

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 339 Session of 1989

INTRODUCED BY LEMMOND, LEWIS, HOPPER, PECORA, HELFRICK, SCANLON,
HESS AND HOLL, JANUARY 30, 1989

REFERRED TO BANKING AND INSURANCE, JANUARY 30, 1989

AN ACT

1 Amending the act of December 12, 1980 (P.L.1179, No.219),
2 entitled "An act to define and regulate secondary mortgage
3 loans and providing penalties," defining and regulating a
4 secondary mortgage loan broker; further providing for record
5 retention, processing and the licensing of contiguous State
6 offices; providing for loan closings; and further providing
7 for the authority of the Secretary of Banking.

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

10 Section 1. Section 2 of the act of December 12, 1980
11 (P.L.1179, No.219), known as the Secondary Mortgage Loan Act, is
12 amended by adding definitions to read:

13 Section 2. Definitions.

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

17 "Advance fee." Any funds requested by or to be paid to a
18 secondary mortgage loan broker in advance of or during the
19 processing of a secondary mortgage loan application.

20 * * *

1 "Secondary mortgage loan broker." A person who in the
2 ordinary course of business, for a fee, directly or indirectly
3 negotiates or arranges for others a secondary mortgage loan.

4 * * *

5 Section 2. Section 3 of the act, amended December 17, 1986
6 (P.L.1696, No.203), is amended and the section is amended by
7 adding subsections to read:

8 Section 3. License requirements and exemptions.

9 (a) [On and after the effective date of this act, no]

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

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

20 (3) A State-chartered or National bank, bank and trust
21 company, savings bank, private bank, savings association or
22 savings and loan association, having its principal place of
23 business in this Commonwealth, or an individual making loans
24 to family members, shall not be required to be licensed under
25 this act in order to make loans secured by real property
26 under this act.

27 (4) Any agency or instrumentality of the United States
28 Government or a corporation otherwise created by an act of
29 the United States Congress which engages in the business of
30 purchasing secondary mortgage loans shall not be required to

1 be licensed under this act in order to purchase secondary
2 mortgage loans from licensees under this act. This shall
3 include but not be limited to the Federal National Mortgage
4 Association and the Federal Home Loan Mortgage Corporation.

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

8 [(1) such person, his subsidiary or affiliate,]

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

17 [(2) such person, his subsidiary or affiliate,]

18 (ii) such person in the ordinary course of business
19 becomes the subsequent holder of more than two promissory
20 notes or mortgages, indentures or any other similar
21 instruments or documents received in a calendar year in
22 connection with a secondary mortgage loan.

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

29 (c) A secondary mortgage loan broker who can demonstrate to
30 the satisfaction of the secretary that he does not accept

1 advance fees shall be exempt from the capital requirement of
2 section 4(b).

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

8 Section 3. Section 4(a) and (b) of the act are amended to
9 read:

10 Section 4. Application for license.

11 (a) An application for a secondary mortgage loan license or
12 a secondary mortgage loan broker license shall be on a form
13 provided by the secretary. Among other things, the application
14 shall set forth the following:

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

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

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

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

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

(b) The applicant for a secondary mortgage loan 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.

* * *

Section 4. The introductory sentence of section 9 of the act is amended and the section is amended by adding a subsection to read:

Section 9. Powers conferred on licensees.

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

* * *

(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 5. Section 10(a)(2) and (b) of the act are amended and the section is amended by adding subsections to read:

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

4 (a) A secondary mortgage loan licensee shall:

5 * * *

6 (2) Maintain at its principal place of business [or] in
7 this Commonwealth, at a branch location or at such place
8 within [the State of Pennsylvania an] or outside this
9 Commonwealth, if agreed to by the secretary, either the
10 original or [true] a copy of the following instruments,
11 documents, accounts, books and records:

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

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

19 (iii) Credit life and accident and health and
20 property insurance policy or a certificate of insurance
21 where such insurance is obtained in accordance with this
22 act.

23 (iv) Appraisal or search, where utilized.

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

28 (vi) Individual file in which the borrower's
29 application for a loan and any correspondence, including
30 collection letters, memorandums, notes or any other

1 written information pertaining to the borrower's account,
2 shall be kept.

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

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

15 * * *

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

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

19 (2) Annually, before May 1, file with the secretary a
20 report which shall set forth such information as the
21 secretary shall require concerning the business conducted as
22 a licensee during the preceding calendar year. The report
23 shall be in writing, under oath and on a form provided by the
24 secretary.

25 (3) Be subject to an examination by the secretary at
26 least once every two calendar years, at which time the
27 secretary shall have free access, during regular business
28 hours, to the licensee's place or places of business in this
29 Commonwealth and to all instruments, documents, accounts,
30 books and records which pertain to the licensee's secondary

1 mortgage loan broker business. The secretary may examine the
2 licensee's place of business at any time if the secretary
3 deems such action necessary or desirable. The cost of any
4 examination shall be borne by the licensee.

5 [(b)] (c) The licensee's accounting records must be
6 constructed and maintained in compliance with generally accepted
7 accounting principles and all of the aforementioned instruments,
8 documents, accounts, books and records shall be kept separate
9 and apart from the records of any other business conducted by
10 the licensee and shall be preserved and kept available for
11 investigation or examination by the secretary for at least two
12 years after a secondary mortgage loan has been paid in full. The
13 provisions of this section shall not apply to any instrument,
14 document, account, book or record which is assigned, sold or
15 transferred to another secondary mortgage loan licensee nor
16 shall the two-year requirement apply to an instrument or
17 document which must be returned to the borrower at the time a
18 secondary mortgage loan is paid in full.

19 (d) If copies of instruments, documents, accounts, books or
20 records are maintained under subsection (a)(2), they may be
21 photostatic, microfilm or electronic copies or copies provided
22 in some other manner approved by the secretary, as long as
23 access to information required by the secretary exists
24 electronically at all times within this Commonwealth.

25 Section 6. The introductory sentence and paragraph (6) of
26 section 11 of the act, added December 17, 1986 (P.L.1696,
27 No.203), is amended to read:

28 Section 11. Licensee limitations.

29 A secondary mortgage loan licensee and a secondary mortgage
30 loan broker licensee shall not:

1 * * *

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

13 Section 7. Section 16(1) of the act is amended to read:

14 Section 16. Authority of Secretary of Banking.

15 The secretary shall have authority to:

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

22 * * *

23 Section 8. Section 17 of the act is repealed.

24 Section 9. Section 20 of the act is amended to read:

25 Section 20. Scope of act.

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

30 (1) is negotiated, offered, or otherwise transacted

1 within this Commonwealth, in whole or in part, whether by the
2 ultimate lender or any other person;

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

4 (3) notwithstanding the place of execution, [which are]
5 is secured by real property located in this Commonwealth.

6 (b) Notwithstanding subsection (a), the secretary may
7 license a branch office in a state contiguous to Pennsylvania,
8 provided that the licensee maintains a principal place of
9 business in this Commonwealth which is licensed under the
10 provisions of this act.

11 (c) Nothing contained in this act shall prohibit any
12 licensee from closing any loans made under the provisions of
13 this act in the offices of attorneys-at-law licensed by and
14 located in this Commonwealth or of title insurance companies or
15 agencies licensed by and located in this Commonwealth, if an
16 employee of the licensee is present at the closing of any loan
17 which is closed pursuant to the provisions of this subsection.

18 Section 10. This act shall take effect immediately.