
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 94

Session of
1997

INTRODUCED BY HOLL, JANUARY 21, 1997

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, NOVEMBER 9, 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:

1 "Advance fee." Any funds requested by or to be paid [to a
2 mortgage broker] TO A LOAN CORRESPONDENT, MORTGAGE BROKER OR
3 LIMITED MORTGAGE BROKER in advance of or during the processing
4 of a mortgage loan application, excluding those fees paid by an
5 applicant borrower directly to a credit agency reporting bureau,
6 title company or real estate appraiser.

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

11 * * *

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

19 * * *

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

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

30 "Lock-in agreement." An agreement between a mortgage banker

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

10 * * *

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

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

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

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

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

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

29 (2) Any asset, except construction loans receivables
30 secured by first mortgages from related companies, due from

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

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

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

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

17 (6) Goodwill.

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

21 (8) Organization costs of the applicant.

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

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

30 (11) Any leasehold improvements not being amortized over

1 the lesser of the expected life of the asset or the remaining
2 term of the lease.

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

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

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

12 Section 3. License requirements and exemptions.

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

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

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

1 chartered savings bank or a State or federally chartered
2 credit union.

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

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

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

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

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

29 (7) Any agency or instrumentality of the Federal
30 Government or a corporation otherwise created by an act of

1 the United States Congress, including, but not limited to,
2 the Federal National Mortgage Association, the Government
3 National Mortgage Association, the Veterans' Administration,
4 the Federal Home Loan Mortgage Corporation and the Federal
5 Housing Administration.

6 (8) The Pennsylvania Housing Finance Agency.

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

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

22 (i) be subject to the provisions of sections 8,
23 9(a)(3), 10 and 14(b), excluding section 8(a)(1); [and]

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

27 (iii) be registered with the department.

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

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

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

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

12 (iii) be registered with the department.

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

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

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

24 Section 4. Application for license.

25 (a) Contents.--An application for a license to act as a
26 mortgage banker [or], loan correspondent, mortgage broker or
27 limited mortgage broker shall be on such forms as may be
28 prescribed and provided by the department. Each application
29 shall include the address or addresses where business is to be
30 conducted, the full name, official title and business address of

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

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

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

12 (i) Federal National Mortgage Association.

13 (ii) Federal Home Loan Mortgage Corporation.

14 (iii) Federal Housing Administration.

15 (2) That he maintains or is approved for, and will
16 continue to maintain as a licensee, a line of credit or
17 equivalent mortgage-funding capability of not less than
18 \$1,000,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (d) Foreign corporation.--If the applicant is a foreign

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

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

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

9 Section 5. Annual license fee.

10 [An] (a) General rule.--A mortgage banker, mortgage broker
11 or applicant shall pay to the department at the time an
12 application is filed an initial license fee [of \$500] for the
13 principal place of business and an additional license fee [of
14 \$50] for each branch office [in this Commonwealth.] as provided
15 for in section 603-A of the act of April 9, 1929 (P.L.177,
16 No.175), known as The Administrative Code of 1929. On or before
17 July 1 of each year and thereafter, a licensee shall pay a
18 license renewal fee [of \$200] for the principal place of
19 business and an additional license renewal fee [of \$25] for each
20 branch office [in this Commonwealth.] as provided for in section
21 603-A of The Administrative Code of 1929. An applicant for a
22 license to operate as a loan correspondent shall pay the
23 department the same fee for the initial license for principal
24 place of business, each branch office and annual license renewal
25 as provided for mortgage bankers licensed under section 603-A of
26 The 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, mortgage broker or limited
6 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 [or], loan correspondent, mortgage broker
25 or limited mortgage broker at the rate, term and overall cost
26 agreed to by the borrower, provided, however, that this
27 provision shall not apply when the failure to produce a loan
28 is due solely to the borrower's negligence, his refusal to
29 accept and close on a loan commitment or his refusal or
30 inability to provide information necessary for processing,

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

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

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

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

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

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

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

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

14 (11) ALLOW FOR THE EVIDENCE OF ANY INSURANCE REQUIRED IN ←
15 CONNECTION WITH A LOAN BY A POLICY OR BINDER OR A COPY OF
16 EITHER.

17 * * *

18 Section 9. Licensee limitations.

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

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

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

30 (3) Disburse the proceeds of a mortgage loan in any form

1 other than cash, electronic fund transfer, certified check or
2 cashier's check[.] ~~for purchase money mortgage loans and~~ ←
3 ~~portions of nonpurchase money mortgage loans designated to~~
4 ~~pay one or more existing liens held by another.~~ WHERE SUCH ←
5 PROCEEDS ARE DISBURSED BY THE LICENSEE TO A CLOSING AGENT.
6 THIS PARAGRAPH SHALL NOT BE CONSTRUED AS REQUIRING A LENDER
7 TO UTILIZE A CLOSING AGENT AND SHALL NOT APPLY TO
8 DISBURSEMENTS BY CHECK DIRECTLY FROM THE LICENSEE'S ACCOUNT
9 PAYABLE TO THE BORROWER, BORROWER DESIGNEES OR OTHER PARTIES
10 DUE FUNDS FROM THE CLOSING.

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

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

21 * * *

22 Section 10. Authority of department or commission.

23 (a) Department regulations.--Except as provided in
24 subsection (b), the department shall have the authority to issue
25 rules and regulations and orders as may be necessary for the
26 proper conduct of the business of a mortgage banker [or], loan
27 correspondent, a mortgage broker or limited mortgage broker and
28 for the enforcement of this act[. Initial rules and regulations
29 shall be issued by the department within 180 days after the
30 effective date of this subsection.], including, but not limited

1 to, cease and desist orders, notices of fines and such other
2 orders as the department in its discretion may issue.

3 * * *

4 Section 11. Fees.

5 * * *

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

13 * * *

14 Section 13. Suspension, revocation or refusal.

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

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

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

27 (3) If licensed under section 4(c)(3), accepted an
28 advance fee.

29 (4) Become insolvent, meaning that the liabilities of
30 the applicant or licensee exceed the assets of the applicant

1 or licensee or that the applicant or licensee cannot meet the
2 obligations of the applicant or licensee as they mature, or
3 is in such financial condition that the applicant or licensee
4 cannot continue in business with safety to the customers of
5 the applicant or licensee.

6 (5) Engaged in dishonest, fraudulent or illegal
7 practices or conduct in any business or unfair or unethical
8 practices or conduct in connection with the mortgage
9 business.

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

11 (7) Filed an application for a license which, as of the
12 date the license was issued or as of the date of an order
13 denying, suspending or revoking a license, was incomplete in
14 any material respect or contained any statement that was, in
15 light of the circumstances under which it was made, false or
16 misleading with respect to any material fact.

17 (8) Permanently or temporarily been enjoined by a court
18 of competent jurisdiction from engaging in or continuing any
19 conduct or practice involving any aspect of the mortgage
20 business.

21 (9) Become the subject of an order of the department
22 denying, suspending or revoking a license as a mortgage
23 banker, mortgage broker, limited mortgage broker or loan
24 correspondent.

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

28 (11) Failed to comply with the requirements of this act
29 to make and keep records prescribed by rule or order of the
30 department, to produce such records required by the

1 department or to file any financial reports or other
2 information the department by rule or order may require.

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

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

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

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

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

21 * * *

22 Section 14. Penalties.

23 (a) Nonlicensees.--Any person who is not licensed by the
24 department or is not exempted from the licensing requirements in
25 accordance with the provisions of this act and who engages in
26 the business of a mortgage banker [or], loan correspondent,
27 mortgage broker or limited mortgage broker commits a felony of
28 the third degree.

29 (b) Nonlicensees subject to the provisions of this act.--Any
30 person who is subject to the provisions of this act, even though

1 not licensed hereunder, or any person who is not licensed by the
2 department or is not exempt from the licensing requirements, who
3 violates any of the provisions to which it is subject shall be
4 subject to a fine levied by the department or commission of up
5 to \$2,000 for each offense. Any such nonlicensed person who
6 commits three or more offenses may, at the discretion of the
7 department or commission, be prohibited from engaging in the
8 business of a mortgage broker or mortgage banker unless licensed
9 under this act.

10 * * *

11 [Section 15. Report.

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

20 Section 18. Scope of act.

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

22 (1) Any mortgage loan which is:

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

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

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

30 (2) Any person who engages in the first mortgage loan

1 business in this Commonwealth.

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