

No. 1986-203

AN ACT

HB 2308

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," further limiting unlicensed loans; providing for an application and a dishonored check fee; setting the frequency of examinations; prohibiting loan-finders' fees; and further providing for exemptions.

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

Section 1. Section 3(a) of the act of December 12, 1980 (P.L.1179, No.219), known as the Secondary Mortgage Loan Act, is amended to read:

Section 3. License requirements and exemptions.

(a) On and after the effective date of this act, no person shall engage in the business of making secondary mortgage loans in this Commonwealth except a business corporation organized under the laws of this Commonwealth or any other state, after first obtaining a license from the secretary in accordance with the provisions of this act. A State-chartered or National bank, bank and trust company, savings bank, private bank, savings association or savings and loan association, having its principal place of business in this Commonwealth, *or an individual making loans to family members*, shall not be required to be licensed under this act in order to make loans secured by real property under this act. Any agency or instrumentality of the United States Government or a corporation otherwise created by an act of the United States Congress which engages in the business of purchasing secondary mortgage loans shall not be required to be licensed under this act in order to purchase secondary mortgage loans from licensees under this act. This shall include but not be limited to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. For the purpose of this act, a person is deemed to be engaged in the secondary mortgage loan business in the Commonwealth if:

(1) such person, *his subsidiary or affiliate*, advertises, causes to be advertised, solicits, negotiates[,] *or arranges in the ordinary course of business*, offers to make or makes more than [twelve] *two* secondary mortgage loans in a calendar year in this Commonwealth, whether directly or by any person acting for his benefit; or

(2) such person, *his subsidiary or affiliate*, in the ordinary course of business becomes the subsequent holder of more than [twelve] *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.

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Section 2. Section 9 of the act is amended by adding paragraphs to read:

Section 9. Powers conferred on licensees.

All secondary mortgage loan licensees shall have power and authority:

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(7) To collect a fee for a subsequent dishonored check or instrument taken in payment, not to exceed the service charge permitted to be imposed under 18 Pa.C.S. § 4105(e)(3) (relating to bad checks).

(8) To charge and collect an application fee not exceeding 2% 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% of the credit limit was collected at the time the loan was made.

Section 3. Section 10(a)(4) of the act is amended to read:

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

(a) A secondary mortgage loan licensee shall:

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(4) Be subject to an examination by the secretary at least once [per] every two calendar [year] years, at which time the secretary shall have free access, during regular business hours, to the licensee's place or places of business in this Commonwealth and to all instruments, documents, accounts, books and records which pertain to the licensee's secondary mortgage loan business. However, the secretary may examine the licensee at any time if [he has reasonable cause to believe the licensee is violating this act] the secretary deems such action necessary or desirable. The cost of any such examination shall be borne by the licensee.

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Section 4. Section 11 of the act is amended by adding a paragraph to read:

Section 11. Licensee limitations.

A secondary mortgage loan licensee shall not:

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(6) Require a borrower to pay, directly or indirectly, to the licensee or any other person, a broker's fee, finder's fee, commission, premium or any other charges for obtaining, procuring or placing of a secondary mortgage loan, except as provided in this act.

Section 5. This act shall take effect immediately.

APPROVED—The 17th day of December, A. D. 1986.

DICK THORNBURGH