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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 1417** Session of  
2007

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INTRODUCED BY SCAVELLO, CALTAGIRONE, COHEN, CREIGHTON, CRUZ,  
DeLUCA, EVERETT, FABRIZIO, FRANKEL, GEIST, GOODMAN,  
HENNESSEY, JAMES, KOTIK, O'NEILL, ROEBUCK, SIPTROTH AND  
WALKO, JUNE 5, 2007

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REFERRED TO COMMITTEE ON COMMERCE, JUNE 5, 2007

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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, in licensing, for definitions, for requirements  
7 and exemptions, for applications, for fees, for issuance, for  
8 duration, for licensee requirements, for licensee  
9 limitations, for administration, for rates, for sanctions and  
10 denials for penalties, for referral fees and for the Real  
11 Estate Recovery Fund.

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

14 Section 1. The title of the act of December 22, 1989  
15 (P.L.687, No.90), known as the Mortgage Bankers and Brokers and  
16 Consumer Equity Protection Act, is amended to read:

17 AN ACT

18 Providing for the regulation and licensing of mortgage bankers  
19 and mortgage brokers; imposing additional powers and duties  
20 on the Department of Banking [and the State Real Estate  
21 Commission]; and providing penalties.

1 Section 2. The definitions of "commission," "finder's fee"  
2 or "referral fee," "limited mortgage broker," "nonpurchase money  
3 mortgage loan," "person" and "wholesale table funder," in  
4 section 302 of the act, renumbered and amended June 25, 2001  
5 (P.L.621, No.55), are amended and the section is amended by  
6 adding definitions to read:

7 Section 302. Definitions.

8 The following words and phrases when used in this chapter  
9 shall have the meanings given to them in this section unless the  
10 context clearly indicates otherwise:

11 \* \* \*

12 "Applicant." A person that applies for license under this  
13 chapter.

14 \* \* \*

15 ["Commission." The State Real Estate Commission.

16 "Finder's fee" or "referral fee." Any payment of money or  
17 other consideration for the referral of a mortgage loan to a  
18 lender, but shall not include consideration paid for goods or  
19 facilities actually furnished or services actually performed.]

20 \* \* \*

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

24 \* \* \*

25 "Mortgage originator." An individual not licensed under this  
26 chapter who, in other than a clerical or ministerial capacity:

27 (1) solicits, accepts or offers to accept a mortgage loan  
28 application; or

29 (2) negotiates mortgage loan terms.

30 The term does not include a director, partner or ultimate

1 equitable owner of at least 10% of a licensee.

2 ["Nonpurchase money mortgage loan." A mortgage loan the  
3 proceeds of which are not used to finance the purchase of the  
4 real property securing the mortgage loan.]

5 "Person." An individual, association, limited liability  
6 company, joint venture or joint-stock company, partnership,  
7 limited partnership, limited partnership association, business  
8 corporation, nonprofit corporation, or any other group of  
9 individuals, however organized.

10 \* \* \*

11 "Wholesale table funder." A licensed mortgage banker or [an  
12 entity] a person exempt pursuant to section 303(b)(1)[, or (12)]  
13 or (10) who, in the regular course of business, provides the  
14 funding for the closing of mortgage loans through loan  
15 correspondents and who by assignment obtains title to such  
16 mortgage loans.

17 Section 3. Section 303 of the act, renumbered and amended  
18 June 25, 2001 (P.L.621, No.55), is amended to read:

19 Section 303. License requirements and exemptions.

20 (a) License required.--On and after the effective date of  
21 this act, no person [shall act as a mortgage banker, loan  
22 correspondent, mortgage broker or limited mortgage broker] may  
23 engage in the first mortgage loan business in this Commonwealth  
24 without a license as provided for in this chapter. [, provided,  
25 however, that any person licensed as a mortgage banker may also  
26 act as a loan correspondent or mortgage broker and any person  
27 licensed as a loan correspondent may also act as a mortgage  
28 broker without a separate license. A person licensed as a  
29 mortgage broker may only perform the services of a mortgage  
30 broker.] A mortgage originator may not engage in the first

1 mortgage loan business unless the mortgage originator is  
2 employed and supervised by a licensed mortgage banker, mortgage  
3 broker or loan correspondent.

4 (a.1) Licensed activity exceptions.--

5 (1) A mortgage banker may act as a mortgage broker or  
6 loan correspondent without a separate mortgage broker or loan  
7 correspondent license, and, if licensed as an individual, may  
8 perform the services of a mortgage originator without a  
9 separate mortgage originator license.

10 (2) A loan correspondent may act as a mortgage broker  
11 without a separate mortgage broker license, and, if licensed  
12 as an individual, may perform the services of a mortgage  
13 originator without a separate mortgage originator license.

14 (3) A person licensed as a mortgage broker may only  
15 perform the services of a mortgage broker. If a mortgage  
16 broker is licensed as an individual, a mortgage broker may  
17 perform the services of a mortgage originator without a  
18 separate mortgage originator license.

19 (b) Exceptions.--The following persons shall not be required  
20 to be licensed under this chapter in order to conduct the first  
21 mortgage loan business but shall be subject to those provisions  
22 of this chapter as specifically provided in this section:

23 (1) A State-chartered bank, bank and trust company,  
24 savings bank, private bank or national bank, a State or  
25 federally chartered savings and loan association, a federally  
26 chartered savings bank or a State or federally chartered  
27 credit union.

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

1 practice.

2 [(3) A person licensed pursuant to the provisions of the  
3 act of February 19, 1980 (P.L.15, No.9), known as the Real  
4 Estate Licensing and Registration Act, who is principally  
5 engaged in a third-party real estate brokerage business, but  
6 only to the extent that he provides information, verbal or  
7 written, to or negotiates or places a mortgage loan for a  
8 buyer of real estate and is not compensated by the buyer or  
9 any other person for providing such information or  
10 negotiating or placing such mortgage loan. If he is  
11 compensated for providing such information or negotiating or  
12 placing such mortgage loan, he shall be subject to the  
13 provisions of sections 308, 310, 311 and 314(b), excluding  
14 section 308(a)(1).

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

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

22 [(6) Builders, when obtaining mortgages for their own  
23 construction or for the sale of their own construction.]

24 (7) Any agency or instrumentality of the Federal  
25 Government or a corporation otherwise created by an act of  
26 the United States Congress, including, but not limited to,  
27 the Federal National Mortgage Association, the Government  
28 National Mortgage Association, the Veterans' Administration,  
29 the Federal Home Loan Mortgage Corporation and the Federal  
30 Housing Administration.

1           (8) [The] An agency or instrumentality of a state or  
2 local government, of the District of Columbia or of a  
3 territory of the United States. This paragraph includes the  
4 Pennsylvania Housing Finance Agency and any other government  
5 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 304(b)(2) and (3), 308, 310 and  
11 314(b), excluding section 308(a)(1). Employees of licensees  
12 under the Consumer Discount Company Act that act as mortgage  
13 originators shall be subject to the licensing requirements of  
14 this chapter. Consumer discount companies that employ  
15 mortgage originators shall be subject to the same  
16 requirements as mortgage bankers in regard to the employment  
17 and supervision of mortgage originators.

18           (10) Except [for licensees described] as set forth in  
19 paragraph (9), subsidiaries and affiliates of the following  
20 institutions: State-chartered banks, bank and trust  
21 companies, savings banks, private banks, savings and loan  
22 associations and credit unions or national banks, federally  
23 chartered savings and loan associations, federally chartered  
24 savings banks and federally chartered credit unions[, except  
25 that such subsidiaries]. Subsidiaries and affiliates of  
26 institutions enumerated in this paragraph shall:

27           (i) be subject to the provisions of sections 308,  
28 309(a)(3), 310 and 314(b), excluding section 308(a)(1);

29           (ii) deliver as required to the department annually  
30 copies of financial reports made to all supervisory

1 agencies; and

2 (iii) be registered with the department.

3 (11) Employees of a mortgage banker, mortgage broker and  
4 loan correspondent licensee [or excepted persons acting for  
5 their employers], to the extent that the employees are not  
6 otherwise required to be licensed as mortgage originators.

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

13 (i) be subject to the provisions of sections 308,  
14 309(a)(3), 310 and 314(b), excluding section 308(a)(1);

15 (ii) deliver as required to the department annually  
16 copies of financial reports made to all supervisory  
17 agencies; and

18 (iii) be registered with the department.]

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

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

27 (15) A nonprofit corporation making not more than 12  
28 mortgage loans a calendar year with its own funds, that shall  
29 not include funds borrowed through warehouse lines of credit  
30 or other sources for the purpose of making mortgage loans,

1 which loans are retained in the corporation's own portfolios  
2 and not regularly sold to others and are made to promote and  
3 advance the cultural traditions and lifestyles of bona fide  
4 religious organizations provided that the corporation does  
5 not hold itself out to the public as a first mortgage lender.

6 (16) Employees of persons excepted in this subsection,  
7 unless otherwise provided in the applicable paragraph.

8 (c) Loans for business or commercial purposes.--This chapter  
9 shall not apply to mortgage loans made for business or  
10 commercial purposes.

11 Section 4. Section 304(a), (b), (c.1), (d) and (e) of the  
12 act, renumbered and amended June 25, 2001 (P.L.621, No.55), are  
13 amended and the section is amended by adding subsections to  
14 read:

15 Section 304. Application for license.

16 (a) Contents.--

17 (1) An application for a license to act as a mortgage  
18 banker, loan correspondent, mortgage broker or [limited  
19 mortgage broker shall] mortgage originator must be on [such  
20 forms as may be] a form prescribed and provided by the  
21 department. [Each application shall]

22 (2) An application for a license to act as a mortgage  
23 banker, loan correspondent or mortgage broker, must include  
24 [the] each address [or addresses] where business is to be  
25 conducted[,]; the full name, official title and business  
26 address of each director and principal officer of the  
27 business; and any other information [that may be] required by  
28 the department.

29 (3) An application for a license to act as a mortgage  
30 originator must include the name of the applicant, the name



1 of the employer licensee of the applicant, the location of  
2 the employer licensee to which the applicant is assigned and  
3 any other information required by the department.

4 (4) An applicant [shall] must demonstrate to the  
5 department that policies and procedures have been developed  
6 to receive and process customer inquiries and grievances  
7 promptly and fairly.

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

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

14 (i) Federal National Mortgage Association.

15 (ii) Federal Home Loan Mortgage Corporation.

16 (iii) Federal Housing Administration.

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

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

29 (4) That he will maintain fidelity bond coverage in  
30 accordance with the guidelines established by the Federal

1 National Mortgage Association or the Federal Home Loan  
2 Mortgage Corporation.

3 \* \* \*

4 [(c.1) Limited mortgage broker's license.--The department  
5 shall issue a limited mortgage broker's license applied for  
6 pursuant to this chapter if the applicant establishes that he is  
7 an individual who operates from one location and maintains no  
8 branch offices and can demonstrate to the satisfaction of the  
9 department that he accepts or collects no advance fees.]

10 (c.2) Mortgage originator license.--A mortgage originator  
11 must be an employee of a license that is a single mortgage  
12 banker, mortgage broker or loan correspondent. The licensee  
13 shall directly supervise, control and maintain responsibility  
14 for the acts and omissions of the mortgage originator. A  
15 mortgage originator shall be assigned to a licensed location of  
16 the employer licensee.

17 (d) [Foreign corporation] Out-of-State applicants.--

18 (1) Qualification and location of business. If the  
19 applicant is [a foreign corporation, that corporation shall]  
20 not a resident of this Commonwealth, the applicant must be  
21 authorized to do business in this Commonwealth in accordance  
22 with the law of this Commonwealth regulating corporations and  
23 other entities conducting business in this Commonwealth and  
24 [shall] must maintain at least one office in this  
25 Commonwealth which is the office that [shall be] is licensed  
26 as the principal place of business for the purposes of this  
27 chapter. A [foreign corporation which will act only in the  
28 capacity of a] wholesale table funder shall be exempt from  
29 the requirement that it maintain at least one office in this  
30 Commonwealth. [The corporation shall]

1           (2) Consent to service of process. An applicant must  
2       file with the application an irrevocable consent, duly  
3       acknowledged, that suits and actions may be commenced against  
4       that [licensee] person in the courts of this Commonwealth by  
5       the service of process of any pleading upon the department in  
6       the usual manner provided for service of process and  
7       pleadings by the statutes and court rules of this  
8       Commonwealth. The consent [shall] must provide that this  
9       service shall be as valid and binding as if service had been  
10      made personally upon the [licensee] person in this  
11      Commonwealth. In all cases where process or pleadings are  
12      served upon the department pursuant to the provisions of this  
13      section, such process or pleadings shall be served in  
14      triplicate; one copy shall be filed in the [Office of the  
15      Secretary of Banking] department and the others shall be  
16      forwarded by the department, by certified or registered mail,  
17      return receipt requested, to the last known principal place  
18      of business in the Commonwealth and to the [corporation's]  
19      person's principal place of business.

20      (e) Education.--[To maintain a mortgage banker's, a loan  
21      correspondent's or a mortgage broker's license, the applicant or  
22      licensee shall demonstrate to the satisfaction of the secretary  
23      that at least one individual from each licensed office has  
24      attended a minimum of six hours of such continuing education  
25      each year. To maintain a limited mortgage broker's license, the  
26      licensee shall demonstrate to the satisfaction of the secretary  
27      that he has attended at least two hours of continuing education  
28      each year. The secretary shall delineate the requirements for  
29      such continuing education by regulation within three years of  
30      the effective date of this act. The secretary may review and

1 approve continuing education programs and providers to satisfy  
2 the continuing education requirement. The secretary may charge  
3 providers of continuing education programs a fee, to be  
4 determined by the secretary, for department review of continuing  
5 education programs and providers.]

6 (1) In order to obtain a license under this chapter, an  
7 applicant must submit to the department with its application  
8 evidence that the applicant or an officer of the applicant  
9 has successfully completed a minimum of 12 hours of  
10 instruction and a testing program regarding the first  
11 mortgage loan business; this chapter; the act of January 30,  
12 1974 (P.L.13, No.6), referred to as the Loan Interest and  
13 Protection Law; and relevant Federal law, including the Real  
14 Estate Settlement Procedures Act of 1974 (Public Law 93-533,  
15 88 Stat. 1724), the Truth in Lending Act (Public Law 90-321,  
16 15 U.S.C. § 1601 et seq.), and the Equal Credit Opportunity  
17 Act (Public Law 93-495, 15 U.S.C. § 1691 et seq.).

18 (2) In order to maintain a license, the following apply:

19 (i) A mortgage banker, mortgage broker or loan  
20 correspondent must demonstrate to the satisfaction of the  
21 department that at least one individual from each  
22 licensed office who is not a mortgage originator and all  
23 mortgage originators employed by the licensee have  
24 attended a minimum of six hours of continuing education  
25 each year.

26 (ii) A mortgage originator licensee must demonstrate  
27 to the satisfaction of the department that the licensee  
28 has attended a minimum of six hours of continuing  
29 education each year.

30 (3) The department shall delineate the requirements for

1 prequalification education and testing and continuing  
2 education by regulation, including permitting in-house  
3 prequalification education and testing and continuing  
4 education. The department may review and approve education  
5 programs and providers to satisfy the education requirements.  
6 The department may charge providers of education programs a  
7 fee, to be determined by the department, for department  
8 review of education programs and providers.

9 (f) Duty to update.--All applicants and licensees shall  
10 provide the department with written notice of the change in any  
11 information contained in an application for a license or for any  
12 renewal of a license within ten days of an applicant or licensee  
13 becoming aware of the change.

14 (g) License renewals.--Licenses shall be issued for terms of  
15 12 months and may be renewed by the department each year on a  
16 schedule set by the department upon application by the licensee  
17 and the payment of applicable renewal fees. The licensee must  
18 demonstrate to the department that it is conducting the first  
19 mortgage loan business in accordance with the requirements of  
20 this chapter and that the directors, officers, partners,  
21 employees, agents and ultimate equitable owners of 10% or more  
22 of the licensee continue to meet all of the initial requirements  
23 for licensure required by this chapter unless otherwise  
24 determined by the department.

25 Section 5. Sections 305, 306, 307, 308, 309 and 310 of the  
26 act, renumbered and amended June 25, 2001 (P.L.621, No.55), are  
27 amended to read:

28 Section 305. Annual license fee.

29 [(a) General rule.--A mortgage banker, mortgage broker or  
30 applicant shall pay to the department at the time an application

1 is filed an initial license fee for the principal place of  
2 business and an additional license fee for each branch office as  
3 provided for in section 603-A of the act of April 9, 1929  
4 (P.L.177, No.175), known as The Administrative Code of 1929. On  
5 or before July 1 of each year and thereafter, a licensee shall  
6 pay a license renewal fee for the principal place of business  
7 and an additional license renewal fee for each branch office as  
8 provided for in section 603-A of The Administrative Code of  
9 1929. An applicant for a license to operate as a loan  
10 correspondent shall pay the department the same fee for the  
11 initial license for principal place of business, each branch  
12 office and annual license renewal as provided for mortgage  
13 bankers licensed under section 603-A of The Administrative Code  
14 of 1929. An applicant for a license to operate as a limited  
15 mortgage broker shall pay to the department at the time an  
16 application is filed an initial license fee of \$250. On or  
17 before July 1 of each year thereafter, a limited mortgage broker  
18 licensee shall pay a renewal fee of \$200.

19 (b) Recovery of costs.--No abatement of any license fee  
20 shall be made if the license is issued for a period of less than  
21 one year. The department shall be entitled to recover any cost  
22 of investigation in excess of license or renewal fees from the  
23 licensee or from any person who is not licensed under this  
24 chapter but who is presumed to be engaged in business  
25 contemplated by this chapter.]

26 (a) Initial application fees.--Except as set forth in  
27 subsection (c), an applicant must pay to the department at the  
28 time an application is filed an initial application fee as  
29 follows:

30 (1) For mortgage bankers and loan correspondents, \$1,500

1 for the principal place of business in this Commonwealth and  
2 an additional fee of \$1,500 for each branch office.

3 (2) For mortgage brokers, \$1,000 for the principal place  
4 of business in this Commonwealth and an additional fee of  
5 \$250 for each branch office.

6 (3) For mortgage originators, \$200.

7 (b) Renewal fees.--Except as set forth in subsection (c),  
8 prior to each annual renewal of a license, a licensee must pay  
9 to the department a license renewal fee as follows:

10 (1) For mortgage bankers and loan correspondents, \$750  
11 for the principal place of business in this Commonwealth and  
12 an additional fee of \$750 for each branch office.

13 (2) For mortgage brokers, \$500 for the principal place  
14 of business in this Commonwealth and an additional fee of  
15 \$250 for each branch office.

16 (3) For mortgage originators, \$200.

17 (c) Exception.--For a licensee that employs at least 50  
18 mortgage originators, the initial application fee and license  
19 renewal fee shall be \$50 per mortgage originator, to a maximum  
20 of \$10,000 total per year.

21 (d) No abatement of fee.--No abatement of a licensee fee  
22 shall be made if the license is issued for a period of less than  
23 one year.

24 Section 306. Issuance of license.

25 (a) Time limit.--Within 60 days after a complete application  
26 is received, the department shall either issue a license or, for  
27 any reason for which the department may suspend, revoke or  
28 refuse to renew a license as provided for by section 313, refuse  
29 to issue a license. Upon receipt of an application for license,  
30 the department shall conduct such investigation of the applicant

1 or of any director, officer, partner, employee, agent or  
2 ultimate equitable owner of at least 10% of the applicant as it  
3 deems necessary [to determine that the applicant and its  
4 officers, directors and principals are of good character and  
5 ethical reputation]. The 60-day time limit specified in this  
6 subsection may be extended by the department for an additional  
7 30 days if the department determines that the extension is  
8 necessary. The department shall provide written notification to  
9 any applicant whose application review has been extended and  
10 include the final date by which a decision shall be rendered  
11 regarding the application.

12 (b) Appeal of denial.--If the department refuses to issue a  
13 license, it shall notify the applicant, in writing, of the  
14 denial and the reason therefor and of the applicant's right to  
15 appeal from such action to the [Commonwealth Court] secretary.  
16 An appeal from the department's refusal to approve an  
17 application for a license shall be filed by the applicant within  
18 30 days of notice thereof.

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

21 (1) The name and address of the licensee, the address so  
22 specified to be that of the licensee's principal place of  
23 business within this Commonwealth or, for a licensee acting  
24 only in the capacity of a wholesale table funder, either in  
25 or outside of this Commonwealth.

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

30 (3) Such other information as the department shall



1 require to carry out the purposes of this chapter.

2 (d) Denial of license due to conviction.--

3 (1) The department may deny a license if it finds that  
4 the applicant or any person who is a director, officer,  
5 partner, agent, employee or ultimate equitable owner of 10%  
6 or more of the applicant has been convicted [of a misdemeanor  
7 or felony] in any jurisdiction [or] of [a crime which, if  
8 convicted]:

9 (i) an offense involving moral turpitude;

10 (ii) a felony; or

11 (iii) an offense which, if committed in this

12 Commonwealth, would constitute a [misdemeanor or] felony  
13 under the laws of this Commonwealth.

14 (2) A license under this chapter shall be subject to  
15 section 405 of the act of May 15, 1933 (P.L. 565, No.111),  
16 known as the Department of Banking Code. The department shall  
17 notify a licensee if a "covered individual" within the  
18 meaning of section 405 of the Department of Banking Code who  
19 is or will be employed or contracted by the licensee has a  
20 criminal background which renders the employee unfit for  
21 employment in the first mortgage loan business.

22 (3) For the purposes of this [chapter,] subsection, the  
23 following apply:

24 (i) Except as set forth in subparagraph (ii), a  
25 person shall be deemed to have been convicted of [a  
26 crime] an offense if the person [shall have] has:

27 (A) pleaded guilty or nolo contendere to [a  
28 charge thereof] the offense before a court or Federal  
29 magistrate [or shall have]; or

30 (B) been found guilty [thereof] of the offense

1 by the decision or judgment of a court or Federal  
2 magistrate or by the verdict of a jury, irrespective  
3 of the pronouncement of sentence or the suspension  
4 [thereof, unless] of sentence.

5 (ii) Subparagraph (i) does not apply if the pleas of  
6 guilty or nolo contendere or the decision, judgment or  
7 verdict [shall have been] is set aside, vacated, reversed  
8 or otherwise abrogated by lawful judicial process.

9 (e) Denial of license for other reason.--The department may  
10 deny a license or otherwise restrict a license if it finds  
11 that[, within two years prior to or from the date of the  
12 application,] the applicant or any person who is a director,  
13 officer, partner, agent, employee or ultimate equitable owner of  
14 10% or more of the applicant:

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

17 (2) is the subject of an order of the department;  
18 [denying, suspending or revoking a license as a mortgage  
19 banker, loan correspondent, mortgage broker or limited  
20 mortgage broker; or]

21 (3) has violated or failed to comply with any provision  
22 of this chapter or any [rule] regulation, statement of policy  
23 or order of the department[.];

24 (4) does not possess the financial responsibility,  
25 character, reputation, integrity and general fitness to  
26 command the confidence of the public and to warrant the  
27 belief that the first mortgage loan business will be operated  
28 lawfully, honestly, fairly and within the legislative intent  
29 of this chapter and in accordance with the laws of this  
30 Commonwealth; or

1           (5) has an outstanding debt to the Commonwealth or a  
2           Commonwealth agency.

3           (f) Conditional licenses.--The department may impose  
4           conditions on the issuance of any license under this chapter. If  
5           the department determines that conditions imposed upon a  
6           licensee have not been fulfilled, the department may take any  
7           action authorized under this chapter against the licensee that  
8           the department deems necessary. In the case of a mortgage  
9           originator applicant, the department may issue a conditional  
10           mortgage originator license effective immediately upon receipt  
11           of an application.

12 Section 307. License duration.

13           A license issued by the department shall:

14           (1) Be renewed [on July 1 of each year upon payment of  
15           the annual renewal fee and after a determination that the  
16           licensee is conducting business in accordance with the  
17           provisions of this chapter is made by the department] upon  
18           completion of the requirements of section 304(g). No refund  
19           of any portion of the license fee shall be made if the  
20           license is voluntarily surrendered to the department or  
21           suspended or revoked by the department prior to its  
22           expiration date.

23           (2) Be immediately invalid if:

24           (i) Except as set forth in subparagraph (ii), the  
25           [mortgage banker's corporate charter] licensee's  
26           authority to conduct business is voided [in accordance  
27           with the provisions of] under any law of this  
28           Commonwealth or any other state.

29           (ii) Subparagraph (i) does not apply if the licensee  
30           demonstrates to the satisfaction of the department that

1           the voiding of authority to conduct business was clearly  
2           erroneous.

3           (3) Not be assignable or transferable by operation of  
4           law or otherwise [without the written consent of the  
5           department].

6 Section 308. Licensee requirements.

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

8           (1) [Conspicuously] In the case of a mortgage banker,  
9           mortgage broker or loan correspondent, conspicuously display  
10           [its license], at each licensed place of business[.], its  
11           license and copies of the licenses of all mortgage  
12           originators assigned to that location. If the licensee is a  
13           mortgage originator, the license shall be maintained in the  
14           immediate possession of the licensee whenever the licensee is  
15           engaged in the mortgage loan business.

16           (2) Maintain, at its principal place of business within  
17           this Commonwealth, or at such place within or outside this  
18           Commonwealth if agreed to by the [Secretary of Banking or the  
19           commission] department, either the original or a copy of such  
20           books, accounts, records and documents, or electronic or  
21           other similar access thereto, of the business conducted under  
22           the license as may be prescribed by the department [or  
23           commission] to enable [them] it to determine whether the  
24           business of the licensee is being conducted in accordance  
25           with the provisions of this chapter and the [orders, rules  
26           and] regulations, statements of policy and orders issued  
27           under this chapter. The department, at its determination,  
28           shall have free access to and authorization to examine  
29           records maintained within or outside of this Commonwealth.

30           The costs of the examination, including travel costs, shall

1 be borne by the licensee. The [secretary] department may deny  
2 or revoke the authority to maintain records outside of this  
3 Commonwealth for good cause in the interest of consumer  
4 protection for Commonwealth borrowers, including the  
5 licensee's failure to provide, upon request, books, accounts,  
6 records or documents.

7 (3) [Annually] If the licensee is a mortgage banker,  
8 mortgage broker or loan correspondent, annually, before May  
9 1, file a report with the department [or commission] which  
10 shall set forth such information as the department [or  
11 commission] shall require concerning the business conducted  
12 as a licensee during the preceding calendar year. The report  
13 shall be in writing, under oath, and on a form provided by  
14 the department. A licensee that fails to comply with this  
15 paragraph shall be subject to an administrative penalty of  
16 \$100 for each day after May 1 until the date of compliance.

17 (4) Be subject to examination by the department [or  
18 commission] at the discretion of the department [or  
19 commission], at which time the department [or commission]  
20 shall have free access, during regular business hours, to the  
21 licensee's place or places of business in this Commonwealth  
22 and to all instruments, documents, accounts, books and  
23 records which pertain to a licensee's first mortgage loan  
24 business, whether maintained in or outside of this  
25 Commonwealth. The department [or commission] may examine a  
26 licensee at any time if the department or commission deems  
27 such examination to be necessary or desirable. The cost of  
28 any such examination shall be borne by the licensee.

29 (5) Comply with all provisions of the act of January 30,  
30 1974 (P.L.13, No.6), referred to as the Loan Interest and

1 Protection Law, provided, however, that this shall not be  
2 deemed an override of section 501 of the Depository  
3 Institutions Deregulation and Monetary Control Act of 1980  
4 (94 Stat. 161, 12 U.S.C. § 1735f-7a) or the Alternative  
5 Mortgage Transaction Parity Act of 1982 (Public Law 97-320,  
6 12 U.S.C. § 3801 et seq.).

7 (6) Comply with the provisions of the act of December  
8 23, 1983 (P.L.385, No.91), entitled "An act amending the act  
9 of December 3, 1959 (P.L.1688, No.621), entitled, as amended,  
10 'An act to promote the health, safety and welfare of the  
11 people of the Commonwealth by broadening the market for  
12 housing for persons and families of low and moderate income  
13 and alleviating shortages thereof, and by assisting in the  
14 provision of housing for elderly persons through the creation  
15 of the Pennsylvania Housing Finance Agency as a public  
16 corporation and government instrumentality; providing for the  
17 organization, membership and administration of the agency,  
18 prescribing its general powers and duties and the manner in  
19 which its funds are kept and audited, empowering the agency  
20 to make housing loans to qualified mortgagors upon the  
21 security of insured and uninsured mortgages, defining  
22 qualified mortgagors and providing for priorities among  
23 tenants in certain instances, prescribing interest rates and  
24 other terms of housing loans, permitting the agency to  
25 acquire real or personal property, permitting the agency to  
26 make agreements with financial institutions and Federal  
27 agencies, providing for the purchase by persons of low and  
28 moderate income of housing units, and approving the sale of  
29 housing units, permitting the agency to sell housing loans,  
30 providing for the promulgation of regulations and forms by

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

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

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

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

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

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

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

6 (iv) The [commitment] fee locked in, if any.

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

8 (10) Include in all advertisements:

9 (i) language indicating that the licensee is  
10 licensed by the department[.]; and

11 (ii) if the licensee is a mortgage originator, the  
12 name of the mortgage originator's employer.

13 (11) Allow for the evidence of any insurance required in  
14 connection with a loan by a policy or binder or a copy of  
15 either.

16 (12) In the case of a mortgage broker, mortgage lender or  
17 mortgage loan correspondent:

18 (i) maintain supervision and control of, and  
19 responsibility for, the acts and omissions of all  
20 mortgage originators employed by the licensee;

21 (ii) maintain a list of all current and former  
22 mortgage originators employed by the licensee and the  
23 dates of such employment; and

24 (iii) if a licensee has evidence that a mortgage  
25 originator employed by the licensee has engaged in  
26 activity which is illegal or in violation of this chapter  
27 or a regulation or statement of policy promulgated under  
28 this chapter, the licensee shall provide the department  
29 with written notification of the evidence and the  
30 licensee's proposed corrective measures within 30 days. A



1           licensee shall not be liable to a mortgage originator in  
2           connection with the notification.

3           (b) Accounting records.--[After the effective date of this  
4 act, the] The licensee's accounting records must be constructed  
5 and maintained in compliance with generally accepted accounting  
6 principles [if the licensee is a mortgage banker] or [in such  
7 manner] as may be provided by regulation [for all other  
8 licensees, and all of the aforementioned instruments].  
9 Instruments, documents, accounts, books and records shall be  
10 kept separate and apart from the records of any other business  
11 conducted by the licensee and shall be preserved and kept  
12 available for investigation or examination by the department [or  
13 commission] for at least two years after a mortgage loan has  
14 been paid in full. The provisions of this subsection shall not  
15 apply to any instrument, document, account, book or record that  
16 is assigned, sold or transferred to another person, nor shall  
17 the two-year requirement apply to an instrument or document  
18 which must be returned to a borrower at the time a mortgage loan  
19 is paid in full.

20           (c) Copies.--If copies of instruments, documents, accounts,  
21 books or records are maintained under subsection (a)(2), they  
22 may be photostatic, microfilm or electronic copies or copies  
23 provided in some other manner approved by the [Secretary of  
24 Banking or the commission] department, as long as access to  
25 information required by the [secretary or commission] department  
26 exists electronically at all times within this Commonwealth.

27           [(d) Limited powers.--The powers conferred upon the  
28 commission by this section, excluding subsection (a)(1), shall  
29 only be exercised by the commission in relation to persons  
30 licensed pursuant to the provisions of the act of February 19,

1 1980 (P.L.15, No.9), known as the Real Estate Licensing and  
2 Registration Act, who are subject to this section under section  
3 303(b)(3), and the exercise of such power by the commission in  
4 relation to such persons shall be exclusive.]

5 Section 309. Licensee limitations.

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

7 (1) Transact any business subject to the provisions of  
8 this chapter under any other name except those designated in  
9 its license[.] or those registered or otherwise qualified as  
10 fictitious business names. A mortgage originator shall not  
11 use any name other than the mortgage originator's personal  
12 legal name. A licensee that changes its name or place or  
13 places of business shall [immediately] notify the department,  
14 [which] within ten days of the change; and the department  
15 shall issue a certificate, if appropriate, to the licensee  
16 which shall specify the licensee's new name or address.

17 (2) Conduct any business other than any business  
18 regulated by the department in any place of business licensed  
19 pursuant to this chapter without at least 90 days' prior  
20 written notification to the department.

21 (3) Disburse the proceeds of a mortgage loan in any form  
22 other than cash, electronic fund transfer, certified check or  
23 cashier's check where such proceeds are disbursed by the  
24 licensee to a closing agent. This paragraph shall not be  
25 construed as requiring a lender to utilize a closing agent  
26 and shall not apply to disbursements by check directly from  
27 the licensee's account payable to the borrower, borrower  
28 designees or other parties due funds from the closing.

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

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

9 (6) In the case of a mortgage originator, accept any  
10 fees from consumers in the mortgage originator's own name. A  
11 mortgage originator may accept fees payable to the licensee  
12 that is the mortgage originator's employer and fees payable  
13 to third-party entities on behalf of that licensee. A  
14 mortgage originator may not accept advance fees payable to  
15 the licensee that is the mortgage originator's employer  
16 unless that licensee is authorized to collect advance fees  
17 under this chapter.

18 (b) Authority to close loans in attorneys' and title  
19 insurance companies or agencies' offices.--Nothing contained in  
20 this chapter shall prohibit any licensee or person exempt from  
21 licensure hereunder from closing any loans made under the  
22 provisions of this chapter in the offices of attorneys-at-law  
23 licensed by and located in this Commonwealth and title insurance  
24 companies or agencies licensed by and located in this  
25 Commonwealth.

26 Section 310. Authority of department [or commission].

27 [(a) Department regulations.--Except as provided in  
28 subsection (b), the department shall have the authority to issue  
29 rules and regulations and orders as may be necessary for the  
30 proper conduct of the business of a mortgage banker, loan

1 correspondent, a mortgage broker or limited mortgage broker and  
2 for the enforcement of this chapter, including, but not limited  
3 to, cease and desist orders, notices of fines and such other  
4 orders as the department in its discretion may issue.

5 (b) Joint regulations.--The department and the commission  
6 shall have the authority to jointly issue rules and regulations  
7 as may be necessary to carry out the purposes of sections 308,  
8 310 and 314(b), excluding section 308(a)(1). Initial rules and  
9 regulations shall be jointly issued by the department and the  
10 commission within 180 days after the effective date of this  
11 subsection.

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

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

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

1 of instruments, documents, accounts, books or records or the  
2 giving of testimony.

3 (3) Request and receive any information or records of  
4 any kind, including a report of criminal history record  
5 information, from any Federal, State, local or foreign  
6 government entity, regarding any applicant for a license,  
7 licensee or any person related in any way to the business of  
8 such applicant or licensee, at a cost to be paid by the  
9 applicant or licensee.

10 (d) Limited powers.--The powers conferred upon the  
11 commission by subsection (c) shall only be exercised by the  
12 commission in relation to persons licensed pursuant to the  
13 provisions of the act of February 19, 1980 (P.L.15, No.9), known  
14 as the Real Estate Licensing and Registration Act, who are  
15 subject to subsection (c) under section 303(b)(3) and the  
16 exercise of such power by the commission in relation to such  
17 persons shall be exclusive.]

18 (a) General authority.--The department has the authority to  
19 do all of the following:

20 (1) Examine any instrument, document, account, book,  
21 record or file of a licensee or any person having a  
22 connection to the licensee or make such other investigation  
23 as necessary to administer this chapter. Under this  
24 paragraph, the department may remove any instrument,  
25 document, account, book, record or file of a licensee to a  
26 location outside of the licensee's office location. The costs  
27 of the examination shall be borne by the licensee or the  
28 entity subject to the examination.

29 (2) Conduct administrative hearings on any matter  
30 pertaining to this chapter and issue subpoenas to compel the

1 attendance of witnesses and the production of instruments,  
2 documents, accounts, books and records at a hearing. The  
3 instruments, documents, accounts, books and records may be  
4 retained by the department until the completion of all  
5 proceedings in connection with which the materials were  
6 produced. A department official may administer oaths and  
7 affirmations to a person whose testimony is required. If a  
8 person fails to comply with a subpoena issued by the  
9 department or to testify on a matter concerning which the  
10 person may be lawfully interrogated, on application by the  
11 department, the Commonwealth Court may issue an order  
12 requiring the attendance of the person; the production of  
13 instruments, documents, accounts, books and records; and the  
14 giving of testimony.

15 (3) Request and receive information or records of any  
16 kind, including reports of criminal history record  
17 information from any Federal, state, local or foreign  
18 government entity regarding an applicant for a license, a  
19 licensee or a person related in any way to the business of  
20 the applicant or licensee, at a cost to be paid by the  
21 applicant or licensee.

22 (4) Require a licensee or nonlicensee to pay the  
23 department's costs incurred while conducting an investigation  
24 of the licensee or nonlicensee for purposes of issuance or  
25 renewal of a license or for any violation of this chapter,  
26 regardless of whether costs are in excess of the license or  
27 renewal fees paid by a licensee.

28 (5) Issue regulations, statements of policy or orders as  
29 necessary for the proper conduct of the first mortgage loan  
30 business by licensees, the issuance and renewal of licenses

1 and the enforcement of this chapter.

2 (6) Prohibit or permanently remove an individual  
3 responsible for a violation of this chapter from working in  
4 his present capacity or in any other capacity related to  
5 activities regulated by the department.

6 (7) Order a person to make restitution for actual  
7 damages to consumers caused by any violation of this chapter.

8 (8) Issue cease and desist orders which are effective  
9 immediately, subject to a hearing as specified in subsection  
10 (b) within 14 days of the issuance of the order.

11 (9) Impose such other conditions as the department deems  
12 appropriate.

13 (b) Hearings.--A person aggrieved by a decision of the  
14 department may appeal the decision of the department to the  
15 secretary. The appeal shall be conducted under 2 Pa.C.S. Ch. 5  
16 Subch. A (relating to practice and procedure of Commonwealth  
17 agencies).

18 (c) Injunctions.--The department may maintain an action for  
19 an injunction or other process against a person to restrain and  
20 prevent the person from engaging in an activity violating this  
21 chapter.

22 (d) Final orders.--A decision of the secretary shall be a  
23 final order of the department and shall be enforceable in a  
24 court of competent jurisdiction. The department may publish  
25 final adjudications issued under this section, subject to  
26 redaction or modification to preserve confidentiality.

27 (e) Appeals.--A person aggrieved by a decision of the  
28 secretary may appeal the decision under 2 Pa.C.S. Ch. 7 Subch. A  
29 (relating to judicial review of Commonwealth agency action).

30 (f) Orders affecting mortgage originators.--An order issued

1 against a licensee is applicable to the mortgage originators  
2 employed by the licensee.

3 Section 6. Section 311 act, renumbered June 25, 2001  
4 (P.L.621, No.55), is amended to read:

5 [Section 311. Fees.

6 (a) Certain fees prohibited.--No real estate broker or  
7 salesperson who has received a fee, commission or other valuable  
8 consideration in connection with the sale or transfer of real  
9 estate shall be paid or receive a fee or other compensation,  
10 directly or indirectly, for providing mortgage brokering  
11 services in connection with the origination of a mortgage loan  
12 relative to such sale or transfer of real estate, but such  
13 broker or salesperson may receive a fee in connection with such  
14 mortgage loan transaction which shall not exceed an amount as  
15 established by the commission pursuant to this section.

16 (b) Regulations.--The commission shall, within 180 days of  
17 the effective date of this subsection, promulgate rules and  
18 regulations establishing the maximum fees which a real estate  
19 broker or salesperson may charge for services rendered in  
20 connection with mortgage brokering services. Said fees shall:

21 (1) Be for actual services rendered in connection with  
22 the origination of a mortgage loan.

23 (2) Be expressed in terms of dollars or as a percentage  
24 of the mortgage loan being created.

25 (c) Formulation procedure.--Prior to the publication of any  
26 notice of proposed rulemaking under this section, the commission  
27 shall hold public hearings to afford any interested party,  
28 including the department, full opportunity to present testimony,  
29 comment thereon and make recommendations regarding the  
30 formulation of such rules and regulations. The department shall



1 also have 30 days following the close of the hearings to submit  
2 further comments and recommendations to the commission. The  
3 procedure contained in this section shall be in addition to the  
4 requirements contained in the act of June 25, 1982 (P.L.633,  
5 No.181), known as the Regulatory Review Act, and shall not  
6 affect any right the department may have to participate in the  
7 rulemaking process following the commission's publication of  
8 proposed rules and regulations as permitted by that act. In  
9 establishing the maximum fees allowable, the commission shall  
10 consider the nature of the services performed by the real estate  
11 broker or salesperson and the time required for the performance  
12 thereof.

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

20 (e) Disclosure.--No real estate broker or salesperson shall  
21 receive a fee, commission or other valuable consideration  
22 pursuant to this section and the regulations promulgated  
23 hereunder unless he makes the following written disclosure to  
24 the buyer in at least ten-point boldface capital letters.

25 The real estate broker in this transaction who has  
26 offered to assist me in obtaining a mortgage loan has  
27 advised me of the following:

28 (1) He does not represent any particular mortgage  
29 lender; or the name of the mortgage lender he represents  
30 is.....

1           (2) I am not required to obtain the mortgage for the  
2 purchase of the real estate from the mortgage banker whom  
3 the broker represents.

4           (3) The real estate broker has a fiduciary  
5 obligation to the seller, from whom he will receive a  
6 commission.

7           (4) Should the real estate broker violate any of the  
8 provisions of the Real Estate Licensing and Registration  
9 Act or the Mortgage Bankers and Brokers Act I may file a  
10 complaint with the Pennsylvania Real Estate Commission.]

11       Section 7. Sections 313 and 314 of the act, renumbered and  
12 amended June 25, 2001 (P.L.621, No.55), are amended to read:

13 Section 313. Suspension, revocation or refusal.

14       (a) Departmental action.--The department may suspend, revoke  
15 or refuse to renew any license issued pursuant to this chapter  
16 [after giving 30 days' written notice forwarded to the  
17 licensee's principal place of business, by registered or  
18 certified mail, return receipt requested, stating the  
19 contemplated action and the reason therefor, if the department  
20 shall find, after the licensee has had an opportunity to be  
21 heard, that] if any fact or condition exists or is discovered  
22 which, if it had existed or been discovered at the time of  
23 filing the application for the license, would have warranted the  
24 department in refusing to issue the license or if the licensee  
25 or any director, officer, partner, employee or owner of the  
26 licensee has:

27           (1) Made any false or material misstatement in [his] an  
28 application or in a report or submission required by this  
29 chapter or by a department regulation, statement of policy or  
30 order.

1 (2) Failed to comply with or violated any provision of  
2 this chapter or any [rule,] regulation, statement of policy  
3 or order promulgated or issued by the department pursuant to  
4 this chapter.

5 (3) If licensed under section [304(c)] 304(b.1) or (c),  
6 accepted an advance fee without having obtained the bond  
7 required by section 304(b.1)(1)(i) or (c)(1).

8 (4) Become insolvent, meaning that the liabilities of  
9 the applicant or licensee exceed the assets of the applicant  
10 or licensee or that the applicant or licensee cannot meet the  
11 obligations of the applicant or licensee as they mature, or  
12 is in such financial condition that the applicant or licensee  
13 cannot continue in business with safety to the customers of  
14 the applicant or licensee.

15 (5) Engaged in dishonest, fraudulent or illegal  
16 practices or conduct in any business or unfair or unethical  
17 practices or conduct in connection with the mortgage  
18 business.

19 (6) Been convicted of [a misdemeanor or of], or entered  
20 a plea of guilty or no contest to, an offense involving moral  
21 turpitude or a felony.

22 [(7) Filed an application for a license which, as of the  
23 date the license was issued or as of the date of an order  
24 denying, suspending or revoking a license, was incomplete in  
25 any material respect or contained any statement that was, in  
26 light of the circumstances under which it was made, false or  
27 misleading with respect to any material fact.]

28 (8) Permanently or temporarily been enjoined by a court  
29 of competent jurisdiction from engaging in or continuing any  
30 conduct or practice involving any aspect of the mortgage

1 business.

2 (9) Become the subject of an order of the department  
3 denying, suspending or revoking a license [as a mortgage  
4 banker, mortgage broker, limited mortgage broker or loan  
5 correspondent] under this chapter.

6 (10) Become the subject of a United States Postal  
7 Service fraud order [that is currently effective and was  
8 issued within the last five years].

9 (11) Failed to comply with the requirements of this  
10 chapter to make and keep records prescribed by [rule]  
11 regulation, statement of policy or order of the department,  
12 to produce such records required by the department or to file  
13 any financial reports or other information the department by  
14 [rule] regulation, statement of policy or order may require.

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

18 [(13) Failed to comply with a cease and desist order  
19 entered after notice and opportunity for hearing and issued  
20 by the department within the last five years.]

21 (14) Demonstrated negligence or incompetence in  
22 performing any act for which the licensee is required to hold  
23 a license under this chapter.

24 [(15) In the case of a limited mortgage broker,  
25 negotiated or placed, either directly or indirectly, a  
26 mortgage loan other than a nonpurchase money mortgage loan as  
27 defined in this chapter.

28 The hearing and notice provisions of this section shall not  
29 apply if the licensee's corporate charter is voided in  
30 accordance with the provisions of any law of this or any other

1 state, in which event the department may suspend or revoke the  
2 license.]

3 (16) Failed to complete the qualifying or continuing  
4 education as required by section 304(e).

5 (17) In the case of a mortgage banker, loan  
6 correspondent, or mortgage broker, conducted the first  
7 mortgage loan business through an unlicensed mortgage  
8 originator.

9 (18) Failed to comply with the terms of any agreement  
10 under which the department authorizes a licensee to maintain  
11 records at a place other than the licensee's principal place  
12 of business.

13 (b) Reinstatement.--The department may subsequently  
14 reinstate a license which has been suspended or revoked or renew  
15 a license which had previously been refused for renewal if the  
16 condition which warranted the original action has been corrected  
17 and the department has reason to believe that such condition is  
18 not likely to occur again and the licensee satisfies the  
19 requirements of this chapter.

20 Section 314. Penalties.

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

27 (b) Nonlicensees subject to the provisions of this  
28 chapter.--Any person who is subject to the provisions of this  
29 chapter, even though not licensed hereunder, or any person who  
30 is not licensed by the department or is not exempt from the

1 licensing requirements, who violates any of the provisions to  
2 which it is subject shall be subject to a fine levied by the  
3 department or commission of up to [\\$2,000] \\$10,000 for each  
4 offense. [Any such nonlicensed person who commits three or more  
5 offenses may, at the discretion of the department or commission,  
6 be prohibited from engaging in the first mortgage loan business  
7 unless licensed under this chapter.]

8 (c) Violations by licensees.--Any person licensed under the  
9 provisions of this chapter or any director, officer, employee or  
10 agent of a licensee who shall violate the provisions of this  
11 chapter or shall direct or consent to such violations shall be  
12 subject to a fine levied by the department of up to [\\$2,000]  
13 \\$10,000 for each offense.

14 [(d) Limited powers.--The powers conferred upon the  
15 commission by subsection (b) shall only be exercised by the  
16 commission in relation to persons licensed pursuant to the  
17 provisions of the act of February 19, 1980 (P.L.15, No.9), known  
18 as the Real Estate Licensing and Registration Act, who are  
19 subject to subsection (b) under section 303(b)(3) and the  
20 exercise of such power by the commission in relation to such  
21 persons shall be exclusive.]

22 Section 8. Sections 316 and 317 of the act, renumbered and  
23 amended June 25, 2001 (P.L.621, No.55), are repealed:

24 [Section 316. Referral fees.

25 Nothing in this chapter shall permit a real estate broker or  
26 salesperson, who receives a fee, commission or other valuable  
27 consideration relating to the sale of residential real property,  
28 to be paid or receive a finder's fee or a referral fee for the  
29 referral of a mortgage loan to a lender in connection with that  
30 sale, whether or not the real estate broker or salesperson is

1 licensed and regulated by the department.

2 Section 317. Real Estate Recovery Fund.

3 Any person injured by the wrongful act, default or  
4 misrepresentation of a person engaged in the activities of a  
5 mortgage broker who is exempt from licensure under this chapter  
6 by virtue of being licensed pursuant to the act of February 19,  
7 1980 (P.L.15, No.9), known as the Real Estate Licensing and  
8 Registration Act, shall be entitled to seek recovery from the  
9 Real Estate Recovery Fund established by the Real Estate  
10 Licensing and Registration Act notwithstanding the fact that  
11 such wrongful act, default or misrepresentation occurred in  
12 conjunction with mortgage-brokering activities subject, however,  
13 to all other terms and conditions of the Real Estate Licensing  
14 and Registration Act regarding recovery from that fund.]

15 Section 9. This act shall take effect in 60 days.