Powers conferred on licensees.

5 All secondary mortgage loan licensees shall have power and
6 authority:

7 (1) To make a secondary mortgage loan repayable in
8 installments, and charge, contract for and receive thereon
9 interest at a percentage rate not exceeding 1.45% per month.
10 No interest shall be paid, deducted or received in advance,
11 except that interest from the date of disbursement of funds
12 to the borrower to the first day of the following month shall
13 be permitted in the event the first installment payment is
14 more than 30 days after the date of disbursement. Interest
15 shall not be compounded and shall be computed only on unpaid
16 principal balances. However, the inclusion of earned interest
17 in a new note shall not be considered compounding. For the
18 purpose of computing interest, a month shall be any period of
19 30 consecutive days.

20 (2) To collect fees or premiums for title examination,
21 abstract of title, title insurance, credit reports, surveys,
22 appraisals or other costs or fees actually related to the
23 granting of a secondary mortgage loan, when such fees are
24 actually paid or incurred by the licensee and to collect fees
25 or charges prescribed by law which actually are or will be
26 paid to public officials for determining the existence of or
27 for perfecting or releasing or satisfying any security
28 related to the loan and include these in the principal of the
29 secondary mortgage loan.

30 (3) To collect reasonable attorney's fees, of an

1 attorney licensed to practice in this Commonwealth, upon the
2 execution of the secondary mortgage loan provided that such
3 fees represent actual fees charged the licensee in connection
4 with said mortgage loan and said fees are evidenced by a
5 statement for services rendered addressed to the licensee and
6 include these in the principal of the secondary mortgage
7 loan.

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

13 (5) To provide credit life and credit accident and
14 health insurance. A borrower shall not be compelled to
15 purchase credit life or accident and health insurance as a
16 condition of the granting of a secondary mortgage loan AND <—
17 ALL CONTRACTS UTILIZED SHALL REFLECT A CLEAR DISCLOSURE THAT
18 THE PURCHASE OF CREDIT LIFE OR CREDIT HEALTH INSURANCE IS NOT
19 A PREREQUISITE TO OBTAINING A LOAN; if, however, the borrower
20 elects to obtain credit life or accident and health
21 insurance, or both, he shall consent thereto in writing. If
22 borrowers desire joint life insurance, all such borrowers
23 must consent thereto in writing. Such insurance shall be
24 obtained from an insurance company authorized by the laws of
25 Pennsylvania to conduct business in this Commonwealth. Any
26 benefit or return to the licensee from the sale or provision
27 of such insurance shall not be included in the computation of
28 the maximum charge authorized under this section and shall
29 not be deemed a violation of this act when the insurance is
30 written pursuant to the laws of this Commonwealth governing

1 insurance.

2 (6) To require credit property insurance on security
3 against reasonable risks of loss, damage and destruction. The
4 amount and term of such insurance shall be reasonable in
5 relation to the amount and term of the loan contract and the
6 value of the security. A licensee shall not require property
7 insurance if to the licensee's knowledge, the borrower at the
8 time the loan is made has valid and collectible insurance
9 covering the property to be insured and has furnished a loss
10 payable endorsement sufficient for the protection of the
11 licensee. Such insurance shall be obtained from an insurance
12 company authorized by the laws of Pennsylvania to conduct
13 business in this Commonwealth. Any benefit or return to the
14 licensee from the sale or provision of credit insurance shall
15 not be included in the computation of the maximum charge
16 authorized under section 9 and shall not be deemed a
17 violation of this act when the insurance is written pursuant
18 to the laws of this Commonwealth governing insurance. The
19 premium for any credit insurance may be included in the
20 principal amount of the secondary mortgage loan requested by
21 the borrower. However, such premiums shall be disclosed as a
22 separate item on the face of the principal contract document
23 and the licensee's individual borrower ledger records. No
24 licensee shall grant any secondary mortgage loan on the
25 condition, agreement or understanding that the borrower
26 contract with any specific person or organization for
27 insurance services as agent, broker or underwriter.

28 ~~(7) To collect an origination fee not exceeding 2% of~~ <—
29 ~~the original bona fide principal amount of any loan. This fee~~
30 ~~shall be fully earned at the time the loan is made and at the~~

~~option of the borrower may be included in the principal of
the secondary mortgage loan or may be paid at the time of
closing. No origination fee may be collected on subsequent
advances made pursuant to an open end loan.~~

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

(a) A secondary mortgage loan licensee shall:

(1) Conspicuously display its license at each licensed
place of business.

(2) Maintain at its principal place of business or at a
branch location within the State of Pennsylvania an original
or true 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.

(3) Annually, before May 1, file a report with the secretary 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.

(4) Be subject to an examination by the secretary at least once per calendar year, at which time the secretary 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 may examine the

1 licensee at any time if he has reasonable cause to believe
2 the licensee is violating this act. The cost of any such
3 examination shall be borne by the licensee.

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

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

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

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

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

1 examination by the secretary for at least two years after a
2 secondary mortgage loan has been paid in full. The provisions of
3 this section shall not apply to any instrument, document,
4 account, book or record which is assigned, sold or transferred
5 to another secondary mortgage loan licensee nor shall the two-
6 year requirement apply to an instrument or document which must
7 be returned to the borrower at the time a secondary mortgage
8 loan is paid in full.

9 Section 11. Licensee limitations.

10 A secondary mortgage loan licensee shall not:

11 (1) Transact any business subject to the provisions of
12 this act under any other name except that designated in its
13 license. A licensee who changes its name or place of business
14 shall immediately notify the secretary who shall issue a
15 certificate to the licensee, which shall specify the
16 licensee's new name or address.

17 (2) Charge, contract for, collect or receive charges,
18 fees, premiums, commissions or other considerations in excess
19 of those authorized by the provisions of this act.

20 (3) Assign, sell or transfer a secondary mortgage loan
21 to any person except a licensee or a person excepted from the
22 licensing provisions of this act in accordance with section 3
23 hereof without written permission of the secretary.

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

27 (i) That it is licensed by, or that its business is
28 under the supervision of, the Commonwealth of
29 Pennsylvania or the Department of Banking except that a
30 licensee may advertise that it is "licensed pursuant to

1 the Secondary Mortgage Loan Act," provided, however, that
2 for the purpose of raising capital, no such advertisement
3 shall be permitted if it is to be used in connection with
4 a public solicitation for such funds except as otherwise
5 required by the act of December 5, 1972 (P.L.1280,
6 No.284), known as the "Pennsylvania Securities Act of
7 1972," or regulations promulgated under said acts, to be
8 disclosed in any prospectus.

9 (ii) Any statement or representation which is false,
10 misleading or deceptive.

11 (5) Conduct any business other than any business
12 regulated by the secretary in any place of business licensed
13 pursuant to this act without the prior written approval of
14 the secretary.

15 Section 12. Prepayment.

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

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

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

26 (2) Stamp or write on the face of the loan agreement or
27 promissory note evidencing the borrower's secondary mortgage
28 loan indebtedness "Paid in Full" or "Cancelled", the date
29 paid and, within 30 days, return the loan agreement or
30 promissory note to the borrower.

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

10 Section 13. Loan agreement or promissory note.

11 Any loan agreement or promissory note evidencing a secondary
12 mortgage loan shall be identified by the use of the words
13 "Secondary Mortgage Loan" printed at the top of the loan
14 agreement or promissory note and the statement "This agreement
15 is subject to the provisions of the Secondary Mortgage Loan
16 Act." Any loan agreement or promissory note evidencing a
17 secondary mortgage loan shall provide for the payment of the
18 total amount of the loan in substantially equal payment periods,
19 and installment payment amounts, except that the first
20 installment payment may be due up to one month and 29 days from
21 the date of the loan. When appropriate for the purpose of
22 facilitating payment in accordance with the borrower's
23 intermittent income, a loan agreement or promissory note may
24 provide an installment schedule which reduces or omits payments
25 over any period or periods of time during which period or
26 periods the borrower's income is reduced or suspended, except
27 that no installment shall be more than one and one-half times as
28 much as regular installment payments.

29 Section 14. Prohibited clauses.

30 No writing of any kind executed in connection with a

1 secondary mortgage loan shall contain:

2 (1) An agreement whereby the borrower waives any rights
3 accruing to him under the provisions of this act.

4 (2) An irrevocable wage assignment of or order for the
5 payment of any salary, wages, commissions or any other
6 compensation for services, or any part thereof, earned or to
7 be earned.

8 (3) An agreement to pay any amount other than the unpaid
9 balance of the loan agreement or promissory note or any other
10 charge authorized by this act.

11 Section 15. Open-end loans.

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

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

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

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

27 (2) by multiplying the monthly rate by the applicable
28 portion of the average monthly unpaid principal balance of
29 the account in the billing cycle, in which case the average
30 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 licensee and set forth in the secondary mortgage open-end loan agreement.

(f) A 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

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

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

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

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

<—

1 INCLUDE ON ALL BILLING STATEMENTS PROVIDED IN CONNECTION WITH AN
2 OPEN-END CREDIT LOAN A STATEMENT IN THE LICENSEE RETAINS A
3 SECURITY INTEREST IN THE BORROWER'S REAL PROPERTY WHENEVER SUCH
4 SECURITY INTEREST HAS NOT BEEN RELEASED.

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

7 Section 16. Authority of Secretary of Banking.

8 The secretary shall have authority to:

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

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

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

Section 17. Involuntary liquidation.

The procedure for taking possession of the business and
property of a licensee shall be in accordance with the
provisions of the act of May 15 1933 (P.L.565, No.111), known as
the "Department of Banking Code," as applicable.

Section 18. Surrender of license.

Upon satisfying the secretary that all creditors have been
paid or that other arrangements satisfactory to the creditors
and the secretary have been made, a licensee may surrender its
license to the secretary by delivering its license to the
secretary 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.

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

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

12 Section 20. Scope of act.

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

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

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

21 (3) notwithstanding the place of execution, which are
22 secured by real property located in this Commonwealth.

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

24 With regard to foreclosure, default, right to cure a default
25 and confession of judgment, nothing contained in this act shall
26 be deemed to supersede section 403, 404 or 407 of the act of
27 January 30, 1974 (P.L.13, No.6), referred to as the Loan
28 Interest and Protection Law, which shall apply to all loans made
29 pursuant to this act.

30 Section 22. Penalties.

1 (a) Any person who is not licensed by the secretary or
2 exempted from the licensing requirements in accordance with the
3 provisions of this act and who shall engage in the business of
4 negotiating or making secondary mortgage loans and charge,
5 collect, contract for or receive interest, fees, premiums,
6 charges or other considerations which aggregate in excess of the
7 interest that the lender would otherwise be permitted by law to
8 charge if not licensed under this act on the amount actually
9 loaned or advanced, or on the unpaid principal balances when the
10 contract is payable by stated installments, shall be guilty of a
11 misdemeanor, and upon conviction thereof, shall be sentenced to
12 pay a fine of not less than \$500 or more than \$5,000, and/or
13 undergo imprisonment not less than six months nor more than
14 three years, in the discretion of the court. This subsection
15 shall not apply to real property secured loans made by a
16 licensee under the act of April 8, 1937 (P.L.262, No.66), known
17 as the "Consumer Discount Company Act."

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

1 (c) If a contract is made in good faith in conformity with
2 an interpretation of this act by the appellate courts of the
3 Commonwealth or in compliance with a rule or regulation
4 officially promulgated by the secretary no provision of this
5 section imposing any penalty shall apply, notwithstanding that
6 after such contract is made, such interpretation, rule or
7 regulation is amended, rescinded, or determined by judicial or
8 other authority to be invalid for any reason.

9 (D) THE LIEN GRANTED OR PROVIDED IN CONNECTION WITH A <—
10 SECONDARY MORTGAGE LOAN SHALL NOT BE DEEMED TO CONSTITUTE A SALE
11 OF THE PROPERTY WITH REGARD TO ANY PRIOR EXISTING LIEN, FOR THE
12 PURPOSE OF PERMITTING FORECLOSURE OF OR EXECUTION ON SUCH PRIOR
13 LIEN.

14 Section 23. Preservation of existing powers.

15 Nothing ~~is~~ IN this act shall be construed as restricting the <—
16 powers otherwise conferred by law upon financial institutions,
17 such as State and national banks, State and Federal savings and
18 loan associations, savings banks and insurance companies, to
19 engage in the secondary mortgage business as defined in section
20 2, and no such financial institution, in exercising any power
21 otherwise so conferred upon it, shall be subject to any
22 provision of this act. A State-chartered or national bank, bank
23 and trust company, savings bank or savings and loan association
24 located in this State shall have all the powers of a licensee
25 under this act but shall not be subject to the license
26 requirement or any other provision of this act relating to the
27 requirements imposed on licensees.

28 SECTION 24. EXCLUSIONS FROM ACT. <—

29 NO PROVISIONS OF THIS ACT SHALL APPLY TO FEDERALLY-CHARTERED
30 OR STATE-CHARTERED CREDIT UNIONS.

1 Section ~~24~~ 25. Interpretation of act.

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2 The provisions of this act are severable, and if any of its
3 provisions shall be held unconstitutional, the decision of the
4 court shall not affect or impair any of the remaining provisions
5 of this act. It is hereby declared to be the legislative intent
6 that this act would have been adopted had such unconstitutional
7 provisions not been included. Section headings shall not be
8 taken to govern or limit the scope of sections of this act. The
9 singular shall include the plural, and the masculine shall
10 include the feminine or neuter.

11 Section ~~25~~ 26. Preservation of existing contracts.

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12 Nothing contained in this act shall be construed to impair or
13 affect an obligation of a borrower for a secondary mortgage loan
14 executed prior to the effective date of this act.

15 Section ~~26~~ 27. Effective date.

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16 This act shall become effective in 90 days.