
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 94

Session of
1997

INTRODUCED BY HOLL, JANUARY 21, 1997

SENATOR TILGHMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,
MARCH 23, 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, 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] TO A LOAN CORRESPONDENT, MORTGAGE BROKER OR
2 LIMITED MORTGAGE BROKER in advance of or during the processing
3 of a mortgage loan application, excluding those fees paid by an
4 applicant borrower directly to a credit agency reporting bureau,
5 title company or real estate appraiser.

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

10 * * *

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

18 * * *

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

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

29 "Lock-in agreement." An agreement between a mortgage banker
30 or loan correspondent and borrower whereby the licensee

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

9 * * *

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

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

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

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

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

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

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

1 companies in which the applicant's officers or stockholders
2 have an interest.

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

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

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

16 (6) Goodwill.

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

20 (8) Organization costs of the applicant.

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

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

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

1 term of the lease.

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

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

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

11 Section 3. License requirements and exemptions.

12 (a) License required.--On and after the effective date of
13 this act, no person shall act as a mortgage banker [or], loan
14 correspondent, mortgage broker or limited mortgage broker in
15 this Commonwealth without a license as provided for in this act,
16 provided, however, that any person licensed as a mortgage banker
17 may also act as a loan correspondent or mortgage broker and any
18 person licensed as a loan correspondent may also act as a
19 mortgage broker without a separate license. A person licensed as
20 a mortgage broker may only perform the services of a mortgage
21 broker as defined in 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 [or], loan correspondent, mortgage broker or
26 limited mortgage broker shall be on such forms as may be
27 prescribed and provided by the department. Each application
28 shall include the address or addresses where business is to be
29 conducted, the full name, official title and business address of
30 each director and principal officer of the business and any

1 other information that may be required by the department. An
2 applicant shall demonstrate to the department that policies and
3 procedures have been developed to receive and process customer
4 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 <—
10 the regulations of] ACCEPTABLE TO the department, prior to <—
11 the issuance of the license, from a surety company authorized
12 to do business in this Commonwealth[, which bond shall run to
13 the Commonwealth for the benefit of any person injured by the
14 wrongful act, default or misrepresentation of the mortgage
15 broker]. The bond shall run to the Commonwealth of
16 Pennsylvania and shall be for the use of the Commonwealth and
17 any person or persons against the mortgage broker for failure
18 to carry out the terms of any provision for which advance
19 fees are paid. If such person or persons shall be so
20 aggrieved, he may, upon recovering judgment against such
21 licensee, issue execution under such judgment and maintain an
22 action upon the bond of the licensee in any court having
23 jurisdiction for the amount claimed plus costs, provided the
24 department assents thereto. No bond shall comply with the
25 requirements of this section unless it contains a provision
26 that it shall not be canceled for any cause unless notice of
27 intention to cancel is given to the department at least 30
28 days before the day upon which cancellation shall take
29 effect.

30 [(2) In lieu of the bond required by paragraph (1), the

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

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

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

29 (d) Foreign corporation.--If the applicant is a foreign
30 corporation, that corporation shall be authorized to do business

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

25 (e) Education.--To maintain a mortgage banker's, a loan
26 correspondent's or a mortgage broker's license, the applicant or
27 licensee shall demonstrate to the satisfaction of the secretary
28 that at least one person from each licensed office has attended
29 a minimum of six hours of such continuing education each year.
30 To maintain a limited mortgage broker's license the licensee

1 shall demonstrate to the satisfaction of the secretary that he
2 has attended at least two hours of continuing education each
3 year. The secretary shall delineate the requirements for such
4 continuing education by regulation within three years of the
5 effective date of this act. The secretary may review and approve
6 continuing education programs to satisfy the continuing
7 education requirement.

8 Section 5. Annual license fee.

9 [An] (a) General rule.--A mortgage banker, mortgage broker
10 or applicant shall pay to the department at the time an
11 application is filed an initial license fee [of \$500] for the
12 principal place of business and an additional license fee [of
13 \$50] for each branch office [in this Commonwealth.] as provided
14 for in section 603-A of the act of April 9, 1929 (P.L.177,
15 No.175), known as The Administrative Code of 1929. On or before
16 July 1 of each year and thereafter, a licensee shall pay a
17 license renewal fee [of \$200] for the principal place of
18 business and an additional license renewal fee [of \$25] for each
19 branch office [in this Commonwealth.] as provided for in section
20 603-A of The Administrative Code of 1929. An applicant for a
21 license to operate as a loan correspondent shall pay the
22 department the same fee for the initial license for principal
23 place of business, each branch office and annual license renewal
24 as provided for mortgage bankers licensed under section 603-A of
25 The Administrative Code of 1929. An applicant for a license to
26 operate as a limited mortgage broker shall pay to the department
27 at the time an application is filed an initial license fee of
28 \$250. On or before July 1 of each year thereafter, a limited
29 mortgage broker licensee shall pay a renewal fee of \$200.

30 (b) Recovery of costs.--No abatement of any license fee

1 shall be made if the license is issued for a period of less than
2 one year. The department shall be entitled to recover any cost
3 of investigation in excess of license or renewal fees from the
4 licensee or from any person who is not licensed under this act
5 but who is presumed to be engaged in business contemplated by
6 this act.

7 Section 6. Issuance of license.

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

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

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

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

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

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

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

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

30 (1) has had a license application or license issued by

1 the department denied, suspended or revoked;

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

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

8 Section 7. License duration.

9 A license issued by the department shall:

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

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

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

24 Section 8. Licensee requirements.

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

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

28 (2) Maintain, at its principal place of business within
29 this Commonwealth, or at such place within or outside this
30 Commonwealth if agreed to by the Secretary of Banking or the

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

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

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

1 department or commission deems such examination to be
2 necessary or desirable. The cost of any such examination
3 shall be borne by the licensee.

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

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

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

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

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

1 verifications of deposits. The licensee shall disclose to the
2 borrower, in writing, at the time of a loan application which
3 fees paid or to be paid are nonrefundable.

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

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

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

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

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

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

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

13 * * *

14 Section 9. Licensee limitations.

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

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

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

26 (3) Disburse the proceeds of a mortgage loan in any form
27 other than cash, electronic fund transfer, certified check or
28 cashier's check[.] for purchase money mortgage loans and
29 portions of nonpurchase money mortgage loans designated to
30 pay one or more existing liens held by another.

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

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

11 * * *

12 Section 10. Authority of department or commission.

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

23 * * *

24 Section 11. Fees.

25 * * *

26 (d) Licensing option.--A real estate broker or salesperson
27 who is also a bona fide mortgage broker, mortgage banker or loan
28 correspondent who holds himself out publicly as such shall have
29 the option of being licensed and regulated by the department, in
30 which case he shall not be subject to the fee limitations

1 provided for in this section or the rules and regulations
2 promulgated by the commission hereunder.

3 * * *

4 Section 13. Suspension, revocation or refusal.

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

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

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

17 (3) If licensed under section 4(c)(3), accepted an
18 advance fee.

19 (4) Become insolvent, meaning that the liabilities of
20 the applicant or licensee exceed the assets of the applicant
21 or licensee or that the applicant or licensee cannot meet the
22 obligations of the applicant or licensee as they mature, or
23 is in such financial condition that the applicant or licensee
24 cannot continue in business with safety to the customers of
25 the applicant or licensee.

26 (5) Engaged in dishonest, fraudulent or illegal
27 practices or conduct in any business or unfair or unethical
28 practices or conduct in connection with the mortgage
29 business.

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

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

7 (8) 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 mortgage
10 business.

11 (9) Become the subject of an order of the department
12 denying, suspending or revoking a license as a mortgage
13 banker, mortgage broker, limited mortgage broker or loan
14 correspondent.

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

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

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

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

29 (14) Demonstrated negligence or incompetence in
30 performing any act for which the licensee is required to hold

1 a license under this act.

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

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

11 * * *

12 Section 14. Penalties.

13 (a) Nonlicensees.--Any person who is not licensed by the
14 department or is not exempted from the licensing requirements in
15 accordance with the provisions of this act and who engages in
16 the business of a mortgage banker [or], loan correspondent,
17 mortgage broker or limited mortgage broker commits a felony of
18 the third degree.

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

30 * * *

1 [Section 15. Report.

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

10 Section 18. Scope of act.

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

12 (1) Any mortgage loan which is:

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

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

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

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

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