

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 488** Session of
2007

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

SENATOR ARMSTRONG, APPROPRIATIONS, RE-REPORTED AS AMENDED,
FEBRUARY 11, 2008

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," further providing for
4 definitions, for license requirements and exemptions, for
5 application for license, for annual license fee, for issuance
6 of license, for license duration, for transfer of license,
7 for powers conferred on licensees, for licensee requirements,
8 for licensee limitations, for prepayment, for open-end loans,
9 for authority of Secretary of Banking, for surrender of
10 license, for suspension, for scope of act, for foreclosure,
11 for penalties, for preservation of existing powers and for
12 exclusions from act.

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

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

22 Section 2. Definitions.

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

4 * * *

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

7 "Banking institution." A State-chartered bank, bank and
8 trust company, savings bank or private bank, national bank,
9 Federally-chartered or State-chartered savings association or a
10 subsidiary of any of the entities under this definition.

11 * * *

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

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

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

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

25 * * *

26 "Mortgage originator." An individual not licensed as a
27 secondary mortgage lender or secondary mortgage loan broker
28 under this act who solicits, accepts or offers to accept
29 secondary mortgage loan applications, or negotiates secondary
30 mortgage loan terms, in other than a clerical or ministerial

1 capacity. The term does not include directors, partners or
2 ultimate equitable owners of 10% or more of a licensee.

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

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

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

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

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

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

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

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

28 "Principal place of business." The primary office of the
29 licensee located in this Commonwealth which is staffed on a
30 full-time basis and at which books, records, accounts and

1 documents are to be maintained.

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

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

11 * * *

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

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

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

mortgages, indentures or any other similar instruments or documents received in a calendar year in connection with a secondary mortgage loan solely as an investment and such person is not otherwise in the business of making or servicing such loans.

* * *

"Service a mortgage loan." The collection or remittance of payments for another or the right to collect or remit payments for another of principal, interest, taxes, insurance and any other payments pursuant to a secondary mortgage loan.

["Sponsoring broker." A licensed secondary mortgage loan broker who negotiates or arranges secondary mortgage loans on behalf of a broker's agent and provides indemnification of such broker's agent in order to protect borrowers from monetary damages which may be a result of doing business with a broker's agent.]

Section 2. Section 3 of the act, amended July 7, 1989 (P.L.222, No.36) and June 26, 1995 (P.L.73, No.15), is amended to read:

Section 3. License requirements and exemptions.

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

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

1 (3) A State-chartered or National bank, bank and trust
2 company, savings bank, private bank, savings association or
3 savings and loan association, having its principal place of
4 business in this Commonwealth, or an individual making loans
5 to family members, shall not be required to be licensed under
6 this act in order to make loans secured by real property
7 under this act.

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

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

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

27 (ii) such person in the ordinary course of business
28 becomes the subsequent holder of more than two promissory
29 notes or mortgages, indentures or any other similar
30 instruments or documents received in a calendar year in

1 connection with a secondary mortgage loan, provided,
2 however, that a person will not be deemed to be engaged
3 in the secondary mortgage loan business if such person
4 becomes the subsequent holder of two or more promissory
5 notes or mortgages, indentures or any other similar
6 instruments or documents received in a calendar year in
7 connection with a secondary mortgage loan solely as an
8 investment and such person is not otherwise in the
9 business of making or servicing such loans.

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

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

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

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

1 (a) On and after the effective date of this section, no
2 person shall engage in the secondary mortgage loan business in
3 this Commonwealth without a license as provided for in this act.
4 A mortgage originator may not engage in the secondary mortgage
5 loan business unless the mortgage originator is employed and
6 supervised by a licensed secondary mortgage lender or secondary
7 mortgage loan broker.

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

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

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

23 (1) A banking institution or a federally chartered or
24 State-chartered credit union if the primary regulator of the
25 banking institution or federally chartered or State-chartered
26 credit union supervises the banking institution or federally
27 chartered or State-chartered credit union.

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

1 of legal practice.

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

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

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

17 (6) Except for consumer discount companies, affiliates
18 of banking institutions and subsidiaries and affiliates of
19 federally chartered or State-chartered credit unions. The
20 ~~subsidiaries and affiliates of banking institutions and~~ <—
21 Federally-chartered or State-chartered credit unions shall:

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

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

27 (iii) Be registered with the department.

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

1 mortgage originators.

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

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

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

10 Section 3. Section 4 of the act, amended July 7, 1989
11 (P.L.222, No.36) and June 26, 1995 (P.L.73, No.15), is amended
12 to read:

13 Section 4. Application for license.

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

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

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

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

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

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

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

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

(1) The name of the applicant.

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

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

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

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

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

1 accordance with the law of this Commonwealth regulating
2 corporations[. Such corporations shall file with the
3 application an irrevocable] and other entities conducting
4 business in this Commonwealth and shall maintain at least one
5 office in this Commonwealth which is the office that shall be
6 licensed as the principal place of business for the purposes
7 of this act.

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

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

29 (1) The applicant must be an individual.

30 (2) The applicant must be exempt from the capital

1 requirement of subsection (b) by satisfying the secretary
2 that no advance fees whatsoever are accepted or collected,
3 and no fees may be accepted or collected from borrowers.

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

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

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

17 (d.1) A mortgage originator shall be an employee of a single
18 secondary mortgage lender or secondary mortgage loan broker
19 licensed under this act. This licensee shall directly supervise,
20 control and maintain responsibility for the acts and omissions
21 of the mortgage originator. A mortgage originator shall be
22 assigned to a licensed location of the employer licensee.

23 [(e) The sponsoring broker shall enter into an
24 indemnification agreement in a form provided by the secretary to
25 protect borrowers from any monetary damages which may result
26 from doing business with a broker's agent.]

27 (f) (1) In order to obtain a license under this act, an
28 applicant shall submit to the department with its application
29 evidence that the applicant or an officer of the applicant
30 has successfully completed a minimum of 12 hours of

1 instruction and a testing program regarding the secondary
2 mortgage loan business and the provisions of this act, the
3 act of January 30, 1974 (P.L.13, No.6), referred to as the
4 Loan Interest and Protection Law, and relevant Federal law,
5 including the Real Estate Settlement Procedures Act of 1974
6 (Public Law 93-533, 88 Stat. 1724), the Truth in Lending Act
7 (Public Law 90-321, 15 U.S.C. § 1601 et seq.) and the Equal
8 Credit Opportunity Act (Public Law 90-321, 88 Stat. 1521).

9 (2) In order to maintain a license:

10 (i) A secondary mortgage lender or secondary
11 mortgage loan broker shall demonstrate to the
12 satisfaction of the department that at least one
13 individual from each licensed office that is not a
14 mortgage originator and all mortgage originators employed
15 by the licensee have attended a minimum of six hours of
16 continuing education each year.

17 (ii) A mortgage originator licensee shall
18 demonstrate to the satisfaction of the department that he
19 has attended a minimum of six hours of continuing
20 education each year.

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

30 (g) All applicants and licensees shall be required to

1 provide the department with written notice of the change in any
2 information contained in an application for a license or for any
3 renewal of a license within ten days of an applicant or licensee
4 becoming aware of such change.

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

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

18 Section 5. Annual license fee.

19 [An applicant shall pay to the secretary at the time an
20 application is filed an initial license fee of \$500 for the
21 principal place of business and an additional initial license
22 fee of \$50 for each branch office in this Commonwealth, except
23 an applicant for a broker's agent license shall pay to the
24 secretary at the time an application is filed an initial license
25 fee of \$250. On or before July 1 of each year and thereafter, a
26 licensee shall pay a license renewal fee of \$200 for the
27 principal place of business and an additional license renewal
28 fee of \$25 for each branch office in this Commonwealth.

29 Notwithstanding the provision of section 603-A(6) of the act of
30 April 9, 1929 (P.L.177, No.175), known as "The Administrative

1 Code of 1929," a broker's agent licensee shall pay an annual
2 license renewal fee of \$200. No abatement of any license fee
3 shall be made if the license is issued for a period of less than
4 one year. The secretary shall be entitled to recover any cost of
5 investigation in excess of license or renewal fees from the
6 licensee, or from any person who is not licensed under this act
7 but presumed to be engaged in business contemplated by this
8 act.]

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

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

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

17 (3) For mortgage originators, ~~\$100~~ \$200. <—

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

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

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

26 (3) For mortgage originators, ~~\$200~~ \$100. <—

27 (c) For a licensee that employs 50 or more mortgage
28 originators, the initial application fee and license renewal fee
29 shall be \$50 per mortgage originator, to a maximum of \$10,000
30 total per year.

1 (d) No abatement of a licensee fee shall be made if the
2 license is issued for a period of less than one year.

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

4 Section 6. Issuance of license.

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

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

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

30 (b) If the department refuses to issue a license, it shall

1 notify the applicant in writing of the denial and the reason
2 therefor and of the applicant's right to appeal from such action
3 to the secretary. An appeal from the department's refusal to
4 approve an application for a license shall be filed by the
5 applicant within 30 days of notice thereof.

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

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

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

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

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

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

28 (ii) shall have been found guilty thereof by the
29 decision or judgment of a court or Federal magistrate or
30 by the verdict of a jury, irrespective of the

1 pronouncement of sentence or the suspension thereof,
2 unless the plea of guilty or nolo contendere or the
3 decision, judgment or verdict shall have been set aside,
4 vacated, reversed or otherwise abrogated by lawful
5 judicial process.

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

15 (e) The department may deny a license or otherwise restrict
16 a license if it finds that the applicant or any person who is a
17 director, officer, partner, agent, employee or ultimate
18 equitable owner of 10% or more of the applicant:

19 (1) has had a license application or license issued by
20 the department denied, not renewed, suspended or revoked;

21 (2) is the subject of an order of the department;

22 (3) has violated or failed to comply with any provision
23 of this act or any regulation, statement of policy or order
24 of the department;

25 (4) does not possess the financial responsibility,
26 character, reputation, integrity and general fitness to
27 command the confidence of the public and to warrant the
28 belief that the secondary mortgage loan business will be
29 operated lawfully, honestly, fairly and within the
30 legislative intent of this act and in accordance with the

1 general laws of this Commonwealth; or

2 (5) has an outstanding debt to the Commonwealth or any
3 Commonwealth agency.

4 (f) The department may impose conditions on the issuance of
5 any license under this act. If the department determines that
6 conditions imposed upon a licensee have not been fulfilled, the
7 department may take any action authorized under this act against
8 such licensee that the department deems necessary. In the case
9 of mortgage originator applicants, the department may issue
10 mortgage originator licenses effective immediately upon receipt
11 of an application, which licenses shall be conditional licenses
12 issued under this subsection.

13 Section 6. Sections 7 and 8 of the act are amended to read:

14 Section 7. License duration.

15 A license issued by the secretary shall:

16 (1) Be renewed [on June 30 of each year upon payment of
17 the annual renewal fee, and after a determination by the
18 secretary that the licensee is conducting his business in
19 accordance with the provisions of this act] upon completion
20 of the requirements of section 4(h). No refund of any portion
21 of the license fee shall be made if the license is
22 voluntarily surrendered to the [secretary] department or
23 suspended or revoked by the [secretary] department prior to
24 its expiration date.

25 (2) Be immediately invalid if the licensee's [corporate
26 charter is voided in accordance with the provisions of any
27 law of this Commonwealth or any other state.] authority to
28 conduct business is voided under any law of this Commonwealth
29 or any other state, unless the licensee demonstrates to the
30 satisfaction of the department that the applicable court or

governmental entity was clearly erroneous in voiding the
licensee's authority to conduct business.

Section 8. Transfer of license.

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

Section 7. Section 9 of the act, amended APRIL 8, 1982 (P.L.296, NO.83), DECEMBER 17, 1986 (P.L.1696, NO.203), July 7, 1989 (P.L.222, No.36) and June 26, 1995 (P.L.73, No.15), is amended to read:

Section 9. Powers conferred on licensees.

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

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

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

1 application or granting of a secondary mortgage loan, when
2 such fees are actually paid or incurred by the licensee and
3 to collect fees or charges prescribed by law which actually
4 are or will be paid to public officials for determining the
5 existence of or for perfecting or releasing or satisfying any
6 security related to the loan and include these in the
7 principal of the secondary mortgage loan.

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

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

21 (5) To provide credit life, credit accident and health
22 and credit unemployment insurance. A borrower shall not be
23 compelled to purchase credit life, credit accident and health
24 or credit unemployment insurance as a condition of the
25 granting of a secondary mortgage loan and all contracts
26 utilized shall reflect a clear disclosure that the purchase
27 of credit life, credit accident and health or credit
28 unemployment insurance is not a prerequisite to obtaining a
29 loan; if, however, the borrower elects to obtain credit life,
30 credit accident and health or credit unemployment insurance,

1 the borrower shall consent thereto in writing. If borrowers
2 desire joint-life or joint accident and health insurance, all
3 such borrowers shall consent thereto in writing. Such
4 insurance shall be obtained from an insurance company
5 authorized by the laws of Pennsylvania to conduct business in
6 this Commonwealth. Any benefit or return to the licensee from
7 the sale or provision of such insurance shall not be included
8 in the computation of the maximum charge authorized under
9 this section and shall not be deemed a violation of this act
10 when the insurance is written pursuant to the laws of this
11 Commonwealth governing insurance.

12 (6) To require credit property insurance on security
13 against reasonable risks of loss, damage and destruction. The
14 amount and term of such insurance shall be reasonable in
15 relation to the amount and term of the loan contract and the
16 value of the security. A licensee shall not require property
17 insurance if to the licensee's knowledge, the borrower at the
18 time the loan is made has valid and collectible insurance
19 covering the property to be insured and has furnished a loss
20 payable endorsement sufficient for the protection of the
21 licensee. Such insurance shall be obtained from an insurance
22 company authorized by the laws of Pennsylvania to conduct
23 business in this Commonwealth. Any benefit or return to the
24 licensee from the sale or provision of credit insurance shall
25 not be included in the computation of the maximum charge
26 authorized under this section and shall not be deemed a
27 violation of this act when the insurance is written pursuant
28 to the laws of this Commonwealth governing insurance. The
29 premium for any credit insurance may be included in the
30 principal amount of the secondary mortgage loan requested by

1 the borrower. However, such premiums shall be disclosed as a
2 separate item on the face of the principal contract document
3 and the licensee's individual borrower ledger records. No
4 licensee shall grant any secondary mortgage loan on the
5 condition, agreement or understanding that the borrower
6 contract with any specific person or organization for
7 insurance services as agent, broker or underwriter.

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

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

19 (9) To charge and collect a delinquency charge of \$20 or
20 10% of each payment, whichever is higher, for a payment which
21 is in default for more than 15 days.

22 (b) All secondary mortgage loan broker licensees shall have
23 power and authority:

24 (1) To collect title examination, credit report, and
25 appraisal fees actually related to the granting of a
26 secondary mortgage loan when such fees are actually paid or
27 incurred by the licensee, and to include the fees in the
28 principal of the secondary mortgage loan which is being
29 negotiated or arranged.

30 (2) To charge a reasonable broker's fee as determined by

1 regulation of the Department of Banking if the fee is
2 disclosed to the person for whom the loan is being negotiated
3 or arranged.

4 Section 8. Section 10 of the act, amended December 17, 1986
5 (P.L.1696, No.203), July 7, 1989 (P.L.222, No.36), July 2, 1992
6 (P.L.387, No.82) and June 26, 1995 (P.L.73, No.15), is amended
7 to read:

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

11 (a) A secondary mortgage [loan] lender licensee shall:

12 (1) Conspicuously display [its license] at each licensed
13 place of business[.] its license and copies of licenses of
14 all mortgage originators assigned to that location. In the
15 case of a mortgage originator, the license shall be
16 maintained in the immediate possession of the licensee
17 whenever the licensee is engaged in the mortgage loan
18 business.

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

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

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

1 (iii) Credit life and accident and health and
2 property insurance policy or a certificate of insurance
3 where such insurance is obtained in accordance with this
4 act.

5 (iv) Appraisal or search, where utilized.

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

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

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

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

27 (ix) Such information as the department may require.

28 [(3) Annually, before May 1, file a report with the
29 secretary which shall set forth such information as the
30 secretary shall require concerning the business conducted as

1 a licensee during the preceding calendar year. The report
2 shall be in writing, under oath and on a form provided by the
3 secretary.]

4 (3) Annually, on a date determined by the department,
5 file with the department a report which shall set forth the
6 information as the department shall require concerning the
7 business conducted as a licensee during the preceding
8 calendar year. The report shall be on a form provided by the
9 department. Licensees failing to file the required report at
10 the date required by the department may be subject to a
11 penalty of \$100 for each day after the due date the report is
12 not filed.

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

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

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

30 (7) When a payment is made in cash on account of a

1 secondary mortgage loan, give to the borrower at the time
2 such payment is actually received, a written receipt which
3 shall show the account number or other identification mark or
4 symbol, date, amount paid and upon request of the borrower
5 the unpaid balance of the account prior to and after the cash
6 payment.

7 (8) Upon written request from the borrower, give or
8 forward to the borrower within ten days from the date of
9 receipt of such request, a written statement of the
10 borrower's account which shall show the dates and amounts of
11 all installment payments credited to the borrower's account,
12 the dates, amounts and an explanation of all other charges or
13 credits to the account and the unpaid balance thereof. A
14 licensee shall not be required to furnish more than two such
15 statements in any 12-month period.

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

18 (10) In regard to mortgage originators:

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

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

25 (iii) In the event that a licensee has evidence that
26 a mortgage originator employed by the licensee has
27 engaged in any activity that is illegal or in violation
28 of this act or any regulation or statement of policy
29 promulgated pursuant to this act, the licensee shall
30 provide the department with written notification of such

1 evidence and the licensee's proposed corrective measures
2 within 30 days. A licensee shall not be liable to a
3 mortgage originator in connection with such notification.

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

5 (1) Conspicuously display [its license] at each licensed
6 place of business[.] its license and copies of licenses of
7 all mortgage originators assigned to that location. In the
8 case of a mortgage originator, the license shall be
9 maintained in the immediate possession of the licensee
10 whenever the licensee is engaged in the mortgage loan
11 business.

12 [(2) Annually, before May 1, file with the secretary a
13 report which shall set forth such information as the
14 secretary shall require concerning the business conducted as
15 a licensee during the preceding calendar year. The report
16 shall be in writing, under oath and on a form provided by the
17 secretary.]

18 (2) Annually, on a date determined by the department,
19 file with the department a report which shall set forth the
20 information as the department shall require concerning the
21 business conducted as a licensee during the preceding
22 calendar year. The report shall be on a form provided by the
23 department. Licensees failing to file the required report at
24 the date required by the department may be subject to a
25 penalty of \$100 for each day after the due date the report is
26 not filed.

27 (3) Be subject to an examination by the [secretary]
28 department at [least once every two calendar years] the
29 discretion of the department, at which time the [secretary]
30 department shall have free access, during regular business

1 hours, to the licensee's place or places of business in this
2 Commonwealth and to all instruments, documents, accounts,
3 books and records which pertain to the licensee's secondary
4 mortgage loan broker business. The [secretary] department may
5 examine the licensee's place of business at any time if the
6 [secretary] department deems such action necessary or
7 desirable. The cost of any examination shall be borne by the
8 licensee.

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

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

30 Section 9. Section 11 of the act, amended July 7, 1989

1 (P.L.222, No.36) and June 26, 1995 (P.L.73, No.15), is amended
2 to read:

3 Section 11. Licensee limitations.

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

6 (1) Transact any business subject to the provisions of
7 this act under any other name except that designated in its
8 license or registered or otherwise qualified as a fictitious
9 business name. A mortgage originator may not use any name
10 other than the mortgage originator's personal legal name. A
11 licensee[, other than a broker's agent,] who changes its name
12 or place of business shall [immediately] notify the
13 [secretary who] department within ten days of the change
14 which shall issue a certificate, if appropriate, to the
15 licensee, which shall specify the licensee's new name or
16 address. [A broker's agent who changes its name or place of
17 business shall notify the secretary in writing at least 15
18 days prior to making such change in name or place of
19 business.]

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

25 (3) Unless the secondary mortgage lender licensee shall
26 retain responsibility for servicing the loan, assign, sell or
27 transfer a secondary mortgage loan to any person except a
28 secondary mortgage lender licensee or a person excepted from
29 the licensing provisions of this act in accordance with
30 section 3 hereof without written permission of the

1 [secretary] department.

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

5 (i) That it is licensed by, or that its business is
6 under the supervision of, the Commonwealth of
7 Pennsylvania or the Department of Banking except that a
8 licensee may advertise that it is "licensed pursuant to
9 the Secondary Mortgage Loan Act," provided, however, that
10 for the purpose of raising capital, no such advertisement
11 shall be permitted if it is to be used in connection with
12 a public solicitation for such funds except as otherwise
13 required by the act of December 5, 1972 (P.L.1280,
14 No.284), known as the "Pennsylvania Securities Act of
15 1972," or regulations promulgated under said acts, to be
16 disclosed in any prospectus.

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

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

25 (6) Require a borrower to pay, to the licensee or any
26 other person, a broker's fee, finder's fee, commission,
27 premium or any other charges for obtaining, procuring or
28 placing of a secondary mortgage loan, except as provided in
29 this act. This restriction shall not prohibit a secondary
30 mortgage [loan] lender licensee from paying a fee to a

1 secondary mortgage loan broker in connection with the
2 placement or procurement of a secondary mortgage loan, nor
3 prohibit a borrower from requesting or directing a licensee
4 to pay such a fee from the proceeds of a loan or include it
5 in the amount to be financed.

6 (7) In the case of a mortgage originator:

7 (i) Accept any fees from consumers in the mortgage
8 originator's own name. A mortgage originator may accept
9 fees payable to the mortgage originator's employer
10 licensee and fees payable to third-party entities on
11 behalf of the mortgage originator's employer licensee. A
12 mortgage originator may not accept advance fees payable
13 to the mortgage originator's employer licensee unless
14 such licensee is authorized to collect advance fees under
15 this act.

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

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

23 Section 10. Sections 12 and 15 of the act, amended June 26,
24 1995 (P.L.73, No.15), are amended to read:

25 Section 12. Prepayment.

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

30 (b) When a secondary mortgage loan is paid in full the

1 secondary mortgage lender licensee shall:

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

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

12 (3) Release any lien on real property and cancel the
13 same of record and, at the time the loan agreement or
14 promissory note evidencing the borrower's secondary mortgage
15 loan indebtedness is returned, deliver to the borrower such
16 good and sufficient assignments, releases or any other
17 certificate, instrument or document as may be necessary to
18 vest the borrower with complete evidence of title, insofar as
19 the applicable secondary mortgage loan is concerned, to the
20 real property.

21 Section 15. Open-end loans.

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

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

30 (c) Interest authorized by this section shall be deemed not

1 to exceed the maximum interest permitted by this act if such
2 interest is computed in each billing cycle by any of the
3 following methods:

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

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

14 (3) by converting the monthly rate to a daily rate and
15 multiplying such daily rate by the average daily unpaid
16 principal balance of the account in the billing cycle, in
17 which case the daily rate shall be 1/30 of the monthly rate.

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

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

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

5 (1) If credit life or disability insurance is provided
6 and if the insured dies or becomes disabled when there is an
7 outstanding open-end loan indebtedness, the insurance shall
8 be sufficient to pay the total balance of the loan due on the
9 date of the borrower's death in the case of credit life
10 insurance, or all minimum payments which become due on the
11 loan during the covered period of disability in the case of
12 credit disability insurance. The additional charge for credit
13 life insurance or credit disability insurance shall be
14 calculated in each billing cycle by applying the current
15 monthly premium rate for such insurance, as such rate may be
16 determined by the Insurance Commissioner, to the unpaid
17 balances in the borrower's account, using any of the methods
18 specified in subsection (c) for the calculation of loan
19 charges.

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

29 (3) The amount, terms and conditions of any insurance
30 against loss or damage to property must be reasonable in

1 relation to character and value of the property insured and
2 the maximum anticipated amount of credit to be extended.

3 (g) Notwithstanding any other provisions in this act to the
4 contrary, a secondary mortgage lender licensee may retain any
5 security interest in real or personal property until the open-
6 end account is terminated, provided that if there is no
7 outstanding balance in the account and there is no commitment by
8 the licensee to make advances, the licensee shall within ten
9 days following written demand by the borrower deliver to the
10 borrower a release of the mortgage or a request for reconveyance
11 of the deed of trust on any real property taken as security for
12 a loan and a release of any security interest in personal
13 property. The licensee shall include on all billing statements
14 provided in connection with an open-end credit loan a statement
15 that the licensee retains a security interest in the borrower's
16 real property whenever such security interest has not been
17 released.

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

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

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

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

26 [The secretary shall have authority to:

27 (1) Issue rules and regulations governing the
28 capitalization, public funding and the records to be
29 maintained by licensees, and such general rules and
30 regulations and orders as may be necessary for insuring the

1 proper conduct of the business and for the enforcement of
2 this act.

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

7 (3) Conduct administrative hearings on any matter
8 pertaining to this act, issue subpoenas to compel the
9 attendance of witnesses and the production of instruments,
10 documents, accounts, books and records at any such hearing,
11 which may be retained by the secretary until the completion
12 of all proceedings in connection with which they were
13 produced, and administer oaths and affirmations to any person
14 whose testimony is required. In the event a person fails to
15 comply with a subpoena issued by the secretary or to testify
16 on any matter concerning which he may be lawfully
17 interrogated, on application by the secretary, the
18 Commonwealth Court may issue an order requiring the
19 attendance of such person, the production of instruments,
20 documents, accounts, books or records or the giving of
21 testimony.]

22 (a) The department shall have the authority to:

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

1 licensee or the entity subject to the examination.

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

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

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

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

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

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

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

14 (9) Impose such other conditions as the department deems
15 appropriate.

16 (b) A person aggrieved by a decision of the department may
17 appeal the decision of the department to the secretary. The
18 appeal shall be conducted under 2 Pa.C.S. Ch. 5 Subch. A
19 (relating to practice and procedure of Commonwealth agencies).

20 (c) The department may maintain an action for an injunction
21 or other process against a person to restrain and prevent the
22 person from engaging in an activity violating this act.

23 (d) A decision of the secretary shall be a final order of
24 the department and shall be enforceable in a court of competent
25 jurisdiction. The department may publish final adjudications
26 issued under this section, subject to redaction or modification
27 to preserve confidentiality.

28 (e) A person aggrieved by a decision of the secretary may
29 appeal the decision under 2 Pa.C.S. Ch. 7 Subch. A (relating to
30 judicial review of Commonwealth agency action).

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

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

5 Section 18. Surrender of license.

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

15 Section 19. Suspension; revocation or refusal.

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

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

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

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

1 license forthwith.

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

8 (a) The department may suspend, revoke or refuse to renew
9 any license issued pursuant to this act, if any fact or
10 condition exists or is discovered which, if it had existed or
11 had been discovered at the time of filing of the application for
12 such license, would have warranted the department in refusing to
13 issue such license or if a licensee or director, officer,
14 partner, employee or owner of a licensee has:

15 (1) Made any false or material misstatement in an
16 application or any report or submission required by this act
17 or any department regulation, statement of policy or order.

18 (2) Failed to comply with or violated any provision of
19 this act or any regulation, statement of policy or order
20 promulgated or issued by the department pursuant to this act.

21 (3) If licensed under section 4(b.1), accepted an
22 advance fee without establishing or maintaining the capital
23 required by section 4(b.1).

24 (4) Become insolvent; the liabilities of the applicant
25 or licensee exceed the assets of the applicant or licensee or
26 that the applicant or licensee cannot meet the obligations of
27 the applicant or licensee as they mature or is in such
28 financial condition that the applicant or licensee cannot
29 continue in business with safety to the customers of the
30 applicant or licensee.

1 (5) Engaged in dishonest, fraudulent or illegal
2 practices or conduct in any business or unfair or unethical
3 practices or conduct in connection with the secondary
4 mortgage loan business.

5 (6) Been convicted of or pleaded guilty or nolo
6 contendere to a crime of moral turpitude or felony.

7 (7) Permanently or temporarily been enjoined by a court
8 of competent jurisdiction from engaging in or continuing any
9 conduct or practice involving any aspect of the secondary
10 mortgage loan business.

11 (8) Become the subject of an order of the department
12 denying, suspending or revoking a license under the
13 provisions of this act.

14 (9) Become the subject of a United States Postal Service
15 fraud order.

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

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

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

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

30 (14) In the case of a secondary mortgage lender or

1 secondary mortgage loan broker, conducted the secondary
2 mortgage loan business through an unlicensed mortgage
3 originator.

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

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

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

18 Section 20. Scope of act.

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

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

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

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

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

1 Commonwealth.

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

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

11 (d) If a secondary mortgage loan is made in good faith in
12 conformity with an interpretation of this act by the appellate
13 courts of the Commonwealth or in compliance with a rule,
14 regulation, order, interpretation or other issuance promulgated
15 by the secretary, no provisions of this act imposing any penalty
16 shall apply, notwithstanding that, after such contract is made,
17 such interpretation, rule or regulation is amended, rescinded or
18 determined by judicial or other authority to be invalid for any
19 reason.]

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

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

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

1 such prior lien.

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

4 Section 22. Penalties.

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

22 (b) Except as the result of unintentional error, a
23 corporation licensed under the provisions of this act or any
24 director, officer, employee or agent who shall violate any
25 provision of this act or shall direct or consent to such
26 violations, shall be subject to a fine of \$2,000 for the first
27 offense, and for each subsequent offense a like fine and/or
28 suspension of license. A licensee shall have no liability for
29 unintentional error if within 15 days after discovering an error
30 the licensee notifies the person concerned of the error and

1 makes adjustments in the account as necessary to assure that the
2 person will not be required to pay any interest, fees, premiums,
3 charges or other considerations which aggregate in excess of the
4 charges permitted under this act.

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

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

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

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

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

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

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

6 [Section 23. Preservation of existing powers.

7 Nothing in this act shall be construed as restricting the
8 powers otherwise conferred by law upon financial institutions,
9 such as State and national banks, State and Federal savings and
10 loan associations, savings banks and insurance companies, to
11 engage in the secondary mortgage business as defined in section
12 2, and no such financial institution, in exercising any power
13 otherwise so conferred upon it, shall be subject to any
14 provision of this act. A State-chartered or national bank, bank
15 and trust company, savings bank or savings and loan association
16 located in this State shall have all the powers of a licensee
17 under this act but shall not be subject to the license
18 requirement or any other provision of this act relating to the
19 requirements imposed on licensees.

20 Section 24. Exclusions from act.

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

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