
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL
No. 1425 Session of
1980

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

AS AMENDED ON SECOND CONSIDERATION, JUNE 17, 1980

AN ACT

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

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

17 Section 1. Short title.

18 This act shall be known and may be cited as the "Secondary
19 Mortgage Loan Act."

20 Section 2. Definitions.

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

24 "Billing cycle." In respect to open-end loans means the time
25 interval between periodic billing dates. A billing cycle shall
26 be considered monthly if the closing date of the cycle is the
27 same date each month or does not vary by more than four days
28 from such date.

29 "Licensee." A person who is licensed under this act or a
30 person excepted from licensing provisions of this act in

1 accordance with section 3 hereof.

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

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

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

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

14 (4) the borrower has the privilege of paying the account
15 in full at any time or, if the account is not in default, in
16 monthly installments of fixed or determinable amounts as
17 provided in the agreement; and

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

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

25 "Secondary mortgage loan." A loan in an original principal
26 amount in excess of \$5,000 which is secured in whole or in part
27 by a lien upon any interest in real property created by a
28 security agreement, including a mortgage, indenture, or any
29 other similar instrument or document, which real property is
30 subject to one or more prior liens and which is used as a

1 dwelling, including a dual purpose or combination type dwelling
2 which is also used as a business or commercial establishment and
3 has accommodations for not more than four families, except that
4 a loan which:

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

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

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

17 (4) is made under any other law of the Commonwealth of
18 Pennsylvania;

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

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

25 Section 3. License required.

26 (a) On and after the effective date of this act, no person
27 shall engage in the business of making secondary mortgage loans
28 in this Commonwealth except a business corporation organized
29 under the laws of this Commonwealth or any other state, after
30 first obtaining a license from the secretary in accordance with

1 the provisions of this act. A State-chartered or National bank,
2 bank and trust company, savings bank, private bank, savings
3 association, savings and loan association, or credit union
4 having its principal place of business in this Commonwealth
5 shall not be required to be licensed under this act in order to
6 make loans secured by real property under this act. For the
7 purpose of this act, a person is deemed to be engaged in the
8 secondary mortgage loan business in the Commonwealth if:

9 (1) such person advertises, causes to be advertised,
10 solicits, negotiates, arranges, offers to make or makes more
11 than four secondary mortgage loans in a calendar year in this
12 Commonwealth, whether directly or by any person acting for
13 his benefit; or

14 (2) such person in the ordinary course of business
15 becomes the subsequent holder of more than four promissory
16 notes or mortgages, indentures or any other similar
17 instruments or documents received in a calendar year in
18 connection with a secondary mortgage loan.

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

25 Section 4. Application for license.

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

29 (1) The full name, corporate title and personal
30 residence address of each officer and director of the

1 proposed licensee corporation.

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

4 (3) The dollar amount of such equity or creditor
5 holdings.

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

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

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

14 (c) If the applicant is a foreign corporation, said
15 corporation shall be authorized to do business in this
16 Commonwealth in accordance with the law of this Commonwealth
17 regulating corporations. Such corporations shall file with the
18 application an irrevocable consent, duly acknowledged, that
19 suits and actions may be commenced against such licensee in the
20 courts of this Commonwealth by the service of process or any
21 pleading upon the secretary in the usual manner provided for
22 service of process and pleadings by the statutes and court rule
23 of this Commonwealth. Said consent shall provide that such
24 service shall be as valid and binding as if service had been
25 made personally upon the licensee in this Commonwealth. In all
26 cases where process or pleadings are served upon the secretary
27 pursuant to the provisions of this section, such process or
28 pleadings shall be served in duplicate, one of which shall be
29 filed in the office of the secretary and the other shall be
30 forwarded by the secretary, by certified or registered mail,

1 return receipt, to the last known principal place of business of
2 the licensee to whom such process or pleadings is directed.

3 Section 5. Annual license fee.

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

18 Section 6. Issuance of license.

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

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

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

30 (1) The name and address of the licensee, the address so

1 specified to be that of the licensee's principal place of
2 business.

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

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

9 Section 7. License duration.

10 A license issued by the secretary shall:

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

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

21 Section 8. Transfer of license.

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

24 Section 9. Powers conferred on licensees.

25 All secondary mortgage loan licensees shall have power and
26 authority:

27 (1) To make a secondary mortgage loan repayable in
28 installments, and charge, contract for and receive thereon
29 interest at a percentage rate not exceeding 1.45% per month.

30 No interest shall be paid, deducted or received in advance,

1 except that interest from the date of disbursement of funds
2 to the borrower to the first day of the following month shall
3 be permitted in the event the first installment payment is
4 more than 30 days after the date of disbursement. Interest
5 shall not be compounded and shall be computed only on unpaid
6 principal balances. However, the inclusion of earned interest
7 in a new note shall not be considered compounding. For the
8 purpose of computing interest, a month shall be any period of
9 30 consecutive days.

10 (2) To collect fees or premiums for title examination,
11 abstract of title, title insurance, credit reports, surveys,
12 appraisals or other costs or fees actually related to the
13 granting of a secondary mortgage loan, when such fees are
14 actually paid or incurred by the licensee and to collect fees
15 or charges prescribed by law which actually are or will be
16 paid to public officials for determining the existence of or
17 for perfecting or releasing or satisfying any security
18 related to the loan and include these in the principal of the
19 secondary mortgage loan.

20 (3) To collect reasonable attorney's fees, of an
21 attorney licensed to practice in this Commonwealth, upon the
22 execution of the secondary mortgage loan provided that such
23 fees represent actual fees charged the licensee in connection
24 with said mortgage loan and said fees are evidenced by a
25 statement for services rendered addressed to the licensee and
26 include these in the principal of the secondary mortgage
27 loan.

28 (4) To collect reasonable attorney's fees, of an
29 attorney licensed to practice in the Commonwealth, in the
30 collection of a delinquent second mortgage loan and any court

1 costs and fees actually incurred in the collection of such
2 loan account.

3 (5) To provide credit life and credit accident and
4 health insurance. A borrower shall not be compelled to
5 purchase credit life or accident and health insurance as a
6 condition of the granting of a secondary mortgage loan; if,
7 however, the borrower elects to obtain credit life or
8 accident and health insurance, or both, he shall consent
9 thereto in writing. If borrowers desire joint life insurance,
10 all such borrowers must consent thereto in writing. Such
11 insurance shall be obtained from an insurance company
12 authorized by the laws of Pennsylvania to conduct business in
13 this Commonwealth. Any benefit or return to the licensee from
14 the sale or provision of such insurance shall not be included
15 in the computation of the maximum charge authorized under
16 this section and shall not be deemed a violation of this act
17 when the insurance is written pursuant to the laws of this
18 Commonwealth governing insurance.

19 (6) To require credit property insurance on security
20 against reasonable risks of loss, damage and destruction. The
21 amount and term of such insurance shall be reasonable in
22 relation to the amount and term of the loan contract and the
23 value of the security. A licensee shall not require property
24 insurance if to the licensee's knowledge, the borrower at the
25 time the loan is made has valid and collectible insurance
26 covering the property to be insured and has furnished a loss
27 payable endorsement sufficient for the protection of the
28 licensee. Such insurance shall be obtained from an insurance
29 company authorized by the laws of Pennsylvania to conduct
30 business in this Commonwealth. Any benefit or return to the

licensee from the sale or provision of credit insurance shall not be included in the computation of the maximum charge authorized under section 9 and shall not be deemed a violation of this act when the insurance is written pursuant to the laws of this Commonwealth governing insurance. The premium for any credit insurance may be included in the principal amount of the secondary mortgage loan requested by the borrower. However, such premiums shall be disclosed as a separate item on the face of the principal contract document and the licensee's individual borrower ledger records. No licensee shall grant any secondary mortgage loan on the condition, agreement or understanding that the borrower contract with any specific person or organization for insurance services as agent, broker or underwriter.

(7) To collect an origination fee not exceeding 2% of the original bona fide principal amount of any loan. This fee shall be fully earned at the time the loan is made and at the option of the borrower may be included in the principal of the secondary mortgage loan or may be paid at the time of closing. No origination fee may be collected on subsequent advances made pursuant to an open-end loan.

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

(a) A secondary mortgage loan licensee shall:

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

(2) Maintain at its principal place of business or at a branch location within the State of Pennsylvania an original or true copy of the following instruments, documents,

1 accounts, books and records:

2 (i) Promissory note, contractual agreement,
3 document or instrument evidencing each borrower's
4 secondary mortgage loan indebtedness.

5 (ii) Mortgage, indenture or any other similar
6 instrument or document which creates a lien on the real
7 property which is taken as security for a secondary
8 mortgage loan.

9 (iii) Credit life and accident and health and
10 property insurance policy or a certificate of insurance
11 where such insurance is obtained in accordance with this
12 act.

13 (iv) Appraisal or search, where utilized.

14 (v) Individual ledger card or any other form of
15 record which shows all installment payments made by the
16 borrower and all other charges or credits to the
17 borrower's account.

18 (vi) Individual file in which the borrower's
19 application for a loan and any correspondence, including
20 collection letters, memorandums, notes or any other
21 written information pertaining to the borrower's account,
22 shall be kept.

23 (vii) A general ledger containing all asset,
24 liability and capital accounts, or a trial balance of the
25 same accounts, which shall be maintained on a 60-day
26 currented basis. In addition thereto, a disbursements
27 register, checkbook and related records as required by
28 the secretary shall be maintained on a current workday
29 basis.

30 (viii) A loan closing statement indicating the date,

1 amount and recipient of all loan proceeds, signed by the
2 borrowers to evidence approval of distribution of loan
3 proceeds and to acknowledge receipt of a copy of the loan
4 closing statement.

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

11 (4) Be subject to an examination by the secretary at
12 least once per calendar year, at which time the secretary
13 shall have free access, during regular business hours, to the
14 licensee's place or places of business in this Commonwealth
15 and to all instruments, documents, accounts, books and
16 records which pertain to the licensee's secondary mortgage
17 loan business. However, the secretary may examine the
18 licensee at any time if he has reasonable cause to believe
19 the licensee is violating this act. The cost of any such
20 examination shall be borne by the licensee.

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

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

26 (7) When a payment is made in cash on account of a
27 secondary mortgage loan, give to the borrower at the time
28 such payment is actually received, a written receipt which
29 shall show the account number or other identification mark or
30 symbol, date, amount paid and upon request of the borrower

1 the unpaid balance of the account prior to and after the cash
2 payment.

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

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

26 Section 11. Licensee limitations.

27 A secondary mortgage loan licensee shall not:

28 (1) Transact any business subject to the provisions of
29 this act under any other name except that designated in its
30 license. A licensee who changes its name or place of business

1 shall immediately notify the secretary who shall issue a
2 certificate to the licensee, which shall specify the
3 licensee's new name or address.

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

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

11 (4) Advertise, cause to be advertised or otherwise
12 solicit whether orally, in writing, by telecast, by broadcast
13 or in any other manner:

14 (i) That it is licensed by, or that its business is
15 under the supervision of, the Commonwealth of
16 Pennsylvania or the Department of Banking except that a
17 licensee may advertise that it is "licensed pursuant to
18 the Secondary Mortgage Loan Act," provided, however, that
19 for the purpose of raising capital, no such advertisement
20 shall be permitted if it is to be used in connection with
21 a public solicitation for such funds except as otherwise
22 required by the act of December 5, 1972 (P.L.1280,
23 No.284), known as the "Pennsylvania Securities Act of
24 1972," or regulations promulgated under said acts, to be
25 disclosed in any prospectus.

26 (ii) Any statement or representation which is false,
27 misleading or deceptive.

28 (5) Conduct any business other than any business
29 regulated by the secretary in any place of business licensed
30 pursuant to this act without the prior written approval of

1 the secretary.

2 Section 12. Prepayment.

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

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

8 (1) Cancel any insurance provided by the licensee in
9 connection with the loan and refund to the borrower, in
10 accordance with regulations promulgated by the Pennsylvania
11 Insurance Department, any unearned portion of the premium for
12 such insurance.

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

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

27 Section 13. Loan agreement or promissory note.

28 Any loan agreement or promissory note evidencing a secondary
29 mortgage loan shall be identified by the use of the words
30 "Secondary Mortgage Loan" printed at the top of the loan

1 agreement or promissory note and the statement "This agreement
2 is subject to the provisions of the Secondary Mortgage Loan
3 Act." Any loan agreement or promissory note evidencing a
4 secondary mortgage loan shall provide for the payment of the
5 total amount of the loan in substantially equal payment periods,
6 and installment payment amounts, except that the first
7 installment payment may be due up to one month and 29 days from
8 the date of the loan. When appropriate for the purpose of
9 facilitating payment in accordance with the borrower's
10 intermittent income, a loan agreement or promissory note may
11 provide an installment schedule which reduces or omits payments
12 over any period or periods of time during which period or
13 periods the borrower's income is reduced or suspended, except
14 that no installment shall be more than one and one-half times as
15 much as regular installment payments.

16 Section 14. Prohibited clauses.

17 No writing of any kind executed in connection with a
18 secondary mortgage loan shall contain:

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

21 (2) An irrevocable wage assignment of or order for the
22 payment of any salary, wages, commissions or any other
23 compensation for services, or any part thereof, earned or to
24 be earned.

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

28 Section 15. Open-end loans.

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

1 (b) A licensee shall not compound interest by adding any
2 unpaid interest authorized by this section to the unpaid
3 principal balance of the borrower's account: Provided, however,
4 That the unpaid principal balance may include the additional
5 charges authorized by section 9.

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

10 (1) by converting the monthly rate to a daily rate and
11 multiplying such daily rate by the applicable portion of the
12 daily unpaid principal balance of the account, in which case
13 the daily rate shall be 1/30 of the monthly rate;

14 (2) by multiplying the monthly rate by the applicable
15 portion of the average monthly unpaid principal balance of
16 the account in the billing cycle, in which case the average
17 daily unpaid principal balance is the sum of the amount
18 unpaid each day during the cycle divided by the number of
19 days in the cycle; or

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

24 (d) For all of the above methods of computation, the billing
25 cycle shall be monthly and the unpaid principal balance on any
26 day shall be determined by adding to any balance unpaid as of
27 the beginning of that day all advances and other permissible
28 amounts charged to the borrower and deducting all payments and
29 other credits made or received that day.

30 (e) The borrower may at any time pay all or any part of the

1 unpaid balance in his account; or, if the account is not in
2 default, the borrower may pay the unpaid principal balance in
3 monthly installments. Minimum monthly payment requirements shall
4 be determined by the licensee and set forth in the secondary
5 mortgage open-end loan agreement.

6 (f) A licensee may contract for and receive the fees, costs
7 and expenses permitted by this act on other secondary mortgage
8 loans, subject to all the conditions and restrictions set forth,
9 with the following variations:

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

25 (2) No credit life or disability insurance written in
26 connection with a secondary mortgage open-end loan shall be
27 cancelled by the licensee because of delinquency of the
28 borrower in the making of the required minimum payments on
29 the loan unless one or more of such payments is past due for
30 a period of 90 days or more; and the licensee shall advance

1 to the insurer the amounts required to keep the insurance in
2 force during such period, which amounts may be debited to the
3 borrower's account.

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

8 (g) Notwithstanding any other provisions in this act to the
9 contrary, a licensee may retain any security interest in real or
10 personal property until the open-end account is terminated,
11 provided that if there is no outstanding balance in the account
12 and there is no commitment by the licensee to make advances, the
13 licensee shall within ten days following written demand by the
14 borrower deliver to the borrower a release of the mortgage or a
15 request for reconveyance of the deed of trust on any real
16 property taken as security for a loan and a release of any
17 security interest in personal property.

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

20 Section 16. Authority of Secretary of Banking.

21 The secretary shall have authority to:

22 (1) Issue rules and regulations governing the
23 capitalization, public funding and the records to be
24 maintained by licensees, and such general rules and
25 regulations and orders as may be necessary for insuring the
26 safety and soundness of the business, the proper conduct of
27 the business and for the enforcement of this act.

28 (2) Examine any instrument, document, account, book,
29 record or file for a licensee or any other person, or make
30 such other investigations as he shall deem necessary to

1 administer the provisions of this act.

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

17 Section 17. Involuntary liquidation.

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

22 Section 18. Surrender of license.

23 Upon satisfying the secretary that all creditors have been
24 paid or that other arrangements satisfactory to the creditors
25 and the secretary have been made, a licensee may surrender its
26 license to the secretary by delivering its license to the
27 secretary with written notice that the license is being
28 voluntarily surrendered but such an action by a licensee shall
29 not affect the licensee's civil or criminal liability for acts
30 committed prior to the date on which the license was

1 surrendered.

2 Section 19. Suspension; revocation or refusal.

3 (a) The secretary may suspend, revoke or refuse to renew any
4 license issued pursuant to this act after giving 30 days written
5 notice forwarded to the licensee's principal place of business,
6 by registered or certified mail, return receipt, stating the
7 contemplated action and the reason therefor, if he shall find,
8 after the licensee has had an opportunity to be heard, that the
9 licensee has:

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

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

14 The hearing and notice provisions of this section shall not
15 apply if the licensee's corporate charter is voided in
16 accordance with the provisions of any law of this or any other
17 state, in which event the secretary may suspend or revoke the
18 license forthwith.

19 (b) The secretary may subsequently reinstate a license which
20 has been suspended or revoked or renew a license which he had
21 previously refused to renew if the condition which warranted the
22 original action has been corrected, and he has reason to believe
23 that such condition is not likely to occur again and that the
24 licensee is worthy of such reinstatements.

25 Section 20. Scope of act.

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

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

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

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

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

6 SECTION 21. FORECLOSURE, DEFAULT, CONFESSION OF JUDGMENT. <—

7 WITH REGARD TO FORECLOSURE, DEFAULT, RIGHT TO CURE A DEFAULT
8 AND CONFESSION OF JUDGMENT, NOTHING CONTAINED IN THIS ACT SHALL
9 BE DEEMED TO SUPERSEDE SECTION 403, 404 OR 407 OF THE ACT OF
10 JANUARY 30, 1974 (P.L.13, NO.6), REFERRED TO AS THE LOAN
11 INTEREST AND PROTECTION LAW, WHICH SHALL APPLY TO ALL LOANS MADE
12 PURSUANT TO THIS ACT.

13 Section ~~21~~ 22. Penalties. <—

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

1 (b) Except as the result of unintentional error, a
2 corporation licensed under the provisions of this act or any
3 director, officer, employee or agent who shall violate any
4 provision of this act or shall direct or consent to such
5 violations, shall be subject to a fine of \$2,000 for the first
6 offense, and for each subsequent offense a like fine and/or
7 suspension of license. A licensee shall have no liability for
8 unintentional error if within 15 days after discovering an error
9 the licensee notifies the person concerned of the error and
10 makes adjustments in the account as necessary to assure that the
11 person will not be required to pay any interest, fees, premiums,
12 charges or other considerations which aggregate in excess of the
13 charges permitted under this act.

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

22 Section ~~22~~ 23. Preservation of existing powers.

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23 Nothing in this act shall be construed as restricting the
24 powers otherwise conferred by law upon financial institutions,
25 such as State and national banks, State and Federal savings and
26 loan associations, savings banks and insurance companies, to
27 engage in the secondary mortgage business as defined in section
28 2, and no such financial institution, in exercising any power
29 otherwise so conferred upon it, shall be subject to any
30 provision of this act. A State-chartered or national bank, bank

1 and trust company, savings bank or savings and loan association
2 located in this State shall have all the powers of a licensee
3 under this act but shall not be subject to the license
4 requirement or any other provision of this act relating to the
5 requirements imposed on licensees.

6 Section ~~23~~ 24. Interpretation of act. <—

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

16 Section ~~24~~ 25. Preservation of existing contracts. <—

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

20 Section ~~25~~ 26. Effective date. <—

21 This act shall become effective in 90 days.