

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 377 Session of
2001

INTRODUCED BY WENGER, PICCOLA, ARMSTRONG, M. WHITE, THOMPSON,
GREENLEAF, WAUGH, ROBBINS, TARTAGLIONE, BOSCOLA, MOWERY,
WOZNIAK, STOUT AND LEMMOND, FEBRUARY 8, 2001

AS AMENDED ON THIRD CONSIDERATION, APRIL 30, 2001

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 license ~~requirements and~~ exemptions, for <—
7 application for license, for licensee requirements, for
8 authority of department or commission and for penalties.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Sections 3, 4(c)(1) and (e) and 8(a)(5) of the
12 act of December 22, 1989 (P.L.687, No.90), known as the Mortgage
13 Bankers and Brokers Act, amended December 21, 1998 (P.L.987,
14 No.131), are amended to read:

15 Section 3. License requirements and exemptions.

16 (a) License required.--On and after the effective date of
17 this act, no person shall act as a mortgage banker, loan
18 correspondent, mortgage broker or limited mortgage broker in
19 this Commonwealth without a license as provided for in this act,
20 provided, however, that any person licensed as a mortgage banker

1 may also act as a loan correspondent or mortgage broker and any
2 person licensed as a loan correspondent may also act as a
3 mortgage broker without a separate license. A person licensed as
4 a mortgage broker may only perform the services of a mortgage
5 broker as defined in section 2.

6 (b) Exceptions.--The following persons shall not be required
7 to be licensed under this act in order to conduct the first
8 mortgage loan business but shall be subject to those provisions
9 of this act as specifically provided in this section:

10 (1) A State-chartered bank, bank and trust company,
11 savings bank, private bank or national bank, a State or
12 federally chartered savings and loan association, a federally
13 chartered savings bank or a State or federally chartered
14 credit union.

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

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

1 8(a)(1).

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

5 (5) A person who either originates or negotiates less
6 than three mortgage loans in a calendar year in this
7 Commonwealth unless he is otherwise deemed to be engaged in
8 the first mortgage loan business.

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

11 (7) Any agency or instrumentality of the Federal
12 Government or a corporation otherwise created by an act of
13 the United States Congress, including, but not limited to,
14 the Federal National Mortgage Association, the Government
15 National Mortgage Association, the Veterans' Administration,
16 the Federal Home Loan Mortgage Corporation and the Federal
17 Housing Administration.

18 (8) The Pennsylvania Housing Finance Agency.

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

25 (10) Except for licensees described in paragraph (9),
26 subsidiaries and affiliates of the following institutions:
27 State-chartered banks, bank and trust companies, savings
28 banks, private banks, savings and loan associations and
29 credit unions or national banks, federally chartered savings
30 and loan associations, federally chartered savings banks and

1 federally chartered credit unions, except that such
2 subsidiaries and affiliates of institutions enumerated in
3 this paragraph shall:

4 (i) be subject to the provisions of sections 8,
5 9(a)(3), 10 and 14(b), excluding section 8(a)(1);

6 (ii) deliver as required to the department annually
7 copies of financial reports made to all supervisory
8 agencies; and

9 (iii) be registered with the department.

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

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

19 (i) be subject to the provisions of sections 8,
20 9(a)(3), 10 and 14(b), excluding section 8(a)(1);

21 (ii) deliver as required to the department annually
22 copies of financial reports made to all supervisory
23 agencies; and

24 (iii) be registered with the department.

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

29 (14) Nonprofit corporations making mortgage loans to
30 promote home ownership or improvements for the disadvantaged,

1 given that the corporation does not hold itself out to the
2 public as a first mortgage lender.

3 (15) A nonprofit corporation making not more than 12
4 mortgage loans a calendar year with its own funds, that shall
5 not include funds borrowed through warehouse lines of credit
6 or other sources for the purpose of making mortgage loans,
7 which loans are retained in the corporation's own portfolios
8 and not regularly sold to others and are made to promote and
9 advance the cultural traditions and lifestyles of bona fide
10 religious organizations provided that the corporation does
11 not hold itself out to the public as a first mortgage lender.

12 (c) Loans for business or commercial purposes.--This act
13 shall not apply to mortgage loans made for business or
14 commercial purposes.

15 Section 4. Application for license.

16 * * *

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

18 (1) The department shall issue a mortgage broker's
19 license applied for pursuant to this act if the applicant
20 establishes that he is eligible to and will obtain and
21 maintain a bond in the amount of \$100,000, in a form
22 acceptable to the department, prior to the issuance of the
23 license, from a surety company authorized to do business in
24 this Commonwealth. The bond shall be a penal bond conditioned
25 on compliance with this act and subject to forfeiture by the
26 department and shall run to the Commonwealth of Pennsylvania
27 [and shall be for the use of the Commonwealth and] for its
28 use. The bond shall also be for the use of any person [or
29 persons] against the mortgage broker for failure to carry out
30 the terms of any provision for which advance fees are paid.

1 If such person [or persons shall be so] is aggrieved, he may
2 [upon recovering judgment against such licensee issue
3 execution under such judgment and maintain an action upon the
4 bond of the licensee in any court having jurisdiction for the
5 amount claimed plus costs, provided the department assents
6 thereto.] with the written assent of the department, recover
7 advance fees and costs from the bond by filing a claim with
8 the surety company or maintaining an action on the bond. In
9 the alternative, an aggrieved person may recover advance fees
10 and costs by filing a formal complaint against the mortgage
11 broker with the department which shall adjudicate the matter.
12 Such an adjudication shall be binding upon the surety company
13 and enforceable by the department in Commonwealth Court and
14 by an aggrieved person in any court. Any aggrieved person
15 seeking to recover advance fees and costs from a bond that
16 has already been forfeited by the department or which the
17 department is in the process of forfeiting may recover
18 payment on such bond if, after filing a petition with the
19 department, the department assents to his requested payment
20 or portion thereof. The department may pay the aggrieved
21 person from the bond proceeds it recovered in such case.
22 Nothing in this section shall be construed as limiting the
23 ability of any court or district justice to award to any
24 aggrieved person other damages, court costs and attorney fees
25 as permitted by law, but those claims that are not advance
26 fees or related costs may not be recovered from the bond. The
27 department, in its discretion, may assent to or order pro
28 rata or other recovery on the bond for any aggrieved person
29 if claims against the bond may or do exceed its full monetary
30 amount. No bond shall comply with the requirements of this

1 section unless it contains a provision that it shall not be
2 canceled for any cause unless notice of intention to cancel
3 is given to the department at least 30 days before the day
4 upon which cancellation shall take effect. Cancellation of
5 the bond shall not invalidate the bond regarding the period
6 of time it was in effect.

7 * * *

8 (e) Education.--To maintain a mortgage banker's, a loan
9 correspondent's or a mortgage broker's license, the applicant or
10 licensee shall demonstrate to the satisfaction of the secretary
11 that at least one [person] individual from each licensed office
12 has attended a minimum of six hours of such continuing education
13 each year. To maintain a limited mortgage broker's license, the
14 licensee shall demonstrate to the satisfaction of the secretary
15 that he has attended at least two hours of continuing education
16 each year. The secretary shall delineate the requirements for
17 such continuing education by regulation within three years of
18 the effective date of this act. The secretary may review and
19 approve continuing education programs and providers to satisfy
20 the continuing education requirement. The secretary may charge
21 providers of continuing education programs a fee, to be
22 determined by the secretary, for department review of continuing
23 education programs and providers.

24 Section 8. Licensee requirements.

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

26 * * *

27 (5) Comply with all provisions of the act of January 30,
28 1974 (P.L.13, No.6), referred to as the Loan Interest and
29 Protection Law, provided, however, that this shall not be
30 deemed an override of section 501 of the Depository

Institutions Deregulation and Monetary Control Act of 1980
(94 Stat. 161, 12 U.S.C. § [1735f-7 note] 1735f-7a).

* * *

Section 2. Section 10(c) of the act is amended to read:

Section 10. Authority of department or commission.

* * *

(c) Powers.--The department and the commission shall have
the authority to:

(1) Examine any instrument, document, account, book,
record or file of a licensee or any other person, or make
such other investigation as may be necessary to administer
the provisions of this act.

(2) Conduct administrative hearings on any matter
pertaining to this act, issue subpoenas to compel the
attendance of witnesses and the production of instruments,
documents, accounts, books and records at any such hearing,
which may be retained by the department or commission until
the completion of all proceedings in connection with which
they were produced, and administer oaths and affirmations to
any person whose testimony is required. In the event a person
fails to comply with a subpoena issued by the department or
commission or to testify on any matter concerning which he
may be lawfully interrogated, on application by the
department or commission, the Commonwealth Court may issue an
order requiring the attendance of such person, the production
of instruments, documents, accounts, books or records or the
giving of testimony.

(3) Request and/or receive any information or records of
any kind, including a report of criminal history record
information, from any Federal, State, local or foreign

1 government entity, regarding any applicant for a license,
2 licensee or any person related in any way to the business of
3 such applicant or licensee, at a cost to be paid by the
4 applicant or licensee.

5 * * *

6 Section 3. Section 14(b) of the act, amended December 21,
7 1998 (P.L.987, No.131), is amended to read:

8 Section 14. Penalties.

9 * * *

10 (b) Nonlicensees subject to the provisions of this act.--Any
11 person who is subject to the provisions of this act, even though
12 not licensed hereunder, or any person who is not licensed by the
13 department or is not exempt from the licensing requirements, who
14 violates any of the provisions to which it is subject shall be
15 subject to a fine levied by the department or commission of up
16 to \$2,000 for each offense. Any such nonlicensed person who
17 commits three or more offenses may, at the discretion of the
18 department or commission, be prohibited from engaging in [the
19 business of a mortgage broker or mortgage banker] the first
20 mortgage loan business unless licensed under this act.

21 * * *

22 Section 4. This act shall take effect in 60 days.