

No. 1995-15

AN ACT

HB 710

Amending the act of December 12, 1980 (P.L.1179, No.219), entitled "An act to define and regulate secondary mortgage loans and providing penalties," adding definitions; further providing for license requirements, for license applications, for license fees, for license powers, for records requirements, for limitations, for prepayment, for annual fees and for penalties.

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

Section 1. Section 2 of the act of December 12, 1980 (P.L.1179, No.219), known as the Secondary Mortgage Loan Act, is amended by adding definitions to read:

Section 2. Definitions.

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

* * *

"Broker's agent." *A category of secondary mortgage loan broker's license that is issued to individuals who broker secondary mortgage loans exclusively to one licensed secondary mortgage loan broker, designated as a sponsoring broker, and who are not employees of such sponsoring broker.*

* * *

"Sponsoring broker." *A licensed secondary mortgage loan broker who negotiates or arranges secondary mortgage loans on behalf of a broker's agent and provides indemnification of such broker's agent in order to protect borrowers from monetary damages which may be a result of doing business with a broker's agent.*

Section 2. Section 3(a)(5) of the act, amended July 7, 1989 (P.L.222, No.36), is amended and the section is amended by adding a subsection to read:

Section 3. License requirements and exemptions.

(a) * * *

(5) For the purpose of this act, a person is deemed to be engaged in the secondary mortgage loan business in the Commonwealth if:

(i) such person advertises, causes to be advertised, solicits, negotiates or arranges in the ordinary course of business, offers to make or makes more than two secondary mortgage loans in a calendar year in this Commonwealth, whether directly or by any person acting for his benefit, but this provision shall not prohibit advertising or solicitation by a licensee under a general corporate name, logo or trade mark; or

(ii) such person in the ordinary course of business becomes the subsequent holder of more than two promissory notes or mortgages, indentures or any other similar instruments or documents received in a calendar year in connection with a secondary mortgage loan, *provided, however, that a person will not be deemed to be engaged in the secondary mortgage loan business if such person becomes the subsequent holder of two or more promissory notes or mortgages, indentures or any other similar instruments or documents received in a calendar year in connection with a secondary mortgage loan solely as an investment and such person is not otherwise in the business of making or servicing such loans.*

* * *

(e) *A secondary mortgage loan broker who is an individual exempt from the capital requirement of section 4(b) and who can also demonstrate to the satisfaction of the secretary that he solicits secondary mortgage loan applications exclusively for one secondary mortgage loan broker may apply for a broker's agent license subject to the requirements in section 4(d).*

Section 3. Section 4 of the act is amended by adding subsections to read:
Section 4. Application for license.

* * *

(d) *The applicant for a secondary mortgage loan broker license may apply for a broker's agent license subject to the following:*

(1) *The applicant must be an individual.*

(2) *The applicant must be exempt from the capital requirement of subsection (b) by satisfying the secretary that no advance fees whatsoever are accepted or collected, and no fees may be accepted or collected from borrowers.*

(3) *The applicant must demonstrate to the satisfaction of the secretary that he solicits secondary mortgage loan applications exclusively for one licensed secondary mortgage loan broker known as the sponsoring broker.*

(4) *The principal office location of the holder of a broker's agent license must be a Pennsylvania-licensed principal or branch place of business of the sponsoring broker.*

(5) *The holder of a broker's agent license, if he uses advertising to solicit or obtain customers for his secondary mortgage loan brokerage business, may not advertise in his own name alone but shall advertise his own name only in conjunction with the name of the sponsoring broker.*

(e) *The sponsoring broker shall enter into an indemnification agreement in a form provided by the secretary to protect borrowers from any monetary damages which may result from doing business with a broker's agent.*

Section 4. Section 5 of the act is amended to read:

Section 5. Annual license fee.

An applicant shall pay to the secretary at the time an application is filed an initial license fee of \$500 for the principal place of business and an additional initial license fee of \$50 for each branch office in this Commonwealth, *except an applicant for a broker's agent license shall pay to the secretary at the time an application is filed an initial license fee of \$250*. On or before July 1 of each year and thereafter, a licensee shall pay a license renewal fee of \$200 for the principal place of business and an additional license renewal fee of \$25 for each branch office in this Commonwealth. *Notwithstanding the provision of section 603-A(6) of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," a broker's agent licensee shall pay an annual license renewal fee of \$200*. No abatement of any license fee shall be made if the license is issued for a period of less than one year. The secretary shall be entitled to recover any cost of investigation in excess of license or renewal fees from the licensee, or from any person who is not licensed under this act but presumed to be engaged in business contemplated by this act.

Section 5. Section 9(a)(2), (5) and (8) of the act, amended December 17, 1986 (P.L.1696, No.203) and July 7, 1989 (P.L.222, No.36), are amended and the subsection is amended by adding a paragraph to read:

Section 9. Powers conferred on licensees.

(a) All secondary mortgage loan licensees shall have power and authority:

* * *

(2) To collect fees or premiums for title examination, abstract of title, title insurance, credit reports, surveys, appraisals, *notaries, postage (including messenger and express carrier), tax service* or other costs or fees actually related to the *processing of a secondary mortgage loan application* or granting of a secondary mortgage loan, when such fees are actually paid or incurred by the licensee and to collect fees or charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the loan and include these in the principal of the secondary mortgage loan.

* * *

(5) To provide credit life [and], credit accident and health *and credit unemployment* insurance. A borrower shall not be compelled to purchase credit life [or], *credit* accident and health *or credit unemployment* insurance as a condition of the granting of a secondary mortgage loan and all contracts utilized shall reflect a clear disclosure that the purchase of credit life [or], credit *accident and* health *or credit unemployment* insurance is not a prerequisite to obtaining a loan; if, however, the borrower elects to obtain credit life [or], *credit* accident and health *or credit unemployment* insurance, [or both, he] *the borrower* shall consent thereto in writing. If borrowers desire [joint life] *joint-life or joint accident and health* insurance, all such borrowers [must] *shall* consent

thereto in writing. Such insurance shall be obtained from an insurance company authorized by the laws of Pennsylvania to conduct business in this Commonwealth. Any benefit or return to the licensee from the sale or provision of such insurance shall not be included in the computation of the maximum charge authorized under this section and shall not be deemed a violation of this act when the insurance is written pursuant to the laws of this Commonwealth governing insurance.

* * *

(8) To charge and collect an application fee not exceeding [2%] **3%** of the original principal amount of the loan. The fee shall be fully earned at the time the loan is made and may be added to the principal amount of the loan. No application fee may be collected on subsequent advances made pursuant to an open-end loan if the full fee of [2%] **3%** of the credit limit was collected at the time the loan was made.

(9) To charge and collect a delinquency charge of \$20 or 10% of each payment, whichever is higher, for a payment which is in default for more than 15 days.

* * *

Section 6. Sections 10(a)(6) and (d) and 11(1), (3) and (5) of the act, amended or added July 7, 1989 (P.L.222, No.36), are amended to read:

Section 10. Licensee requirements: records; reports; examinations; receipts; information to be furnished borrower.

(a) A secondary mortgage loan licensee shall:

* * *

(6) Give to the borrower written evidence of credit life, *credit* and accident and health, *credit unemployment* and property insurance, if any.

* * *

(d) If copies of instruments, documents, accounts, books or records are maintained under subsection (a)(2), they may be photostatic, microfilm, *optically imaged, magnetic* or electronic copies or copies provided in some other manner approved by the secretary[, **as long as access to information required by the secretary exists electronically at all times within this Commonwealth**].

Section 11. Licensee limitations.

A secondary mortgage loan licensee and a secondary mortgage loan broker licensee shall not:

(1) Transact any business subject to the provisions of this act under any other name except that designated in its license *or registered or otherwise qualified as a fictitious business name*. A licensee, *other than a broker's agent*, who changes its name or place of business shall immediately notify the secretary who shall issue a certificate to the licensee, which shall specify the licensee's new name or address. *A broker's agent who changes its name or place of business shall notify*

the secretary in writing at least 15 days prior to making such change in name or place of business.

* * *

(3) [Assign] *Unless the licensee shall retain responsibility for servicing the loan, assign, sell or transfer a secondary mortgage loan to any person except a licensee or a person excepted from the licensing provisions of this act in accordance with section 3 hereof without written permission of the secretary.*

* * *

(5) Conduct any business other than any business regulated by the secretary in any place of business licensed pursuant to this act [without the prior written approval of the secretary] *if the secretary determines such other business to be inappropriate.*

* * *

Section 7. Section 12(b) of the act is amended to read:

Section 12. Prepayment.

* * *

(b) When a secondary mortgage loan is paid in full the licensee shall:

(1) Cancel any insurance provided by the licensee in connection with the loan and refund to the borrower, in accordance with regulations promulgated by the Pennsylvania Insurance Department, any unearned portion of the premium for such insurance.

(2) Stamp or write on the face of the loan agreement or promissory note evidencing the borrower's secondary mortgage loan indebtedness "Paid in Full" or "Cancelled", the date paid and, within [30] 60 days, return the loan agreement or promissory note to the borrower.

(3) Release any lien on real property and cancel the same of record and, at the time the loan agreement or promissory note evidencing the borrower's secondary mortgage loan indebtedness is returned, deliver to the borrower such good and sufficient assignments, releases or any other certificate, instrument or document as may be necessary to vest the borrower with complete evidence of title, insofar as the applicable secondary mortgage loan is concerned, to the real property.

Section 8. Section 15 of the act is amended by adding a subsection to read:

Section 15. Open-end loans.

* * *

(i) *A licensee may charge, contract for, receive or collect on any revolving loan account an annual fee not to exceed \$50 per year.*

Section 9. Section 20(b) of the act, amended July 2, 1992 (P.L.387, No.82), is amended and the section is amended by adding a subsection to read:

Section 20. Scope of act.

* * *

(b) Notwithstanding subsection (a), the secretary may license a branch office in [a] *another* state [contiguous to Pennsylvania,] provided that the licensee maintains a [principal] place of business in this Commonwealth which is licensed under the provisions of this act.

* * *

(d) If a secondary mortgage loan is made in good faith in conformity with an interpretation of this act by the appellate courts of the Commonwealth or in compliance with a rule, regulation, order, interpretation or other issuance promulgated by the secretary, no provisions of this act imposing any penalty shall apply, notwithstanding that, after such contract is made, such interpretation, rule or regulation is amended, rescinded or determined by judicial or other authority to be invalid for any reason.

Section 10. Section 22 of the act is amended by adding a subsection to read:

Section 22. Penalties.

* * *

(b.1) A sponsoring broker or broker's agent who violates any provision of this act shall be subject to a fine to be levied by the Department of Banking of up to \$2,000 for each offense.

* * *

Section 11. This act shall take effect immediately.

APPROVED—The 26th day of June, A.D. 1995.

THOMAS J. RIDGE