

No. 1989-36

AN ACT

SB 339

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," defining and regulating a secondary mortgage loan broker; further providing for record retention, processing and the licensing of contiguous State offices; providing for loan closings; and further providing for the authority of the Secretary of Banking.

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:

"Advance fee." Any funds requested by or to be paid to a secondary mortgage loan broker in advance of or during the processing of a secondary mortgage loan application.

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"Secondary mortgage loan broker." A person who in the ordinary course of business, for a fee, directly or indirectly negotiates or arranges for others a secondary mortgage loan.

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Section 2. Section 3 of the act, amended December 17, 1986 (P.L.1696, No.203), is amended to read:

Section 3. License requirements and exemptions.

(a) **[On and after the effective date of this act, no]**

(1) 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.

(2) No person shall engage in the business of being a secondary mortgage loan broker until after first obtaining a license from the secretary in accordance with the provisions of this act.

(3) 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.

(4) 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.

(5) 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,]

(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

(2) such person, his subsidiary or affiliate,]

(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.

(b) A real estate broker licensed pursuant to the provisions of the law of this Commonwealth or an attorney authorized to practice law in this Commonwealth shall not be required to obtain a license to arrange a secondary mortgage loan in the normal course of the business of a real estate broker or attorney.

(c) *A secondary mortgage loan broker who can demonstrate to the satisfaction of the secretary that he does not accept advance fees shall be exempt from the capital requirement of section 4(b).*

(d) *A person who is deemed to be engaged in the secondary mortgage loan business solely because he negotiates or arranges secondary mortgage loans for others need not obtain a secondary mortgage loan license but shall be required to be licensed as a secondary mortgage loan broker.*

Section 3. Section 4(a) and (b) of the act are amended to read:

Section 4. Application for license.

(a) An application for a secondary mortgage loan license *or a secondary mortgage loan broker license* shall be on a form provided by the secretary. Among other things, the application shall set forth the following:

(1) The full name, corporate title and personal residence address of each officer and director of the proposed licensee corporation *or the full name and address of each owner of the proposed broker license if it is not a corporation.*

(2) Any or all other business entities in which **[any officer or director holds]** an equity or creditor interest *is held by an officer or director of the proposed licensee corporation or by any owner of the proposed broker licensee if it is not a corporation.*

(3) The dollar amount of such equity or creditor holdings.

(4) Whether or not funds are or will be interchanged between the licensee and such business entities.

(5) The address or addresses where the secondary mortgage loan business is to be conducted.

(b) The applicant *for a secondary mortgage loan license* shall have a minimum legal capitalization of \$200,000. At the time of applying for a license under this act, and at all times thereafter, the minimum paid in legal capital shall be \$200,000. *An applicant for a secondary mortgage loan broker license shall have a minimum legal capitalization of \$25,000 at the time of applying for a license under this act and at all times thereafter.*

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Section 4. The introductory sentence of section 9 of the act is amended and the section is amended by adding a subsection to read:

Section 9. Powers conferred on licensees.

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

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(b) *All secondary mortgage loan broker licensees shall have power and authority:*

(1) *To collect title examination, credit report, and appraisal fees actually related to the granting of a secondary mortgage loan when such fees are actually paid or incurred by the licensee, and to include the fees in the principal of the secondary mortgage loan which is being negotiated or arranged.*

(2) *To charge a reasonable broker's fee as determined by regulation of the Department of Banking if the fee is disclosed to the person for whom the loan is being negotiated or arranged.*

Section 5. Section 10(a)(2) and (b) of the act are amended and the section is amended by adding subsections to read:

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

(a) A secondary mortgage loan licensee shall:

* * *

(2) Maintain at its principal place of business [or] *in this Commonwealth*, at a branch location *or at such place* within [the State of Pennsylvania an] *or outside this Commonwealth, if agreed to by the secretary, either the original or [true] a copy of the following instruments, documents, accounts, books and records:*

(i) Promissory note, contractual agreement, document or instrument evidencing each borrower's secondary mortgage loan indebtedness.

(ii) Mortgage, indenture or any other similar instrument or document which creates a lien on the real property which is taken as security for a secondary mortgage loan.

(iii) Credit life and accident and health and property insurance policy or a certificate of insurance where such insurance is obtained in accordance with this act.

(iv) Appraisal or search, where utilized.

(v) Individual ledger card or any other form of record which shows all installment payments made by the borrower and all other charges or credits to the borrower's account.

(vi) Individual file in which the borrower's application for a loan and any correspondence, including collection letters, memorandums, notes or any other written information pertaining to the borrower's account, shall be kept.

(vii) A general ledger containing all asset, liability and capital accounts, or a trial balance of the same accounts, which shall be maintained on a 60-day currented basis. In addition thereto, a disbursements register, checkbook and related records as required by the secretary shall be maintained on a current workday basis.

(viii) A loan closing statement indicating the date, amount and recipient of all loan proceeds, signed by the borrowers to evidence approval of distribution of loan proceeds and to acknowledge receipt of a copy of the loan closing statement.

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(b) A secondary mortgage loan broker licensee shall:

(1) Conspicuously display its license at each licensed place of business.

(2) Annually, before May 1, file with the secretary a report which shall set forth such information as the secretary shall require concerning the business conducted as a licensee during the preceding calendar year. The report shall be in writing, under oath and on a form provided by the secretary.

(3) Be subject to an examination by the secretary at least once every two calendar 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 broker business. The secretary may examine the licensee's place of business at any time if the secretary deems such action necessary or desirable. The cost of any examination shall be borne by the licensee.

[(b)] (c) The licensee's accounting records must be constructed and maintained in compliance with generally accepted accounting principles and all of the aforementioned instruments, documents, accounts, books and records shall be kept separate and apart from the records of any other business conducted by the licensee and shall be preserved and kept available for investigation or examination by the secretary for at least two years after a secondary mortgage loan has been paid in full. The provisions of this section shall not apply to any instrument, document, account, book or record which is assigned, sold or transferred to another secondary mortgage loan licensee nor shall the two-year requirement apply to an instrument or document which must be returned to the borrower at the time a secondary mortgage loan is paid in full.

(d) If copies of instruments, documents, accounts, books or records are maintained under subsection (a)(2), they may be photostatic, microfilm 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 6. The introductory sentence and paragraph (6) of section 11 of the act, added December 17, 1986 (P.L.1696, No.203), is amended to read:

Section 11. Licensee limitations.

A secondary mortgage loan licensee *and a secondary mortgage loan broker 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. *This restriction shall not prohibit a secondary mortgage loan licensee from paying a fee to a secondary mortgage loan broker in connection with the placement or procurement of a secondary mortgage loan, nor prohibit a borrower from requesting or directing a licensee to pay such a fee from the proceeds of a loan or include it in the amount to be financed.*

Section 7. Section 16(1) of the act is amended to read:

Section 16. Authority of Secretary of Banking.

The secretary shall have authority to:

(1) Issue rules and regulations governing the capitalization, public funding and the records to be maintained by licensees, and such general rules and regulations and orders as may be necessary for insuring **[the safety and soundness of the business,]** the proper conduct of the business and for the enforcement of this act.

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Section 8. Section 17 of the act is repealed.

Section 9. Section 20 of the act is amended to read:

Section 20. Scope of act.

(a) The provisions of this act shall apply to any secondary mortgage loan (except loans secured by real property made pursuant to a license issued under any other law of this Commonwealth) which **[is]**:

(1) *is* negotiated, offered, or otherwise transacted within this Commonwealth, in whole or in part, whether by the ultimate lender or any other person;

(2) *is* made or executed within this Commonwealth; or

(3) notwithstanding the place of execution, **[which are]** *is* secured by real property located in this Commonwealth.

(b) *Notwithstanding subsection (a), the secretary may license a branch office in a 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.*

(c) *Nothing contained in this act shall prohibit any licensee from closing any loans made under the provisions of this act in the offices of attorneys-at-law licensed by and located in this Commonwealth or of title insurance companies or agencies licensed by and located in this Commonwealth, if an*

employee of the licensee is present at the closing of any loan which is closed pursuant to the provisions of this subsection.

Section 10. This act shall take effect immediately.

APPROVED—The 7th day of July, A. D. 1989.

ROBERT P. CASEY