
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 31

Session of
1989

INTRODUCED BY HOLL, JANUARY 23, 1989

REFERRED TO BANKING AND INSURANCE, JANUARY 23, 1989

AN ACT

1 Providing for the regulation and licensing of mortgage bankers
2 and mortgage brokers; imposing additional powers and duties
3 on the Department of Banking; and providing penalties.

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

4 Section 1. Short title.

5 This act shall be known and may be cited as the Mortgage
6 Bankers and Brokers Act.

7 Section 2. Definitions.

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

11 "Advance fee." Any funds requested by or to be paid to a
12 mortgage broker in advance of or during the processing of a
13 mortgage loan application, excluding those fees paid by an
14 applicant borrower directly to a credit agency reporting bureau,
15 title company or real estate appraiser.

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

17 "Licensee." A person who is licensed under this act.

18 "Mortgage banker." A person who directly or indirectly
19 originates and closes mortgage loans with its own funds in the
20 primary market.

21 "Mortgage broker." A person who directly or indirectly
22 negotiates or places mortgage loans for others in the primary
23 market.

24 "Mortgage loan." A loan which is secured by a first mortgage
25 or other similar instrument or document which creates a first
26 lien on real property, which real property is used as a one-
27 family to four-family dwelling, a portion of which may be used
28 for nonresidential purposes.

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

1 partnership association, business corporation, nonprofit
2 corporation, or any other group of individuals, however
3 organized.

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

6 Section 3. License requirements and exemptions.

7 (a) License required.--On and after the effective date of
8 this act, no person shall act as a mortgage banker or mortgage
9 broker in this Commonwealth without a license as provided for in
10 this act, provided, however, that any person licensed as a
11 mortgage banker may also act as a mortgage broker without a
12 separate license. A person licensed as a mortgage broker may
13 only perform the services of a mortgage broker as defined in
14 section 2.

15 (b) Exceptions.--The following persons shall not be required
16 to be licensed under this act in order to conduct the activities
17 of a mortgage banker or mortgage broker but shall be subject to
18 the provisions of section 9(a)(4) and, in addition, any other
19 provisions of this act as specifically provided in this section:

20 (1) A State-chartered bank, bank and trust company,
21 savings bank, private bank or national bank, a State or
22 federally chartered savings and loan association, a federally
23 chartered savings bank or a State or federally chartered
24 credit union.

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

29 (3) A person licensed pursuant to the provisions of the
30 act of February 19, 1980 (P.L.15, No.9), known as the Real

1 Estate Licensing and Registration Act, who is principally
2 engaged in a third-party real estate brokerage business, but
3 only to the extent that he provides information, verbal or
4 written, to or negotiates or places a mortgage loan for a
5 buyer of real estate and is not compensated by the buyer or
6 any other person for providing such information or
7 negotiating or placing such mortgage loan. If he is
8 compensated for providing such information or negotiating or
9 placing such mortgage loan, he shall be subject to the
10 provisions of sections 8, 10 and 13(b), excluding section
11 8(a)(1).

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

15 (5) A person who either originates or negotiates less
16 than 12 mortgage loans in a calendar year in this
17 Commonwealth.

18 (6) Builders, when obtaining mortgages for their own
19 construction or for the sale of their own construction.

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

27 (8) The Pennsylvania Housing Finance Agency.

28 (9) A licensee under the act of April 8, 1937 (P.L.262,
29 No.66), known as the Consumer Discount Company Act, except
30 that any such licensee who makes a mortgage loan other than

1 under the provisions of that act shall be subject to the
2 provisions of sections 4(b)(2) and (3), 8, 10 and 13(b) of
3 this act, excluding section 8(a)(1).

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

14 (i) be subject to the provisions of sections 8,
15 9(a)(3), 10 and 13(b) of this act excluding section
16 8(a)(1); and

17 (ii) deliver to the department annually copies of
18 financial reports made to all supervisory agencies.

19 (11) Employees of a licensee or excepted persons acting
20 for their employers.

21 Section 4. Application for license.

22 (a) Contents.--An application for a license to act as a
23 mortgage banker or mortgage broker shall be on such forms as may
24 be prescribed and provided by the department. Each application
25 shall include the address or addresses where business is to be
26 conducted, the full name, official title and business address of
27 each director and principal officer of the business and any
28 other information that may be required by the department.

29 (b) Mortgage banker's license.--The department shall issue a
30 mortgage banker's license applied for pursuant to this act if

1 the applicant establishes that he has met the following
2 conditions:

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

5 (i) Federal National Mortgage Association.

6 (ii) Federal Home Loan Mortgage Corporation.

7 (iii) Federal Housing Administration.

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

12 (3) That he has a minimum tangible net worth of \$250,000
13 at the time of application and will, at all times thereafter,
14 maintain such minimum net worth, provided, however, that
15 those applicants who were in business prior to January 1,
16 1987, may be licensed with a minimum tangible net worth of
17 \$100,000 if, in the opinion of the department, the applicant
18 has established that it has an otherwise adequate financial
19 structure and operating history.

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

24 (c) Mortgage broker's license.--The department shall issue a
25 mortgage broker's license applied for pursuant to this act if
26 the applicant establishes that he has met the following
27 conditions:

28 (1) That he is eligible to and will obtain a bond in the
29 amount of \$100,000, in a form prescribed by the regulations
30 of the department, prior to the issuance of the license, from

1 a surety company authorized to do business in this
2 Commonwealth, which bond shall run to the Commonwealth for
3 the benefit of any person injured by the wrongful act,
4 default or misrepresentation of the mortgage broker. No bond
5 shall comply with the requirements of this section unless it
6 contains a provision that it shall not be canceled for any
7 cause unless notice of intention to cancel is given to the
8 department at least 30 days before the day upon which
9 cancellation shall take effect.

10 (2) In lieu of the bond required by subsection (c)(1),
11 the applicant may deposit, with the department or with the
12 State Treasurer, bonds, notes, debentures or other
13 obligations of the United States or any agency or
14 instrumentality thereof if guaranteed by the United States,
15 or such bonds, notes, debentures or other obligations of the
16 Commonwealth or of a political subdivision thereof having a
17 market value of at least \$100,000; and it shall be the
18 obligation of the licensee to see to it that the securities
19 on deposit shall have a market value of at least \$100,000 at
20 all times. The depositor shall be entitled to receive all
21 interest and dividends thereon, and shall have the right,
22 with the approval of the department, to substitute other
23 securities for those deposited. Should the securities on
24 deposit at any time have a market value of less than
25 \$100,000, the department may revoke the license as
26 hereinafter provided. All securities deposited shall be held
27 under the same conditions and subject to the same right of
28 execution as the bond provided for in subsection (c)(1).

29 (3) Mortgage brokers who can demonstrate to the
30 satisfaction of the department that they do not accept

1 advance fees shall be exempt from the requirement of this
2 subsection.

3 (d) Foreign corporation.--If the applicant is a foreign
4 corporation, that corporation shall be authorized to do business
5 in this Commonwealth in accordance with the law of this
6 Commonwealth regulating corporations and shall maintain at least
7 one office in this Commonwealth which is the office that shall
8 be licensed as the principal place of business for the purposes
9 of this act. The corporation shall file with the application an
10 irrevocable consent, duly acknowledged, that suits and actions
11 may be commenced against that licensee in the courts of this
12 Commonwealth by the service of process of any pleading upon the
13 department in the usual manner provided for service of process
14 and pleadings by the statutes and court rules of this
15 Commonwealth. The consent shall provide that this service shall
16 be as valid and binding as if service had been made personally
17 upon the licensee in this Commonwealth. In all cases where
18 process or pleadings are served upon the department pursuant to
19 the provisions of this section, such process or pleadings shall
20 be served in triplicate; one copy shall be filed in the Office
21 of the Secretary of Banking and the others shall be forwarded by
22 the department, by certified or registered mail, return receipt
23 requested, to the last known principal place of business in the
24 Commonwealth and to the corporation's principal place of
25 business.

26 Section 5. Annual license fee.

27 An applicant shall pay to the department at the time an
28 application is filed an initial license fee of \$500 for the
29 principal place of business and an additional license fee of \$50
30 for each branch office in this Commonwealth. On or before July 1

1 of each year and thereafter, a licensee shall pay a license
2 renewal fee of \$200 for the principal place of business and an
3 additional license renewal fee of \$25 for each branch office in
4 this Commonwealth. No abatement of any license fee shall be made
5 if the license is issued for a period of less than one year. The
6 department shall be entitled to recover any cost of
7 investigation in excess of license or renewal fees from the
8 licensee or from any person who is not licensed under this act
9 but who is presumed to be engaged in business contemplated by
10 this act.

11 Section 6. Issuance of license.

12 (a) Time limit.--Within 60 days after an application is
13 received, the department shall either issue a license or, for
14 any reason for which the department may suspend, revoke or
15 refuse to renew a license as provided for by section 12, refuse
16 to issue a license.

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

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

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

29 (2) The licensee's reference number, which may remain
30 the same from year to year despite variations in annual

1 license numbers which may result from the renewal of licenses
2 by mechanical techniques.

3 (3) Such other information as the department shall
4 require to carry out the purposes of this act.

5 Section 7. License duration.

6 A license issued by the department shall:

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

15 (2) Be invalid if the mortgage banker's corporate
16 charter is voided in accordance with the provisions of any
17 law of this Commonwealth or any other state.

18 (3) Not be assignable by operation of law or otherwise
19 without the written consent of the department.

20 Section 8. Licensee requirements.

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

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

24 (2) Maintain, at its principal place of business within
25 this Commonwealth, or at such place within or outside this
26 Commonwealth, if agreed to by the Secretary of Banking,
27 either the original or a copy of such books, accounts,
28 records and documents, or electronic or other similar access
29 thereto, of the business conducted under the license as may
30 be prescribed by the department to enable it to determine

1 whether the business of the licensee is being conducted in
2 accordance with the provisions of this act and the orders,
3 rules and regulations issued under this act.

4 (3) Annually, before May 1, file a report with the
5 department which shall set forth such information as the
6 department shall require concerning the business conducted as
7 a licensee during the preceding calendar year. The report
8 shall be in writing, under oath, and on a form provided by
9 the department.

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

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

26 (6) Comply with the provisions of the act of December
27 23, 1983 (P.L.385, No.91), entitled "An act amending the act
28 of December 3, 1959 (P.L.1688, No.621), entitled, as amended,
29 'An act to promote the health, safety and welfare of the
30 people of the Commonwealth by broadening the market for

housing for persons and families of low and moderate income and alleviating shortages thereof, and by assisting in the provision of housing for elderly persons through the creation of the Pennsylvania Housing Finance Agency as a public corporation and government instrumentality; providing for the organization, membership and administration of the agency, prescribing its general powers and duties and the manner in which its funds are kept and audited, empowering the agency to make housing loans to qualified mortgagors upon the security of insured and uninsured mortgages, defining qualified mortgagors and providing for priorities among tenants in certain instances, prescribing interest rates and other terms of housing loans, permitting the agency to acquire real or personal property, permitting the agency to make agreements with financial institutions and Federal agencies, providing for the purchase by persons of low and moderate income of housing units, and approving the sale of housing units, permitting the agency to sell housing loans, providing for the promulgation of regulations and forms by the agency, prescribing penalties for furnishing false information, empowering the agency to borrow money upon its own credit by the issuance and sale of bonds and notes and by giving security therefor, permitting the refunding, redemption and purchase of such obligations by the agency, prescribing remedies of holders of such bonds and notes, exempting bonds and notes of the agency, the income therefrom, and the income and revenues of the agency from taxation, except transfer, death and gift taxes; making such bonds and notes legal investments for certain purposes; and indicating how the act shall become effective,' providing for

1 homeowner's emergency assistance."

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

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

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

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

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

12 Section 9. Licensee limitations.

13 a) Prohibitions.--A licensee shall not:

14 (1) Transact any business subject to the provisions of
15 this act under any other name except those designated in its
16 license. A licensee that changes its name or place or places
17 of business shall immediately notify the department, which
18 shall issue a certificate, if appropriate, to the licensee
19 which shall specify the licensee's new name or address.

20 (2) Conduct any business other than any business
21 regulated by the department in any place of business licensed
22 pursuant to this act without at least 90 days prior written
23 notification to the department.

24 (3) Disburse the proceeds of a mortgage loan in any form
25 other than cash, electronic fund transfer, certified check or
26 cashier's check.

27 (4) Pay a finder's fee, service fee or any other
28 compensation to any person in connection with any transaction
29 if that person is receiving compensation from any other
30 person for any services in connection with the same

1 transaction or the real estate transfer leading to such
2 transaction.

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

11 Section 10. Authority of department.

12 The department shall have the authority to:

13 (1) Issue rules and regulations and orders as may be
14 necessary for the proper conduct of the business of a
15 mortgage banker or a mortgage broker and for the enforcement
16 of this act.

17 (2) Examine any instrument, document, account, book,
18 record or file of a licensee or any other person, or make
19 such other investigation as may be necessary to administer
20 the provisions of this act.

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

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

6 Section 11. Surrender of license.

7 Upon satisfying the department that all creditors have been
8 paid or that other arrangements satisfactory to the creditors
9 and the department have been made, a licensee shall surrender
10 its license to the department by delivering its license to the
11 department with written notice that the license is being
12 voluntarily surrendered, but such an action by a licensee shall
13 not affect the licensee's civil or criminal liability for acts
14 committed.

15 Section 12. Suspension, revocation or refusal.

16 (a) Departmental action.--The department may suspend, revoke
17 or refuse to renew any license issued pursuant to this act after
18 giving 30 days' written notice forwarded to the licensee's
19 principal place of business, by registered or certified mail,
20 return receipt requested, stating the contemplated action and
21 the reason therefor, if the department shall find, after the
22 licensee has had an opportunity to be heard, that the licensee
23 has:

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

25 (2) Failed to comply with or violated any provision of
26 this act or any rule, regulation or order promulgated by the
27 department pursuant to this act.

28 (3) If licensed under section 4(c)(3), accepts an
29 advance fee.

30 The hearing and notice provisions of this section shall not

1 apply if the licensee's corporate charter is voided in
2 accordance with the provisions of any law of this or any other
3 state, in which event the department may suspend or revoke the
4 license.

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

12 Section 13. Penalties.

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

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

27 (c) Violations by licensees.--Any person licensed under the
28 provisions of this act or any director, officer, employee or
29 agent of a licensee who shall violate the provisions of this act
30 or shall direct or consent to such violations shall be subject

1 to a fine levied by the department of up to \$2,000 for each
2 offense.

3 Section 14. Scope of act.

4 The provisions of this act shall apply to any mortgage loan
5 which is:

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

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

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

12 Section 15. Effective date.

13 This act shall take effect in 180 days.