

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 900

By: Ford

COMMITTEE SUBSTITUTE

An Act relating to mortgage broker licensure;
amending Sections 2, 3, 4, 5, 7, 8, 9, 10, and 11,
Chapter 401, O.S.L. 1997 (59 O.S. Supp. 1997,
Sections 2082, 2083, 2084, 2085, 2087, 2088, 2089,
2090, and 2091), which relate to the "Mortgage
Broker Licensure Act"; defining additional term;
deleting exemption of consumer loan companies and
insurance companies; adding exemption for certain
supervised lenders and for certain insurance agents
under certain conditions; shifting certain powers
and duties from the Commission on Consumer Credit
to Administrator of the Commission on Consumer
Credit; authorizing certain additional sanction;
making certain committee subject to the Oklahoma
Open Meeting Act and Oklahoma Open Records Act;
clarifying references; making certain usage of
language parallel; providing an effective date; and
declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 2, Chapter 401, O.S.L. 1997 (59 O.S. Supp. 1997, Section 2082), is amended to read as follows:

Section 2082. As used in ~~this act~~ the "Mortgage Broker Licensure Act":

1. "Administrator" means the Administrator of Consumer Credit;

2. "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan;

~~2.~~ 3. "Commission" means the Commission on Consumer Credit;

~~3.~~ 4. "Employee" means an individual who has an employment relationship acknowledged by both the employee and the mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws;

~~4.~~ 5. "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws;

~~5.~~ 6. "Loan originator" means a person employed, either directly or indirectly, or retained as an independent contractor by a person required to be licensed as a mortgage broker, or an individual who represents a person required to be licensed as a

mortgage broker, and who performs any of the services specified in paragraph 6 of this section;

~~6.~~ 7. "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain, performs the following services:

- a. makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan, or
- b. holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan;

~~7.~~ 8. "Person" means an individual, corporation, company, limited liability company, partnership, association, or similar legal entity;

~~8.~~ 9. "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units; and

~~9.~~ 10. "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

SECTION 2. AMENDATORY Section 3, Chapter 401, O.S.L. 1997 (59 O.S. Supp. 1997, Section 2083), is amended to read as follows:

Section 2083. The following are exempt from all provisions of ~~this act~~ the Mortgage Broker Licensure Act:

1. Any person authorized to do business under the laws of this state or the United States regulating commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, ~~consumer loan companies, insurance companies,~~ supervised lenders as defined in paragraph 2 of Section 3-501 of Title 14A of the Oklahoma Statutes, or real estate investment trusts as defined in 26 U.S.C., Section 856 and the affiliates, subsidiaries, and service corporations thereof;

2. ~~An~~ Any attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney;

3. Any person making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment without intending to resell the residential mortgage loans;

4. Any mortgage broker approved and subject to auditing by the Federal National Mortgage Association, the Government National Mortgage Association, the Department of Housing and Urban Development (HUD), or the Federal Home Loan Mortgage Corporation;

5. The United States of America, the State of Oklahoma, any other state and any political subdivision of this state, or their instrumentalities;

6. ~~A~~ Any real estate broker or sales associate licensed by this state who assists the borrower in obtaining financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker or associate and who receives only the customary real estate broker's or associate's commission in connection with the transaction;

7. ~~A~~ Any real estate broker or sales associate licensed by this state who provides only information regarding rates, terms, and lenders, who receives a fee for providing such information, who conforms to all rules of the Oklahoma Real Estate Commission with

respect to the providing of such service, and who discloses on a form approved by the ~~Commission~~ Administrator of Consumer Credit that to obtain a loan the borrower must deal directly with a mortgage broker or lender. ~~However;~~ however, such real estate broker or sales associate shall not be exempt if he or she does any of the following:

- a. holds himself or herself out as able to obtain a loan from a lender for another,
- b. accepts a loan application, or submits a loan application to a lender,
- c. accepts any deposit for third-party services or any loan fees from a borrower, whether such fees are paid before, upon, or after the closing of the loan, or
- d. negotiates rates or terms with a lender on behalf of a borrower; and

8. Any insurance company or its affiliates, subsidiaries, and service corporations authorized to do business under the laws of this state and any agent of any such insurance company, affiliate, subsidiary, or service corporation:

- a. if the agent holds a current license as an insurance agent from the Insurance Department,
- b. if the agent performs services which would otherwise require a license under the Mortgage Broker Licensure Act only for an insurance company, affiliate, subsidiary, or service corporation for which the agent has been appointed and the appointment has been approved by the Insurance Commissioner, and
- c. if the insurance company, affiliate, subsidiary, or service corporation agrees to accept liability for the acts of its agents at least to the same extent as a lender accepts liability for the acts of a licensed

mortgage broker with whom the lender has a loan
brokerage agreement; and

9. Any employee of a person licensed or exempt from licensing under this act when acting within the scope of their employment.

SECTION 3. AMENDATORY Section 4, Chapter 401, O.S.L. 1997 (59 O.S. Supp. 1997, Section 2084), is amended to read as follows:

Section 2084. Unless exempt from licensure under ~~this act~~ the Mortgage Broker Licensure Act, a person may not engage in the business of a mortgage broker without first obtaining and maintaining a license under ~~this act~~ the Mortgage Broker Licensure Act. However, a person who independently contracts with a licensed mortgage broker to perform mortgage broker services need not be licensed if the licensed mortgage broker and the independent contractor have on file with the ~~Commission on Consumer Credit Administrator of Consumer Credit~~ a binding written agreement under which the licensed mortgage broker assumes responsibility for the independent contractor's violations of any provision of this act or rules promulgated pursuant to the provisions of ~~this act~~ the Mortgage Broker Licensure Act.

SECTION 4. AMENDATORY Section 5, Chapter 401, O.S.L. 1997 (59 O.S. Supp. 1997, Section 2085), is amended to read as follows:

Section 2085. A. 1. A person of good moral character who has experience in the residential mortgage loan industry or real estate sales or lending industry, or has applicable educational requirements as established by rule of the Commission on Consumer Credit, may make application to the ~~Commission~~ Administrator of Consumer Credit for a mortgage broker license.

2. Application for a mortgage broker license shall be made upon forms prescribed by the ~~Commission~~ Administrator and shall be accompanied by a nonrefundable application fee as set by rule of the

Commission and any information and documents the Commission or
Administrator may require.

3. Upon approval by the ~~Commission~~ Administrator of the application and payment of the license fee provided for in ~~this act~~ the Mortgage Broker Licensure Act the ~~Commission~~ Administrator shall issue to the applicant a license which shall authorize the applicant to act as a mortgage broker.

B. A license issued under this act shall be valid for a period of three (3) years, unless otherwise revoked or suspended by the ~~Commission~~ Administrator.

C. Initial and renewal license fees shall be Three Hundred Dollars (\$300.00) for each three-year period. These fees shall be deposited in the Oklahoma Mortgage Brokers Recovery Fund.

D. A person may be denied a license for any of the causes set forth in subsection B of ~~Section 8 of this act~~ Section 2088 of this title.

E. A residential mortgage broker who ~~holds~~ held a current license as of ~~the effective date this act~~ November 1, 1997, which was issued under the Credit Services Organization Act shall be granted an initial license by the ~~Commission~~ Administrator pursuant to the provisions of this section.

SECTION 5. AMENDATORY Section 7, Chapter 401, O.S.L. 1997 (59 O.S. Supp. 1997, Section 2087), is amended to read as follows:

Section 2087. A. A mortgage broker shall deposit, prior to the end of the next business day, all monies received from borrowers for third-party provider services in a trust account of a federally insured financial institution located in this state. The trust account shall be designated and maintained for the benefit of borrowers. Monies maintained in the trust account shall be exempt from execution, attachment, or garnishment. A mortgage broker shall

not in any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds.

B. Withdrawals from the trust account shall be only for the payment of bona fide services rendered by a third-party provider or for refunds to borrowers. Any interest earned on the trust account shall be refunded or credited to the borrowers at closing. Any monies remaining in the trust account after payment to third-party providers shall be refunded to the borrower.

C. The mortgage broker shall pay third-party providers no later than thirty (30) days after completion of the third-party service.

D. A mortgage broker shall maintain accurate, current, and readily available records of the trust account until at least three (3) years have elapsed following the effective period to which the records relate. The records shall be subject to audit by the ~~Commission on Consumer Credit~~ Administrator of Consumer Credit pursuant to an investigation conducted under ~~Section 8 of this act~~ Section 2088 of this title.

SECTION 6. AMENDATORY Section 8, Chapter 401, O.S.L. 1997 (59 O.S. Supp. 1997, Section 2088), is amended to read as follows:

Section 2088. A. The ~~Commission on Consumer Credit~~ Administrator of Consumer Credit may upon ~~its~~ his or her own motion, and shall upon written complaint filed by any person, investigate the business transactions of any licensed mortgage broker and, after notice and hearing, may, for any cause as set forth in subsection B of this section, impose the following sanctions:

1. Reprimand;
2. Probation for a specified period of time;
3. Suspension of license for specified periods of time;
4. Revocation of license;
5. Imposition of an administrative fine which shall be not less than One Hundred Dollars (\$100.00) nor more than Two Thousand

Dollars (\$2,000.00) for each violation nor exceed Five Thousand Dollars (\$5,000.00) for all violations resulting from a single incident or transaction; ~~or~~

6. Restitution of actual damages suffered by the complaining person; or

7. Any combination of sanctions as provided for by paragraphs 1 through ~~5~~ 6 of this subsection.

B. Cause shall be established upon clear and convincing evidence that any licensee or its employee has performed or has attempted to perform, or is performing or is attempting to perform any of the following acts:

1. Making a materially false or fraudulent statement in an application for license;

2. Making substantial misrepresentations or false promises in the conduct of business as a mortgage broker or through advertising;

3. Failing to escrow, account for, or remit monies or documents as required by this act;

4. Commingling monies as prohibited by this act;

5. Having been convicted in a court of competent jurisdiction of having violated any provision of the federal fair housing laws, 42 U.S.C., Section 3601 et seq.;

6. Having been convicted in a court of competent jurisdiction in this or any other state of the crime of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, fraud, or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses;

7. Failing to pay the fees required under ~~this act~~ the Mortgage Broker Licensure Act or to comply with an order lawfully issued pursuant to ~~this act~~ the Mortgage Broker Licensure Act; or

8. Having violated any provision of ~~this act~~ the Mortgage Broker Licensure Act.

C. In addition to any sanctions authorized by ~~this act~~ the Mortgage Broker Licensure Act, the ~~Commission Administrator~~, the Attorney General, or the district attorney may apply to the district court in the county in which a violation of ~~this act~~ the Mortgage Broker Licensure Act has allegedly occurred for an order enjoining or restraining the licensee from continuing the acts specified in the complaint. The court may grant any temporary or permanent injunction or restraining order, without bond, as it deems just and proper.

SECTION 7. AMENDATORY Section 9, Chapter 401, O.S.L. 1997 (59 O.S. Supp. 1997, Section 2089), is amended to read as follows:

Section 2089. A. In addition to any other penalties provided by law, any person without a license as required by ~~this act~~ the Mortgage Broker Licensure Act who engages in the business of a mortgage broker or who willingly and knowingly violates any provision of ~~this act~~ the Mortgage Broker Licensure Act, upon conviction, shall be guilty of a misdemeanor which shall be punishable by a fine of not more than One Thousand Dollars (\$1,000.00) for each violation. Each violation shall be a separate offense under this section.

B. In addition to any civil or criminal actions authorized by law, the ~~Commission on Consumer Credit~~ Administrator of Consumer Credit, the Attorney General, or the district attorney may apply to the district court in the county in which a violation of ~~this act~~ the Mortgage Broker Licensure Act has allegedly occurred for an order enjoining or restraining the unlicensed person from continuing the acts specified in the complaint. The court may grant any temporary or permanent injunction or restraining order, without bond, as it deems just and proper.

SECTION 8. AMENDATORY Section 10, Chapter 401, O.S.L. 1997 (59 O.S. Supp. 1997, Section 2090), is amended to read as follows:

Section 2090. A. There is hereby created the "Mortgage Broker Advisory Committee" which shall advise the Commission on Consumer Credit on matters pertaining to the licensure, regulation, and discipline of mortgage brokers required to be licensed under the provisions of ~~this act~~ the Mortgage Broker Licensure Act.

B. 1. Except as provided in paragraph 2 of this subsection, the Committee shall be comprised of three (3) licensed mortgage brokers, appointed by the Governor. Each member shall serve a term of three (3) years and until a successor is appointed and qualified. Members may be removed for misconduct, incompetency, or neglect of duty.

2. Members initially appointed to the Committee shall have been active in the mortgage broker business in this state for at least two (2) years prior to appointment and shall complete licensure requirements within one (1) year of appointment. Initial members shall serve staggered terms as follows: one member shall be appointed for a term of one (1) year, one member shall be appointed for a term of two (2) years, and one member shall be appointed for a term of three (3) years. Thereafter, these members may be appointed for three-year terms of office. All terms of office shall expire on October 31.

C. The Committee shall elect a chair from among its membership. Meetings shall be held at least quarterly. Special meetings may be called by request of the Commission. A majority of the Committee shall constitute a quorum for the transaction of business. Each member shall receive reimbursement for travel expenses in accordance with the provisions of the State Travel Reimbursement Act. The Committee shall be subject to the provisions of the Oklahoma Open Meeting Act and the Oklahoma Open Records Act.

SECTION 9. AMENDATORY Section 11, Chapter 401, O.S.L. 1997 (59 O.S. Supp. 1997, Section 2091), is amended to read as follows:

Section 2091. A. There is hereby created in the State Treasury a revolving fund for the Commission on Consumer Credit to be designated the "Oklahoma Mortgage Brokers Recovery Fund". The fund shall consist of monies received by the ~~Commission~~ Administrator of Consumer Credit as license fees and any administrative fines imposed pursuant to ~~this act~~ the Mortgage Broker Licensure Act. The revolving fund shall be a continuing fund not subject to fiscal year limitations and shall be under the administrative direction of the Administrator ~~of the Commission~~. Only monies accruing to the credit of this fund are hereby appropriated and may be budgeted and expended by the Commission, pursuant to rules adopted by the Commission, for the purposes specified in subsection B of this section. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

B. 1. Subject to the limitations of this subsection, monies in the fund shall be used to reimburse any person in an amount not to exceed Five Thousand Dollars (\$5,000.00) who has been adjudged by a court of competent jurisdiction to have suffered monetary damages by a person required to have a license under ~~this act~~ the Mortgage Broker Licensure Act in any transaction or series of transactions for which a license is required under ~~this act~~ the Mortgage Broker Licensure Act because of the acquisition of money or property by fraud, misrepresentation, deceit, false pretenses, artifice, trickery, or by any other act which would constitute a violation of ~~this act~~ the Mortgage Broker Licensure Act.

2. Payments for claims based on judgments against any one person required to have a license under this act shall not exceed in the aggregate Thirty Thousand Dollars (\$30,000.00).

3. Payments for claims may only be made for a cause of action which has accrued on or after ~~the effective date of this act~~ November 1, 1997, and which has accrued not more than two (2) years prior to filing the action in district court.

SECTION 10. This act shall become effective November 1, 1998.

SECTION 11. It being immediately necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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