

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 94

Session of 1997

INTRODUCED BY HOLL, JANUARY 21, 1997

SENATOR HOLL, BANKING AND INSURANCE, AS AMENDED, JANUARY 27, 1998

AN ACT

1 Amending the act of December 22, 1989 (P.L.687, No.90), entitled
2 "An act providing for the regulation and licensing of
3 mortgage bankers and mortgage brokers; imposing additional
4 powers and duties on the Department of Banking and the State
5 Real Estate Commission; and providing penalties," further
6 providing for definitions, for loan correspondents and, FOR
7 LIMITED MORTGAGE BROKER, FOR wholesale table funders, for
8 license applications, requirements, exemptions, duration,
9 fees, limitations, suspensions or revocations and for
10 enforcement and penalties.

<—

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

13 Section 1. The definition of "advance fee" in section 2 of
14 the act of December 22, 1989 (P.L.687, No.90), known as the
15 Mortgage Bankers and Brokers Act, is amended and the section is
16 amended by adding definitions to read:

17 Section 2. Definitions.

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

21 "Advance fee." Any funds requested by or to be paid [to a

1 mortgage broker] in advance of or during the processing of a  
2 mortgage loan application, excluding those fees paid by an  
3 applicant borrower directly to a credit agency reporting bureau,  
4 title company or real estate appraiser.

5 "Branch." An office or other place of business located in  
6 this Commonwealth or any other state, other than the principal  
7 place of business, where a person engages in the first mortgage  
8 loan business which falls under the scope of this act.

9 \* \* \*

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

17 \* \* \*

18 "LIMITED MORTGAGE BROKER." AN INDIVIDUAL WHO, DIRECTLY OR ←  
19 INDIRECTLY, NEGOTIATES OR PLACES NONPURCHASE MONEY MORTGAGE  
20 LOANS FOR OTHERS IN THE PRIMARY MARKET FOR CONSIDERATION.

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

28 "Lock-in agreement." An agreement between a mortgage banker  
29 or loan correspondent and borrower whereby the licensee  
30 guarantees until a specified date the availability of a

1 specified rate of interest or specified formula by which the  
2 rate of interest and/or a specific number of discount points  
3 will be determined, provided the loan is approved and closed by  
4 the specified date. If a specified date is not determinable, the  
5 licensee may fulfill the requirement of this provision by  
6 setting forth with specificity the method by which the duration  
7 of the lock-in period will be determined.

8 \* \* \*

9 "NONPURCHASE MONEY MORTGAGE LOAN." A MORTGAGE LOAN AS ←  
10 DEFINED IN THIS ACT THE PROCEEDS OF WHICH ARE NOT USED TO  
11 FINANCE THE PURCHASE OF THE REAL PROPERTY SECURING THE MORTGAGE  
12 LOAN.

13 "Principal place of business." The primary office of the  
14 licensee located in this Commonwealth which is staffed on a  
15 full-time basis and at which books, records, accounts and  
16 documents are to be maintained.

17 "Secretary." The Secretary of Banking of the Commonwealth,  
18 or his designee.

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

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

24 (1) That portion of any assets pledged to secure  
25 obligations of any person or entity other than that of the  
26 applicant.

27 (2) Any asset, except construction loans receivables  
28 secured by first mortgages from related companies, due from  
29 officers or stockholders of the applicant or related  
30 companies in which the applicant's officers or stockholders

1 have an interest.

2 (3) That portion of the value of any marketable  
3 security, listed or unlisted, not shown at lower of cost or  
4 market, except for any shares of Federal National Mortgage  
5 Association stock required to be held under a servicing  
6 agreement, which should be carried at cost.

7 (4) Any amount in excess of the lower of the cost or  
8 market value of mortgages in foreclosures, construction loans  
9 or foreclosed property acquired by the applicant through  
10 foreclosure.

11 (5) Any investment shown on the balance sheet in the  
12 applicant's joint ventures, subsidiaries, affiliates or  
13 related companies which is greater than the value of the  
14 assets at equity.

15 (6) Goodwill.

16 (7) The value placed on insurance renewals or property  
17 management contract renewals or other similar intangibles of  
18 the applicant.

19 (8) Organization costs of the applicant.

20 (9) The value of any servicing contracts held by the  
21 applicant not determined in accordance with American  
22 Institute of Certified Public Accountants Statement of  
23 Position 76-2, dated August 25, 1976, or subsequent revision  
24 thereto.

25 (10) Any real estate held for investment where  
26 development will not start within two years from the date of  
27 its initial acquisition.

28 (11) Any leasehold improvements not being amortized over  
29 the lesser of the expected life of the asset or the remaining  
30 term of the lease.

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

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

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

10          Section 3. License requirements and exemptions.

11          (a) License required.--On and after the effective date of  
12          this act, no person shall act as a mortgage banker, ~~loan~~ <—  
13          ~~correspondent~~ or [OR], LOAN CORRESPONDENT, mortgage broker OR <—  
14          LIMITED MORTGAGE BROKER in this Commonwealth without a license  
15          as provided for in this act, provided, however, that any person  
16          licensed as a mortgage banker may also act as a loan  
17          correspondent or mortgage broker and any person licensed as a  
18          loan correspondent may also act as a mortgage broker without a  
19          separate license. A person licensed as a mortgage broker may  
20          only perform the services of a mortgage broker as defined in  
21          section 2.

22          (b) Exceptions.--The following persons shall not be required  
23          to be licensed under this act in order to conduct the  
24          [activities of a mortgage banker or mortgage broker] FIRST <—  
25          MORTGAGE LOAN BUSINESS but shall be subject to those provisions  
26          of this act as specifically provided in this section:

27                  (1) A State-chartered bank, bank and trust company,  
28                  savings bank, private bank or national bank, a State or  
29                  federally chartered savings and loan association, a federally  
30                  chartered savings bank or a State or federally chartered

1 credit union.

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

6 (3) A person licensed pursuant to the provisions of the  
7 act of February 19, 1980 (P.L.15, No.9), known as the Real  
8 Estate Licensing and Registration Act, who is principally  
9 engaged in a third-party real estate brokerage business, but  
10 only to the extent that he provides information, verbal or  
11 written, to or negotiates or places a mortgage loan for a  
12 buyer of real estate and is not compensated by the buyer or  
13 any other person for providing such information or  
14 negotiating or placing such mortgage loan. If he is  
15 compensated for providing such information or negotiating or  
16 placing such mortgage loan, he shall be subject to the  
17 provisions of sections 8, 10, 11 and 14(b), excluding section  
18 8(a)(1).

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

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

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

28 (7) Any agency or instrumentality of the Federal  
29 Government or a corporation otherwise created by an act of  
30 the United States Congress, including, but not limited to,

1 the Federal National Mortgage Association, the Government  
2 National Mortgage Association, the Veterans' Administration,  
3 the Federal Home Loan Mortgage Corporation and the Federal  
4 Housing Administration.

5 (8) The Pennsylvania Housing Finance Agency.

6 (9) A licensee under the act of April 8, 1937 (P.L.262,  
7 No.66), known as the Consumer Discount Company Act, except  
8 that any such licensee who makes a mortgage loan other than  
9 under the provisions of that act shall be subject to the  
10 provisions of sections 4(b)(2) and (3), 8, 10 and 14(b) of  
11 this act, excluding section 8(a)(1).

12 (10) Except for licensees described in paragraph (9),  
13 subsidiaries and affiliates of the following institutions:  
14 [Pennsylvania] State-chartered banks, bank and trust  
15 companies, savings banks, private banks, savings and loan  
16 associations and credit unions or national banks, federally  
17 chartered savings and loan associations, federally chartered  
18 savings banks and federally chartered credit unions, except  
19 that such subsidiaries and affiliates of institutions  
20 enumerated in this paragraph shall:

21 (i) be subject to the provisions of sections 8,  
22 9(a)(3), 10 and 14(b), excluding section 8(a)(1); [and]

23 (ii) deliver as required to the department annually  
24 copies of financial reports made to all supervisory  
25 agencies[.]; and

26 (iii) be registered with the department.

27 (11) Employees of a MORTGAGE BANKER, MORTGAGE BROKER AND ←  
28 LOAN CORRESPONDENT licensee or excepted persons acting for  
29 their employers.

30 (12) An insurance company, association or exchange

1 authorized to transact business in this Commonwealth under  
2 the act of May 17, 1921 (P.L.682, No.284), known as The  
3 Insurance Company Law of 1921, and any subsidiaries and  
4 affiliates thereof, except that such subsidiaries and  
5 affiliates shall:

6 (i) be subject to the provisions of sections 8,  
7 9(a)(3), 10 and 14(b), excluding section 8(a)(1); [and]

8 (ii) deliver as required to the department annually  
9 copies of financial reports made to all supervisory  
10 agencies[.]; and

11 (iii) be registered with the department.

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

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

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

23 Section 4. Application for license.

24 (a) Contents.--An application for a license to act as a  
25 mortgage banker, ~~loan correspondent~~ or [OR], LOAN CORRESPONDENT, <—  
26 mortgage broker OR LIMITED MORTGAGE BROKER shall be on such <—  
27 forms as may be prescribed and provided by the department. Each  
28 application shall include the address or addresses where  
29 business is to be conducted, the full name, official title and  
30 business address of each director and principal officer of the



1 business and any other information that may be required by the  
2 department. An applicant shall demonstrate to the department  
3 that policies and procedures have been developed to receive and  
4 process customer inquiries and grievances promptly and fairly.

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

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

11 (i) Federal National Mortgage Association.

12 (ii) Federal Home Loan Mortgage Corporation.

13 (iii) Federal Housing Administration.

14 (2) That he maintains or is approved for, and will  
15 continue to maintain as a licensee, a line of credit or  
16 equivalent mortgage-funding capability of not less than  
17 \$1,000,000.

18 (3) That he has a minimum tangible net worth of \$250,000  
19 at the time of application and will, at all times thereafter,  
20 maintain such minimum net worth, provided, however, that  
21 those applicants who were in business prior to [January 1,  
22 1987] June 20, 1990, may be licensed with a minimum tangible  
23 net worth of \$100,000 if, in the opinion of the department,  
24 the applicant has established that it has an otherwise  
25 adequate financial structure and operating history.

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

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

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

4           (i) That he is eligible to and will obtain and  
5 maintain a bond in the amount of \$100,000, in a form  
6 prescribed by the department, prior to the issuance of  
7 the license from a surety company authorized to do  
8 business in this Commonwealth. The bond shall run to the  
9 Commonwealth of Pennsylvania and shall be for the use of  
10 the Commonwealth and any person or persons who obtain a  
11 judgment against the loan correspondent for failure to  
12 carry out the terms of any provision for which advance  
13 fees are paid. No bond shall comply with the requirements  
14 of this section unless it contains a provision that it  
15 shall not be canceled for any cause unless notice of  
16 intention to cancel is given to the department at least  
17 30 days before the day upon which cancellation shall take  
18 effect.

19           (ii) That he has a minimum tangible net worth of  
20 \$100,000 at the time of application and will, at all  
21 times thereafter, maintain such minimum net worth.

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

1 with a minimum tangible net worth of \$75,000. Following  
2 that period, the applicant may continue to be licensed  
3 with a minimum tangible net worth of \$100,000.

4 (c) Mortgage broker's license.--

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

8 (1) That] he is eligible to and will obtain and maintain  
9 a bond in the amount of \$100,000, in a form prescribed by the  
10 regulations of the department, prior to the issuance of the  
11 license, from a surety company authorized to do business in this  
12 Commonwealth[, which bond shall run to the Commonwealth for the  
13 benefit of any person injured by the wrongful act, default or  
14 misrepresentation of the mortgage broker]. The bond shall run to  
15 the Commonwealth of Pennsylvania and shall be for the use of the  
16 Commonwealth and any person or persons against the mortgage  
17 broker for failure to carry out the terms of any provision for  
18 which advance fees are paid. If such person or persons shall be  
19 so aggrieved, he may, upon recovering judgment against such  
20 licensee, issue execution under such judgment and maintain an  
21 action upon the bond of the licensee in any court having  
22 jurisdiction for the amount claimed plus costs, provided the  
23 department assents thereto. No bond shall comply with the  
24 requirements of this section unless it contains a provision that  
25 it shall not be canceled for any cause unless notice of  
26 intention to cancel is given to the department at least 30 days  
27 before the day upon which cancellation shall take effect.

28 [(2) In lieu of the bond required by paragraph (1), the  
29 applicant may deposit, with the department or with the State  
30 Treasurer, bonds, notes, debentures or other obligations of

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

17 (3)] (2) Mortgage brokers who can demonstrate to the  
18 satisfaction of the department that they do not accept  
19 advance fees shall be exempt from the bond requirement of  
20 this subsection.

21 (C.1) LIMITED MORTGAGE BROKER'S LICENSE.--THE DEPARTMENT ←  
22 SHALL ISSUE A LIMITED MORTGAGE BROKER'S LICENSE APPLIED FOR  
23 PURSUANT TO THIS ACT IF THE APPLICANT ESTABLISHES THAT HE IS AN  
24 INDIVIDUAL WHO OPERATES FROM ONE LOCATION AND MAINTAINS NO  
25 BRANCH OFFICES AND CAN DEMONSTRATE TO THE SATISFACTION OF THE  
26 DEPARTMENT THAT HE ACCEPTS OR COLLECTS NO ADVANCE FEES.

27 (d) Foreign corporation.--If the applicant is a foreign  
28 corporation, that corporation shall be authorized to do business  
29 in this Commonwealth in accordance with the law of this  
30 Commonwealth regulating corporations and shall maintain at least

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

23 (e) Education.--To maintain a mortgage banker's, a loan  
24 correspondent's or a mortgage broker's license, the applicant or  
25 licensee shall demonstrate to the satisfaction of the secretary  
26 that at least one person from each licensed office has fulfilled <—  
27 ATTENDED a minimum of six to the maximum of ten hours of such <—  
28 continuing education requirements each year as the EACH YEAR. TO <—  
29 MAINTAIN A LIMITED MORTGAGE BROKER'S LICENSE THE LICENSEE SHALL  
30 DEMONSTRATE TO THE SATISFACTION OF THE SECRETARY THAT HE HAS

1 ATTENDED AT LEAST TWO HOURS OF CONTINUING EDUCATION EACH YEAR.  
2 THE secretary shall establish DELINEATE THE REQUIREMENTS FOR <—  
3 SUCH CONTINUING EDUCATION by regulation within three years of  
4 the effective date of this act. THE SECRETARY MAY REVIEW AND <—  
5 APPROVE CONTINUING EDUCATION PROGRAMS TO SATISFY THE CONTINUING  
6 EDUCATION REQUIREMENT.

7 Section 5. Annual license fee.

8 ~~(a) General rule.~~ An [AN] (A) GENERAL RULE.--A MORTGAGE <—  
9 BANKER, MORTGAGE BROKER OR applicant shall pay to the department  
10 at the time an application is filed an initial license fee [of <—  
11 \$500] for the principal place of business and an additional <—  
12 license fee [of \$50] for each branch office [in this <—  
13 Commonwealth.] AS PROVIDED FOR IN SECTION 603-A OF THE ACT OF <—  
14 APRIL 9, 1929 (P.L.177, NO.175), KNOWN AS THE ADMINISTRATIVE  
15 CODE OF 1929. On or before July 1 of each year and thereafter, a  
16 licensee shall pay a license renewal fee [of \$200] for the <—  
17 principal place of business and an additional license renewal  
18 fee [of \$25] for each branch office [in this Commonwealth]. <—  
19 COMMONWEALTH.] AS PROVIDED FOR IN SECTION 603-A OF THE <—  
20 ADMINISTRATIVE CODE OF 1929. An applicant for a license to  
21 operate as a loan correspondent shall pay the department the  
22 same fee for the initial license for principal place of  
23 business, each branch office and annual license renewal as  
24 provided for mortgage bankers licensed under section 603-A of  
25 the act of April 9, 1929 (P.L.177, No.175), known as The <—  
26 Administrative Code of 1929. AN APPLICANT FOR A LICENSE TO <—  
27 OPERATE AS A LIMITED MORTGAGE BROKER SHALL PAY TO THE DEPARTMENT  
28 AT THE TIME AN APPLICATION IS FILED AN INITIAL LICENSE FEE OF  
29 \$250. ON OR BEFORE JULY 1 OF EACH YEAR THEREAFTER, A LIMITED  
30 MORTGAGE BROKER LICENSEE SHALL PAY A RENEWAL FEE OF \$200.

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

8 Section 6. Issuance of license.

9       **(a) Time limit.**--Within 60 days after [an] a complete  
10 application is received, the department shall either issue a  
11 license or, for any reason for which the department may suspend,  
12 revoke or refuse to renew a license as provided for by section  
13 13, refuse to issue a license. Upon receipt of an application  
14 for license, the department shall conduct such investigation as  
15 it deems necessary to determine that the applicant and its  
16 officers, directors and principals are of good character and  
17 ethical reputation.

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

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

27               (1) The name and address of the licensee, the address so  
28 specified to be that of the licensee's principal place of  
29 business within this Commonwealth or, for a licensee acting  
30 only in the capacity of a wholesale table funder, either in

1 or outside of this Commonwealth.

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

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

8 (d) Denial of license due to conviction.--The department may  
9 deny a license if it finds that the applicant or any person who  
10 is a director, officer, partner, agent, employee or ultimate  
11 equitable owner of 10% or more of the applicant has been  
12 convicted of a misdemeanor or felony in any jurisdiction or of a  
13 crime which, if convicted in this Commonwealth, would constitute  
14 a misdemeanor or felony under the laws of this Commonwealth. For  
15 the purposes of this act, a person shall be deemed to have been  
16 convicted of a crime if the person shall have pleaded guilty or  
17 nolo contendere to a charge thereof before a court or Federal  
18 magistrate or shall have been found guilty thereof by the  
19 decision or judgment of a court or Federal magistrate or by the  
20 verdict of a jury, irrespective of the pronouncement of sentence  
21 or the suspension thereof, unless the pleas of guilty or nolo  
22 contendere or the decision, judgment or verdict shall have been  
23 set aside, vacated, reversed or otherwise abrogated by lawful  
24 judicial process.

25 (e) Denial of license for other reason.--The department may  
26 deny a license or otherwise restrict a license if it finds that,  
27 within two years prior to or from the date of the application,  
28 the applicant or any person who is a director, officer, partner,  
29 agent, employee or ultimate equitable owner of 10% or more of  
30 the applicant:



1           (1) has had a license application or license issued by  
2 the department denied, suspended or revoked;

3           (2) is the subject of an order of the department  
4 denying, suspending or revoking a license as a mortgage  
5 banker, loan correspondent ~~or mortgage broker~~, MORTGAGE ←  
6 BROKER OR LIMITED MORTGAGE BROKER; or

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

9 Section 7. License duration.

10 A license issued by the department shall:

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

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

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

25 Section 8. Licensee requirements.

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

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

29           (2) Maintain, at its principal place of business within  
30 this Commonwealth, or at such place within or outside this

1 Commonwealth if agreed to by the Secretary of Banking or the  
2 commission, either the original or a copy of such books,  
3 accounts, records and documents, or electronic or other  
4 similar access thereto, of the business conducted under the  
5 license as may be prescribed by the department or commission  
6 to enable them to determine whether the business of the  
7 licensee is being conducted in accordance with the provisions  
8 of this act and the orders, rules and regulations issued  
9 under this act. The department, at its determination, shall  
10 have free access to and AUTHORIZATION TO examine records ←  
11 maintained outside of this Commonwealth. The costs of the  
12 examination, including travel costs, shall be borne by the  
13 licensee. The secretary may deny or revoke the authority to  
14 maintain records outside of this Commonwealth for good cause  
15 in the interest of consumer protection for Commonwealth  
16 borrowers.

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

23 (4) Be subject to examination by the department or  
24 commission at the discretion of the department or commission  
25 at which time the department or commission shall have free  
26 access, during regular business hours, to the licensee's  
27 place or places of business in this Commonwealth and to all  
28 instruments, documents, accounts, books and records which  
29 pertain to a licensee's mortgage loan business, whether  
30 maintained in or outside of this Commonwealth. The department

1 or commission may examine a licensee at any time if the  
2 department or commission deems such examination to be  
3 necessary or desirable. The cost of any such examination  
4 shall be borne by the licensee.

5 (5) Comply with all provisions of the act of January 30,  
6 1974 (P.L.13, No.6), referred to as the Loan Interest and  
7 Protection Law, provided, however, that this shall not be  
8 deemed an override of section 501 of the Depository  
9 Institutions Deregulation and Monetary Control Act of 1980  
10 (94 Stat. 161, 12 U.S.C. § 1735f-7 note).

11 (6) Comply with the provisions of the act of December  
12 23, 1983 (P.L.385, No.91), entitled "An act amending the act  
13 of December 3, 1959 (P.L.1688, No.621), entitled, as amended,  
14 'An act to promote the health, safety and welfare of the  
15 people of the Commonwealth by broadening the market for  
16 housing for persons and families of low and moderate income  
17 and alleviating shortages thereof, and by assisting in the  
18 provision of housing for elderly persons through the creation  
19 of the Pennsylvania Housing Finance Agency as a public  
20 corporation and government instrumentality; providing for the  
21 organization, membership and administration of the agency,  
22 prescribing its general powers and duties and the manner in  
23 which its funds are kept and audited, empowering the agency  
24 to make housing loans to qualified mortgagors upon the  
25 security of insured and uninsured mortgages, defining  
26 qualified mortgagors and providing for priorities among  
27 tenants in certain instances, prescribing interest rates and  
28 other terms of housing loans, permitting the agency to  
29 acquire real or personal property, permitting the agency to  
30 make agreements with financial institutions and Federal

1 agencies, providing for the purchase by persons of low and  
2 moderate income of housing units, and approving the sale of  
3 housing units, permitting the agency to sell housing loans,  
4 providing for the promulgation of regulations and forms by  
5 the agency, prescribing penalties for furnishing false  
6 information, empowering the agency to borrow money upon its  
7 own credit by the issuance and sale of bonds and notes and by  
8 giving security therefor, permitting the refunding,  
9 redemption and purchase of such obligations by the agency,  
10 prescribing remedies of holders of such bonds and notes,  
11 exempting bonds and notes of the agency, the income  
12 therefrom, and the income and revenues of the agency from  
13 taxation, except transfer, death and gift taxes; making such  
14 bonds and notes legal investments for certain purposes; and  
15 indicating how the act shall become effective,' providing for  
16 homeowner's emergency assistance."

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

21 (8) Refund all fees, other than those fees paid by the  
22 licensee to a third party, paid by an applicant borrower when  
23 a mortgage loan is not produced within the time specified by  
24 the mortgage banker, ~~loan correspondent~~ or [OR], LOAN ←  
25 CORRESPONDENT, mortgage broker OR LIMITED MORTGAGE BROKER at ←  
26 the rate, term and overall cost agreed to by the borrower,  
27 provided, however, that this provision shall not apply when  
28 the failure to produce a loan is due solely to the borrower's  
29 negligence, his refusal to accept and close on a loan  
30 commitment or his refusal or inability to provide information

1 necessary for processing, including, but not limited to,  
2 employment verifications and verifications of deposits. The  
3 licensee shall disclose to the borrower, in writing, at the  
4 time of a loan application which fees paid or to be paid are  
5 nonrefundable.

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

8 (i) The expiration date of the lock-in, if any.

9 (ii) The interest rate locked in, if any.

10 (iii) The discount points locked in, if any.

11 (iv) The commitment fee locked in, if any.

12 (v) The lock-in fee, if any.

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

15 \* \* \*

16 Section 9. Licensee limitations.

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

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

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

28 (3) Disburse the proceeds of a mortgage loan in any form  
29 other than cash, electronic fund transfer, certified check or  
30 cashier's check[.] for purchase money mortgage loans and

1 portions of nonpurchase money mortgage loans designated to  
2 pay one or more existing liens held by another.

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

5 (5) In the case of a mortgage broker OR LIMITED MORTGAGE <—  
6 BROKER, commit to close or close, mortgage loans in its own  
7 name, service mortgage loans, enter into lock-in agreements  
8 or collect lock-in fees, provided, however, that a mortgage  
9 broker OR LIMITED MORTGAGE BROKER can provide a lender's <—  
10 lock-in agreement to a borrower on behalf of that lender and  
11 collect lock-in fees on the lender's behalf payable to that  
12 lender.

13 \* \* \*

14 Section 10. Authority of department or commission.

15 (a) Department regulations.--Except as provided in  
16 subsection (b), the department shall have the authority to issue  
17 rules and regulations and orders as may be necessary for the  
18 proper conduct of the business of a mortgage banker, loan <—  
19 correspondent or [OR], LOAN CORRESPONDENT, a mortgage broker OR <—  
20 LIMITED MORTGAGE BROKER and for the enforcement of this act[.  
21 Initial rules and regulations shall be issued by the department  
22 within 180 days after the effective date of this subsection.],  
23 including, but not limited to, cease and desist orders, notices  
24 of fines and such other orders as the department in its  
25 discretion may issue.

26 \* \* \*

27 Section 11. Fees.

28 \* \* \*

29 (d) Licensing option.--A real estate broker or salesperson  
30 who is also a bona fide mortgage broker, mortgage banker or loan

1 correspondent who holds himself out publicly as such shall have  
2 the option of being licensed and regulated by the department, in  
3 which case he shall not be subject to the fee limitations  
4 provided for in this section or the rules and regulations  
5 promulgated by the commission hereunder.

6 \* \* \*

7 Section 13. Suspension, revocation or refusal.

8 (a) Departmental action.--The department may suspend, revoke  
9 or refuse to renew any license issued pursuant to this act after  
10 giving 30 days' written notice forwarded to the licensee's  
11 principal place of business, by registered or certified mail,  
12 return receipt requested, stating the contemplated action and  
13 the reason therefor, if the department shall find, after the  
14 licensee has had an opportunity to be heard, that the licensee  
15 has:

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

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

20 (3) If licensed under section 4(c)(3), accepted an  
21 advance fee.

22 (4) Become insolvent, either in the sense MEANING that <—  
23 the liabilities of the applicant or licensee exceed the  
24 assets of the applicant or licensee or that the applicant or  
25 licensee cannot meet the obligations of the applicant or  
26 licensee as they mature, or is in such financial condition  
27 that the applicant or licensee cannot continue in business  
28 with safety to the customers of the applicant or licensee.

29 (5) Engaged in dishonest, fraudulent or illegal  
30 practices or conduct in any business or unfair or unethical

1 practices or conduct in connection with the mortgage  
2 business.

3 (6) Been convicted of a misdemeanor or of a felony.

4 (7) Filed an application for a license which, as of the  
5 date the license was issued or as of the date of an order  
6 denying, suspending or revoking a license, was incomplete in  
7 any material respect or contained any statement that was, in  
8 light of the circumstances under which it was made, false or  
9 misleading with respect to any material fact.

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

14 (9) Become the subject of an order of the department  
15 denying, suspending or revoking a license as a mortgage  
16 banker, mortgage broker, LIMITED MORTGAGE BROKER or loan ←  
17 correspondent.

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

21 (11) Failed to comply with the requirements of this act  
22 to make and keep records prescribed by rule or order of the  
23 department, to produce such records required by the  
24 department or to file any financial reports or other  
25 information the department by rule or order may require.

26 (12) Become the subject of an order of the department  
27 denying, suspending or revoking a license under the  
28 provisions of any other law administered by the department.

29 (13) Failed to comply with a cease and desist order  
30 entered after notice and opportunity for hearing and issued



1 by the department within the last five years.

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

5 (15) IN THE CASE OF A LIMITED MORTGAGE BROKER, ←  
6 NEGOTIATED OR PLACED, EITHER DIRECTLY OR INDIRECTLY, A  
7 MORTGAGE LOAN OTHER THAN A NONPURCHASE MONEY MORTGAGE LOAN,  
8 AS DEFINED IN THIS ACT.

9 The hearing and notice provisions of this section shall not  
10 apply if the licensee's corporate charter is voided in  
11 accordance with the provisions of any law of this or any other  
12 state, in which event the department may suspend or revoke the  
13 license.

14 \* \* \*

15 Section 14. Penalties.

16 (a) Nonlicensees.--Any person who is not licensed by the  
17 department or is not exempted from the licensing requirements in  
18 accordance with the provisions of this act and who engages in  
19 the business of a mortgage banker, ~~loan correspondent~~ or [OR], ←  
20 LOAN CORRESPONDENT, mortgage broker OR LIMITED MORTGAGE BROKER ←  
21 commits a felony of the third degree.

22 (b) Nonlicensees subject to the provisions of this act.--Any  
23 person who is subject to the provisions of this act, even though  
24 not licensed hereunder, or any person who is not licensed by the  
25 department or is not exempt from the licensing requirements, who  
26 violates any of the provisions to which it is subject shall be  
27 subject to a fine levied by the department or commission of up  
28 to \$2,000 for each offense. Any such nonlicensed person who  
29 commits three or more offenses may, at the discretion of the  
30 department or commission, be prohibited from engaging in the

1 business of a mortgage broker or mortgage banker unless licensed  
2 under this act.

3 \* \* \*

4 [SECTION 15. REPORT. ←

5 AT LEAST ANNUALLY, THE DEPARTMENT AND THE COMMISSION SHALL  
6 SEPARATELY PROVIDE A WRITTEN REPORT TO THE GENERAL ASSEMBLY  
7 LISTING THE COMPLAINTS RECEIVED CONCERNING MORTGAGE BROKERAGE  
8 ACTIVITIES AND ADVISING AS TO THE MANNER IN WHICH EACH COMPLAINT  
9 WAS DISPOSED OF. THE DEPARTMENT AND COMMISSION SHALL ALSO SET  
10 FORTH ALL ENFORCEMENT ACTIONS RELATING TO MORTGAGE BROKERAGE  
11 ACTIVITIES UNDER THIS ACT AND THE REGULATIONS PROMULGATED  
12 THEREUNDER.]

13 Section 18. Scope of act.

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

15 (1) Any mortgage loan which is:

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

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

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

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

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