

MORTGAGE BANKERS AND BROKERS ACT - OMNIBUS AMENDMENTS

Act of Dec. 21, 1998, P.L. 987, No. 131

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No. 1998-131

SB 94

AN ACT

Amending the act of December 22, 1989 (P.L.687, No.90), entitled "An act providing for the regulation and licensing of mortgage bankers and mortgage brokers; imposing additional powers and duties on the Department of Banking and the State Real Estate Commission; and providing penalties," further providing for definitions, for loan correspondents, for limited mortgage broker, for wholesale table funders, for license applications, requirements, exemptions, duration, fees, limitations, suspensions or revocations and for enforcement and penalties.

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

Section 1. The definition of "advance fee" in section 2 of the act of December 22, 1989 (P.L.687, No.90), known as the Mortgage Bankers and Brokers Act, is 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 the meanings given to them in this section unless the context clearly indicates otherwise:

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

"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 first mortgage loan business which falls under the scope of this act.**

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"First mortgage loan business." **A person is deemed to be engaged in the first mortgage loan business in this Commonwealth if that person advertises, causes to be advertised, solicits, negotiates or arranges in the ordinary course of business, offers to make or makes more than two first mortgage loans in a calendar year in this Commonwealth, whether directly or by any person acting for his benefit.**

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"Limited mortgage broker." **An individual who directly or indirectly negotiates or places nonpurchase money mortgage loans for others in the primary market for consideration.**

"Loan correspondent." **A person who, in the regular course of business, directly or indirectly originates and closes loans in his own name utilizing funds provided by a wholesale table funder and simultaneously assigns the loans to the wholesale table funder. A loan correspondent may close a mortgage loan utilizing other funding sources but only in an emergency circumstance where wholesale table funding is not available.**

"Lock-in agreement." An agreement between a mortgage banker or loan correspondent and borrower whereby the licensee guarantees until a specified date the availability of a specified rate of interest or specified formula by which the rate of interest and/or a specific number of discount points will be determined, provided the loan is approved and closed by the specified date. If a specified date is not determinable, the licensee may fulfill the requirement of this provision by setting forth with specificity the method by which the duration of the lock-in period will be determined.

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"Nonpurchase money mortgage loan." A mortgage loan as defined in this act the proceeds of which are not used to finance the purchase of the real property securing the mortgage loan.

"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.

"Secretary." The Secretary of Banking of the Commonwealth or his designee.

"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 mortgage loan.

"Tangible net worth." Net worth less the following assets:

- (1) That portion of any assets pledged to secure obligations of any person or entity other than that of the applicant.
- (2) Any asset, except construction loans receivables secured by first mortgages from related companies, due from officers or stockholders of the applicant or related companies in which the applicant's officers or stockholders have an interest.
- (3) That portion of the value of any marketable security, listed or unlisted, not shown at lower of cost or market, except for any shares of Federal National Mortgage Association stock required to be held under a servicing agreement, which should be carried at cost.
- (4) Any amount in excess of the lower of the cost or market value of mortgages in foreclosures, construction loans or foreclosed property acquired by the applicant through foreclosure.
- (5) Any investment shown on the balance sheet in the applicant's joint ventures, subsidiaries, affiliates or related companies which is greater than the value of the assets at equity.
- (6) Goodwill.
- (7) The value placed on insurance renewals or property management contract renewals or other similar intangibles of the applicant.
- (8) Organization costs of the applicant.
- (9) The value of any servicing contracts held by the applicant not determined in accordance with American Institute of Certified Public Accountants Statement of Position 76-2, dated August 25, 1976, or subsequent revision thereto.
- (10) Any real estate held for investment where development will not start within two years from the date of its initial acquisition.
- (11) Any leasehold improvements not being amortized over the lesser of the expected life of the asset or the remaining term of the lease.

(12) Any commitment fees paid or collected which are not recoverable through the closing or selling of loans.

"Wholesale table funder." A licensed mortgage banker or an entity exempt pursuant to section 3(b)(1), (10) or (12) who, in the regular course of business, provides the funding for the closing of mortgage loans through loan correspondents and who by assignment obtains title to such mortgage loans.

Section 2. Sections 3, 4, 5, 6, 7, 8(a), 9(a), 10(a), 11(d), 13(a), 14(a) and (b), 15 and 18 of the act are amended to read:
Section 3. License requirements and exemptions.

(a) License required.--On and after the effective date of this act, no person shall act as a mortgage banker [or], **loan correspondent**, mortgage broker or **limited mortgage broker** in this Commonwealth without a license as provided for in this act, provided, however, that any person licensed as a mortgage banker may also act as a **loan correspondent** or mortgage broker and any **person licensed as a loan correspondent may also act as a mortgage broker** without a separate license. A person licensed as a mortgage broker may only perform the services of a mortgage broker as defined in section 2.

(b) Exceptions.--The following persons shall not be required to be licensed under this act in order to conduct the [activities of a mortgage banker or mortgage broker] **first mortgage loan business** but shall be subject to those 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 federally chartered credit union.

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

(3) A person licensed pursuant to the provisions of the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, who is principally engaged in a third-party real estate brokerage business, but only to the extent that he provides information, verbal or written, to or negotiates or places a mortgage loan for a buyer of real estate and is not compensated by the buyer or any other person for providing such information or negotiating or placing such mortgage loan. If he is compensated for providing such information or negotiating or placing such mortgage loan, he shall be subject to the provisions of sections 8, 10, 11 and 14(b), excluding section 8(a)(1).

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

(5) A person who either originates or negotiates less than [12] **three** mortgage loans in a calendar year in this Commonwealth **unless he is otherwise deemed to be engaged in the first mortgage loan business.**

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

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

(8) The Pennsylvania Housing Finance Agency.

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

any such licensee who makes a mortgage loan other than under the provisions of that act shall be subject to the provisions of sections 4(b)(2) and (3), 8, 10 and 14(b) of this act, excluding section 8(a)(1).

(10) Except for licensees described in paragraph (9), subsidiaries and affiliates of the following institutions: [Pennsylvania] 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, except that such subsidiaries and affiliates of institutions enumerated in this paragraph shall:

- (i) be subject to the provisions of sections 8, 9(a)(3), 10 and 14(b), excluding section 8(a)(1); [and]
- (ii) deliver **as required** to the department annually copies of financial reports made to all supervisory agencies[.]; **and**
- (iii) **be registered with the department.**

(11) Employees of a **mortgage banker, mortgage broker and loan correspondent** licensee or excepted persons acting for their employers.

(12) An insurance company, association or exchange authorized to transact business in this Commonwealth under the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, and any subsidiaries and affiliates thereof, except that such subsidiaries and affiliates shall:

- (i) be subject to the provisions of sections 8, 9(a)(3), 10 and 14(b), excluding section 8(a)(1); [and]
- (ii) deliver **as required** to the department annually copies of financial reports made to all supervisory agencies[.]; **and**
- (iii) **be registered with the department.**

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

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

(c) Loans for business or commercial purposes.--This act shall not apply to mortgage loans made for business or commercial purposes.

Section 4. Application for license.

(a) Contents.--An application for a license to act as a mortgage banker [or], **loan correspondent, mortgage broker or limited mortgage broker** shall be on such forms as may be prescribed and provided by the department. Each application shall include the address or addresses where business is to be conducted, the full name, official title and business address of each director and principal officer of the business and any other information that may be required by the department. **An applicant shall demonstrate to the department that policies and procedures have been developed to receive and process customer inquiries and grievances promptly and fairly.**

(b) Mortgage banker's license.--The department shall issue a mortgage banker's license applied for pursuant to this act if the applicant establishes that he has met the following conditions:

- (1) That he is approved by or meets the current criteria for approval of at least one of the following:
 - (i) Federal National Mortgage Association.
 - (ii) Federal Home Loan Mortgage Corporation.
 - (iii) Federal Housing Administration.

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

(3) That he has a minimum tangible net worth of \$250,000 at the time of application and will, at all times thereafter, maintain such minimum net worth, provided, however, that those applicants who were in business prior to [January 1, 1987] **June 20, 1990**, may be licensed with a minimum tangible net worth of \$100,000 if, in the opinion of the department, the applicant has established that it has an otherwise adequate financial structure and operating history.

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

(b.1) Loan correspondent's license.--

(1) The department shall issue a loan correspondent's license applied for pursuant to this act if the applicant establishes that he has met the following conditions:

(i) That he is eligible to and will obtain and maintain a bond in the amount of \$100,000, in a form acceptable to the department, prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth. The bond shall run to the Commonwealth of Pennsylvania and shall be for the use of the Commonwealth and any person or persons who obtain a judgment against the loan correspondent for failure to carry out the terms of any provision for which advance fees are paid. No bond shall comply with the requirements of this section unless it contains a provision that it shall not be canceled for any cause unless notice of intention to cancel is given to the department at least 30 days before the day upon which cancellation shall take effect.

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

(iii) Notwithstanding subparagraph (ii), an applicant who was in the business as a mortgage banker, mortgage broker or otherwise authorized to engage in the first mortgage loan business by the department prior to the effective date of this section who files an application within 90 days after the effective date of this section may be licensed for one year with a minimum tangible net worth of \$50,000. Thereafter, for a period of one year, the applicant may continue to be licensed with a minimum tangible net worth of \$75,000. Following that period, the applicant may continue to be licensed with a minimum tangible net worth of \$100,000.

(c) Mortgage broker's license.--

(1) The department shall issue a mortgage broker's license applied for pursuant to this act if the applicant establishes that [he has met the following conditions:

(1) That] he is eligible to and will obtain **and maintain** a bond in the amount of \$100,000, in a form [prescribed by the regulations of] **acceptable to** the department, prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth[, which bond shall run to the Commonwealth for the benefit of any person injured by the wrongful act, default or misrepresentation of the mortgage broker]. **The bond shall run to the Commonwealth of Pennsylvania and shall be for the use of the Commonwealth and any person or persons against the mortgage broker for failure to carry out the terms of any provision for which advance fees are paid. If**

such person or persons shall be so aggrieved, he may upon recovering judgment against such licensee issue execution under such judgment and maintain an action upon the bond of the licensee in any court having jurisdiction for the amount claimed plus costs, provided the department assents thereto. No bond shall comply with the requirements of this section unless it contains a provision that it shall not be canceled for any cause unless notice of intention to cancel is given to the department at least 30 days before the day upon which cancellation shall take effect.

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

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

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

(d) Foreign corporation.--If the applicant is a foreign corporation, that corporation shall be authorized to do business in this Commonwealth in accordance with the law of this Commonwealth regulating corporations 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. **A foreign corporation which will act only in the capacity of a wholesale table funder shall be exempt from the requirement that it maintain at least one office in this Commonwealth.** The corporation shall file with the application an irrevocable consent, duly acknowledged, that suits and actions may be commenced against that licensee in the courts of this Commonwealth by the service of process of any pleading upon the department in the usual manner provided for service of process and pleadings by the statutes and court rules of this Commonwealth. The consent shall provide that this service shall be as valid and binding as if service had been made personally upon the licensee in this Commonwealth. In all cases where process or pleadings are served upon the department pursuant to the provisions of this section, such process or pleadings shall be served in triplicate; one copy shall be filed in the Office of the Secretary of Banking and the others shall be forwarded by the department, by certified or registered mail, return receipt requested, to the last known principal place of business

in the Commonwealth and to the corporation's principal place of business.

(e) **Education.**--To maintain a mortgage banker's, a loan correspondent's or a mortgage broker's license, the applicant or licensee shall demonstrate to the satisfaction of the secretary that at least one person from each licensed office has attended a minimum of six hours of such continuing education each year. To maintain a limited mortgage broker's license the licensee shall demonstrate to the satisfaction of the secretary that he has attended at least two hours of continuing education each year. The secretary shall delineate the requirements for such continuing education by regulation within three years of the effective date of this act. The secretary may review and approve continuing education programs to satisfy the continuing education requirement.

Section 5. Annual license fee.

[An] (a) **General rule.**--A mortgage banker, mortgage broker or applicant shall pay to the department at the time an application is filed an initial license fee [of \$500] for the principal place of business and an additional license fee [of \$50] for each branch office [in this Commonwealth.] **as provided for in section 603-A of the act of April 9, 1929 (P.L.177, No.175) , known as The Administrative Code of 1929.** 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.] **as provided for in section 603-A of The Administrative Code of 1929.** An applicant for a license to operate as a loan correspondent shall pay the department the same fee for the initial license for principal place of business, each branch office and annual license renewal as provided for mortgage bankers licensed under section 603-A of The Administrative Code of 1929. An applicant for a license to operate as a limited mortgage broker shall pay to the department at the time an application is filed an initial license fee of \$250. On or before July 1 of each year thereafter, a limited mortgage broker licensee shall pay a renewal fee of \$200.

(b) **Recovery of costs.**--No abatement of any license fee shall be made if the license is issued for a period of less than one year. The department shall be entitled to recover any cost of investigation in excess of license or renewal fees from the licensee or from any person who is not licensed under this act but who is presumed to be engaged in business contemplated by this act.

Section 6. Issuance of license.

(a) **Time limit.**--Within 60 days after [an] **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 13, refuse to issue a license. **Upon receipt of an application for license, the department shall conduct such investigation as it deems necessary to determine that the applicant and its officers, directors and principals are of good character and ethical reputation.**

(b) **Appeal of denial.**--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 Commonwealth Court. 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) **Contents of license.**--Each license issued by the 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 **or, for a licensee acting only**

in the capacity of a wholesale table funder, either in or outside of 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 department shall require to carry out the purposes of this act.

(d) Denial of license due to conviction.--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 misdemeanor or felony in any jurisdiction or of a crime which, if convicted in this Commonwealth, would constitute a misdemeanor 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 shall have pleaded guilty or nolo contendere to a charge thereof before a court or Federal magistrate or 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 pleas 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.

(e) Denial of license for other reason.--The department may deny a license or otherwise restrict a license if it finds that, within two years prior to or from the date of the application, 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, suspended or revoked;

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

(3) has violated or failed to comply with any provision of this act or any rule or order of the department.

Section 7. License duration.

A license issued by the department shall:

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

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

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

Section 8. Licensee requirements.

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

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

(2) Maintain, at its principal place of business within this Commonwealth, or at such place within or outside this Commonwealth if agreed to by the Secretary of Banking or the commission, either the original or a copy of such books, accounts, records and documents, or electronic or other similar access thereto, of the business conducted under the license as may be prescribed by the department or commission to enable them to determine whether the business of the licensee is being

conducted in accordance with the provisions of this act and the orders, rules and regulations issued under this act. **The department, at its determination, shall have free access to and authorization to examine records maintained outside of this Commonwealth. The costs of the examination, including travel costs, shall be borne by the licensee. The secretary may deny or revoke the authority to maintain records outside of this Commonwealth for good cause in the interest of consumer protection for Commonwealth borrowers.**

(3) Annually, before May 1, file a report with the department or commission which shall set forth such information as the department or commission 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 department.

(4) Be subject to examination by the department or commission at the discretion of the department or commission at which time the department or commission 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 a licensee's mortgage loan business, **whether maintained in or outside of this Commonwealth.** The department or commission may examine a licensee at any time if the department or commission deems such examination to be necessary or desirable. The cost of any such examination shall be borne by the licensee.

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

(6) Comply with the provisions of the act of December 23, 1983 (P.L.385, No.91), entitled "An act amending the act of December 3, 1959 (P.L.1688, No.621), entitled, as amended, 'An act to promote the health, safety and welfare of the 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 homeowner's emergency assistance."

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

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

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

- (i) **The expiration date of the lock-in, if any.**
- (ii) **The interest rate locked in, if any.**
- (iii) **The discount points locked in, if any.**
- (iv) **The commitment fee locked in, if any.**
- (v) **The lock-in fee, if any.**

(10) **Include in all advertisements language indicating that the licensee is licensed by the department.**

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

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Section 9. Licensee limitations.

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

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

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

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

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

(5) **In the case of a mortgage broker or limited mortgage broker, commit to close or close mortgage loans in its own name, service mortgage loans, enter into lock-in agreements or collect lock-in fees, provided, however, that a mortgage broker or limited mortgage broker can provide a lender's lock-in agreement to a borrower on behalf of that lender and collect lock-in fees on the lender's behalf payable to that lender.**

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Section 10. Authority of department or commission.

(a) Department regulations.--Except as provided in subsection (b), the department shall have the authority to issue rules and regulations and orders as may be necessary for the proper conduct of the business of a mortgage banker [or], **loan correspondent**, a mortgage broker **or limited mortgage broker** and for the enforcement of this act[. Initial rules and regulations shall be issued by the department within 180 days after the effective date of this subsection.], **including, but not limited to, cease and desist orders, notices of fines and such other orders as the department in its discretion may issue.**

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Section 11. Fees.

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(d) Licensing option.--A real estate broker or salesperson who is also a bona fide mortgage broker, **mortgage banker or loan correspondent** who holds himself out publicly as such shall have the option of being licensed and regulated by the department, in which case he shall not be subject to the fee limitations provided for in this section or the rules and regulations promulgated by the commission hereunder.

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Section 13. Suspension, revocation or refusal.

(a) Departmental action.--The department 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 requested, stating the contemplated action and the reason therefor, if the department 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 department pursuant to this act.
- (3) If licensed under section 4(c)(3), accepted an advance fee.
- (4) Become insolvent, meaning that 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 mortgage business.
- (6) Been convicted of a misdemeanor or of a felony.
- (7) Filed an application for a license which, as of the date the license was issued or as of the date of an order denying, suspending or revoking a license, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.
- (8) 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 mortgage business.
- (9) Become the subject of an order of the department denying, suspending or revoking a license as a mortgage banker, mortgage broker, limited mortgage broker or loan correspondent.

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

(11) Failed to comply with the requirements of this act to make and keep records prescribed by rule 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 rule or order may require.

(12) 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.

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

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

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

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 department may suspend or revoke the license.

* * *

Section 14. Penalties.

(a) Nonlicensees.--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 business of a mortgage banker [or], **loan correspondent**, mortgage broker or **limited mortgage broker** commits a felony of the third degree.

(b) Nonlicensees subject to the provisions of this act.--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 \$2,000 for each offense. Any such nonlicensed person who commits three or more offenses may, at the discretion of the department or commission, be prohibited from engaging in the business of a mortgage broker or mortgage banker unless licensed under this act.

* * *

[Section 15. Report.

At least annually, the department and the commission shall separately provide a written report to the General Assembly listing the complaints received concerning mortgage brokerage activities and advising as to the manner in which each complaint was disposed of. The department and commission shall also set forth all enforcement actions relating to mortgage brokerage activities under this act and the regulations promulgated thereunder.]

Section 18. Scope of act.

The provisions of this act shall apply to [any]:

(1) **Any** mortgage loan which is:

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

[(2)] (ii) made or executed within this Commonwealth; or

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

(2) **Any person who engages in the first mortgage loan business in this Commonwealth.**

Section 3. This act shall take effect in 60 days.

APPROVED--The 21st day of December, A. D. 1998.

THOMAS J. RIDGE