

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE  
SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 2009

By: Phillips and Blackburn of  
the House

and

Ford of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 858-705, 858-705.1 and 858-706, which relate to the Oklahoma Certified Real Estate Appraisers Act; increasing membership of real estate appraiser board; designating Insurance Commissioner as chairperson of real estate appraiser board; providing for chairperson to perform administrative revocation of certain licenses upon notice; allowing chairperson to appoint designee to attend certain meetings; allowing chairperson to perform other functions or duties; amending 59 O.S. 2001, Section 1850.10, which relates to the Mechanical Licensing Act; providing exemption from licensing for certain maintenance employees; amending 59 O.S. 2001, Sections 2082, 2083, 2085, 2086, 2088, 2089 and 2090, which relate to licensure requirements of mortgage brokers; adding definitions; modifying certain exemptions; modifying requirements for eligibility for a mortgage broker license; requiring certain information be provided to Administrator of Consumer Credit; providing for applicability of license to employees of licensee; requiring posting of bond or deposit of cash or cash alternative with State Treasurer; providing for amount of bond; providing definitions; providing for conditions for release of bond, cash or cash alternative; requiring background check of employees; prohibiting transfer or assignment of license; requiring licensee to be responsible for actions of employee; allowing for certain waiver of application requirement; providing for issuance of license; requiring payment of renewal fees by certain date; allowing for change of status of licensee; requiring display of license; requiring licensing of branch offices; setting certain fees; requiring licensing of mortgage loan originators; providing qualification criteria; setting license fee; extending enforcement authority; modifying membership requirements of Mortgage Broker Advisory Committee; requiring certain testing to be eligible for license; setting parameters of test; requiring testing to be provided at certain times; setting fee for test; requiring study aides to be provided for

test; providing for continuing education requirements for mortgage brokers; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 858-705, is amended to read as follows:

Section 858-705. A. There is hereby established as an adjunct to the Department an independent Real Estate Appraiser Board which shall consist of ~~seven (7) regular~~ eight (8) members ~~and one ex officio member. The ex officio member shall be the Insurance Commissioner. The Insurance Commissioner shall serve as chairperson, and may designate various members of his staff to serve as his designee for all purposes stated in Sections 858-700 through 858-732 of this title.~~ The ~~seven regular~~ eight members shall be as follows: the Oklahoma Insurance Commissioner; one from the commercial banking industry; one ~~of whom~~ shall be a layperson; one ~~of whom~~ shall be in the real estate sales industry; and four ~~of whom~~ shall be real estate appraisers with no nationally recognized real estate appraisal organization having more than two members on the Board.

B. The Governor shall appoint the other seven members of the Real Estate Appraiser Board.

C. Each real estate appraiser member of the Board appointed after July 1, 1991, or within twenty-four (24) months of the effective date of this act, whichever occurs first, must be a state licensed, state certified residential or state certified general real estate appraiser.

D. The term of each member shall be five (5) years; except that of the members first appointed, two shall serve for one (1) year, two shall serve for two (2) years, one shall serve for three (3)

years, one shall serve for four (4) years, and one shall serve for five (5) years.

E. Members of the Board shall hold office until the appointment and qualification of their successors. No person shall serve as a member of the Board for more than two consecutive terms. The Governor may remove a member for inefficiency, neglect of duty, or malfeasance in office. The member shall be given notice and an opportunity to be heard prior to removal.

F. The Board shall meet, at the call of the Chairperson, at least once each calendar quarter to conduct its business. Written notice shall be given to each member of the time and place of each meeting of the Board at least ten (10) days before the scheduled date of the meetings.

G. The members of the Board shall elect a vice-chairperson from among the members ~~to preside at Board meetings when the chairperson is absent.~~

H. A quorum of the Board shall be five members.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 858-705.1, is amended to read as follows:

Section 858-705.1 A. ~~In addition to the seven (7) appointed members of the Board, the Insurance Commissioner shall serve as ex-officio Chairperson of the Board, voting only in case of a tie.~~

~~B.~~ As Chairperson, the Insurance Commissioner, in addition to his duties prescribed by law as Insurance Commissioner on the effective date of this act, shall be required to perform the following duties, for which duties he shall be paid an additional Twelve Thousand Dollars (\$12,000.00) annually, payable monthly from appropriations made to the Insurance Department:

1. Keep records of the proceedings of the Board;

2. Call regular and special meetings of the Board ~~when in the judgment of the chairperson it is necessary or proper to do so;~~

3. Procure appropriate examination questions and answers which shall meet criteria established by the Appraisal Subcommittee ~~and approved by the Board;~~

4. Develop guidelines for administration of and grading of the examinations in accordance with standards promulgated by the Appraisal Subcommittee ~~and approved by the Board;~~

5. Prepare and file a annual report with the Speaker of the House, the President Pro Tempore of the Senate, and the Governor detailing the number of applicants for the examination and the pass/fail rate;

6. Formulate a study to evaluate the number of appraisers licensed or certified by the state on a countywide basis and report to the Speaker of the House, the President Pro Tempore of the Senate, and the Governor concerning whether there is a shortage of qualified appraisers in the state;

7. Establish and maintain a recordkeeping system ~~approved by the Board~~ to monitor compliance with the continuing education requirements imposed by law;

8. Make recommendations to the Board concerning the establishment of administrative procedures for conducting disciplinary proceedings pursuant to the provisions of this act;

9. Develop a procedure ~~approved by the Board~~ whereby persons aggrieved by the actions of a licensed or certified appraiser may file complaints with the Board;

10. Annually compile and file a report with the Speaker of the House, President Pro Tempore of the Senate, and the Governor detailing the number of complaints received by the Board, the resulting number of investigations and hearings conducted and the final disposition of these matters;

11. Prepare and file a report with the Speaker of the House, the President Pro Tempore of the Senate, and the Governor evaluating the impact of the voluntary licensure/certification program on

future appraisers and recommend whether an appraiser trainee or apprenticeship program should be instituted; ~~and~~

12. Submit to the Speaker of the House, the President Pro Tempore of the Senate, and the Governor on or before January 1, 1994, a report evaluating the impact of the licensure/certification requirements imposed by this act on the appraiser and banking industry and include in the report any recommendations for amendments to the Oklahoma Certified Real Estate Appraisers Act;

13. To administratively revoke or suspend, upon fifteen (15) days' notice by certified mail, return receipt requested, to the individual at the most recent address on file, the certification of trainee, state licensed, certified residential, and certified general appraisers who fail to pay any fees required by the Oklahoma Certified Real Estate Appraisers Act;

14. To attend Board meetings through his own presence or through that of a designated appointee to preside and vote in the Board's proceedings; and

15. To perform such other functions and duties as may be necessary in carrying out the provisions of the Oklahoma Certified Real Estate Appraisers Act.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 858-706, is amended to read as follows:

Section 858-706. A. The Board shall promulgate rules and regulations to implement the provisions of the Oklahoma Certified Real Estate Appraisers Act.

B. The Board shall have the following powers and duties:

1. To further define by regulation and with respect to each category of Oklahoma certified real estate appraisers the type of educational experience, appraisal experience, and equivalent experience that will meet the requirements of the Oklahoma Certified Real Estate Appraisers Act, as approved by the Appraisal Subcommittee;

2. To establish the examination specifications for each category of Oklahoma certified real estate appraiser;

3. To approve or disapprove applications for certification and issue certificates;

4. To further define by regulation and with respect to each category of Oklahoma certified real estate appraiser, the continuing education requirements for the renewal of certification that will meet the requirements of the Oklahoma Certified Real Estate Appraisers Act as approved by the Appraisal Subcommittee;

5. To review from time to time the standards for the development and communication of real estate appraisals provided in the Oklahoma Certified Real Estate Appraisers Act and to adopt regulations explaining and interpreting the standards;

6. To establish administrative procedures for disciplinary proceedings conducted pursuant to the provisions of the Oklahoma Certified Real Estate Appraisers Act; and

7. To censure, suspend and revoke certificates pursuant to the disciplinary proceedings provided in the Oklahoma Certified Real Estate Appraisers Act; ~~and~~

~~8. To perform such other functions and duties as may be necessary in carrying out the provisions of the Oklahoma Certified Real Estate Appraisers Act.~~

In the exercise of all powers and the performance of all duties provided in this act, the Board shall comply with the procedures provided in the Administrative Procedures Act.

~~C. Actions of the Board shall not be subject to review by the Department.~~

~~D.~~ The members of the Board shall not be held civilly liable for any action taken in good faith by the Board in its official capacity pursuant to law unless such action is arbitrary and capricious.

SECTION 4. AMENDATORY 59 O.S. 2001, Section 1850.10, is amended to read as follows:

Section 1850.10 A. 1. No person shall install, replace or repair gas piping unless such person is licensed under the Mechanical Licensing Act or is licensed as a plumbing contractor or journeyman plumber pursuant to the laws of this state.

2. No person shall install, replace or repair floor furnaces or wall heaters unless such person is licensed under the Mechanical Licensing Act or is licensed as a plumbing contractor or journeyman plumber pursuant to the laws of this state.

B. The Mechanical Licensing Act shall not apply to:

1. A person who is the property owner of record, or his or her authorized representative, when performing minor repair which shall include, but not be limited to, cleaning, adjusting, calibrating and repair of mechanical system parts and the replacement of fuses and room thermostats, and other minor repairs which shall not include any repair which could violate the safe operation of the equipment;

2. The installation of portable, self-contained, ductless air conditioners or heaters;

3. The setting or connecting of detached air conditioning units which utilize flexible ductwork on a manufactured home. The term manufactured home shall have the same definition as such term is defined in Section 1102 of Title 47 of the Oklahoma Statutes;

4. Any permanent employee of a manufacturing facility, whether owned or leased, while performing mechanical work on the premises of such facility. The performance of such mechanical work authorized by this paragraph shall not violate any manufacturer specification or compromise any health or safety standards and practices in accordance with state and federal regulations;

5. The service, repair and installation of boilers, pressure vessels and welded steam lines which are subject to the jurisdiction

of the Commissioner of Labor pursuant to the provisions of Sections 141.1 through 141.18 of Title 40 of the Oklahoma Statutes; ~~or~~

6. Employees of state-owned institutions doing maintenance to state-owned facilities which does not violate manufacturer specifications nor compromise health or safety standards and practices; or

7. Maintenance employees of the owner of record or agent of the owner of record, who in the course of employment, are supervised by a licensed mechanical contractor. The contractor shall be a full-time permanent employee of the owner or agent. The maintenance employees exempt under this section shall obtain a registered apprentice license.

C. The licensing requirements of the Mechanical Licensing Act shall not apply to public utilities, public service corporations, intrastate gas pipeline companies, gas gathering pipeline companies, gas processing companies, rural electric associations, or municipal utilities and their subsidiaries during work on their own facilities or during the performance of energy audits, operational inspections, minor maintenance, or minor repairs for their customers or on their own equipment.

D. The licensing requirements of the Mechanical Licensing Act shall not apply to employees of chemical plants, gas processing plants, and petroleum refineries during work on their own facilities or during the performance of operational inspections, mechanical work, maintenance, or repairs on their own equipment, the performance of which does not violate any manufacturer specification or compromise any health or safety standards and practices in accordance with state and federal regulations.

E. The licensing requirements of the Mechanical Licensing Act shall not apply to employees of research facilities during work on their own facilities or during the performance of operational inspections, mechanical work, maintenance, or repairs on their own

equipment used solely for research purposes when such items of equipment require one or more details of construction not covered by normally used national codes and standards or which involve destruction or reduce life of the equipment and systems.

SECTION 5. AMENDATORY 59 O.S. 2001, Section 2082, is amended to read as follows:

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

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

2. "Affiliate" means an entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the entity specified;

3. "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;

~~3.~~ 4. "Commission" means the Commission on Consumer Credit;

~~4.~~ 5. "Compensation" means anything of value or any benefit including points, commissions, bonuses, referral fees, loan origination fees and other similar fees but excluding periodic interest resulting from the application of the note rate of interest to the outstanding principal balance remaining unpaid from time to time;

6. "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;

~~5.~~ 7. "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;

~~6.~~ 8. "Investor" means a person who lends or invests money in mortgage loans;

9. "Loan processor" means an individual who works under the instruction of a mortgage loan originator or mortgage broker and performs only clerical functions such as gathering information, requesting information, word processing, sending correspondence or amending files;

10. "Mortgage loan originator" means a person ~~employed,~~ who is not exempt under Section 2083 of this title and who for compensation or in the expectation of compensation either directly or indirectly makes, ~~or retained as an independent contractor by a person required to be licensed as~~ negotiates or offers to make or negotiate a mortgage loan for or on behalf of 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 7 of this section;~~

~~7.~~ 11. "Mortgage broker" means any person who is not exempt under Section 2083 of this title and 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~~

either directly or indirectly makes, negotiates or offers to make or negotiate a residential mortgage loan;

~~8.~~ 12. "Person" means an individual, corporation, company, limited liability company, partnership, association, or similar legal entity;

~~9.~~ ~~"Residential mortgage~~ 13. "Mortgage loan" means any loan ~~primarily for personal, family, or household use~~ secured by a mortgage, ~~or deed of trust~~ or any lien interest 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~~ located in this state created with the consent of the owner of the real estate; and

~~10.~~ 14. "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 6. AMENDATORY 59 O.S. 2001, Section 2083, is amended to read as follows:

Section 2083. The following are exempt from all provisions of 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, 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. 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 loan and is not engaged in the business of making mortgage loans;

4. Any mortgage broker solely engaged in transactions 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, or the Department of Veterans Affairs;

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

6. 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. 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 Administrator of Consumer Credit that to obtain a loan the borrower must deal directly with a mortgage broker or lender; 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 mortgage loan from a lender for another,
- b. accepts a mortgage loan application, or submits a mortgage loan application to a lender,

- c. accepts any deposit for third-party services or any ~~loan fees~~ compensation from a borrower, whether such ~~fees are~~ compensation is paid before, upon, or after the closing of the mortgage loan, or
- d. negotiates rates or terms with a lender on behalf of a borrower;

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; and

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

SECTION 7. AMENDATORY 59 O.S. 2001, Section 2085, is amended to read as follows:

Section 2085. A. 1. A person of good moral character who:

- a. has at least three (3) years' experience in the residential mortgage loan industry as a mortgage loan originator or mortgage broker or real estate sales or lending industry during the five (5) years immediately preceding the time of application, or

- b. has satisfactorily completed applicable educational requirements as established by rule of the Commission on Consumer Credit during the three (3) years immediately preceding the time of application, and
- c. has passed a mortgage broker test pursuant to Section 12 of this act not more than one (1) year preceding the time of application,

may make application to the Administrator of Consumer Credit for a mortgage broker license.

2. Application for a mortgage broker license shall be made upon forms prescribed by the Administrator ~~and shall be accompanied by a nonrefundable application fee as set by rule of the Commission and any information and documents the.~~ The Commission or Administrator may require additional information on the experience, background, honesty, truthfulness, integrity and competency of the applicant and any responsible individual designated by the applicant. If the applicant is a person other than a natural person, the Administrator may require information as to the honesty, truthfulness, integrity and competency of any officer, director, shareholder or other interested party of the applicant.

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

4. If a licensee is a person other than a natural person, the license issued entitles all officers, directors, members, partners, trustees and employees of the licensed corporation, partnership, association or trust to engage in the mortgage business if one officer, director, member, partner, employee or trustee of the person is designated in the license as the individual responsible for the person under this article. If a licensee is a natural

person, the license entitles all employees of the licensee to engage in the mortgage business. If the natural person is not a resident of this state, an employee of the licensee shall be designated in the license as the individual responsible for the licensee under the provisions of this article. For purposes of this paragraph, an employee does not include an independent contractor. A responsible individual shall be a resident of this state, shall be in active management of the activities of the licensee governed by the Mortgage Broker Licensure Act and shall meet the qualifications set forth in this subsection for a licensee.

5. A licensee shall notify the Administrator that its responsible individual will cease to be in active management of the activities of the licensee within ten (10) days of knowledge of that fact. The licensee has ninety (90) days after the notification is received by the Administrator within which to replace the responsible individual with a qualified replacement and to notify the Administrator of the replacement. If the license is not placed under active management of a qualified responsible individual and if notice is not given to the Administrator within the ninety-day period, the license shall expire.

6. Every person licensed as a mortgage broker shall deposit with the Administrator, prior to doing business as a mortgage broker in this state, a bond executed by the licensee as principal and a surety company authorized to do business in this state as a surety. The bond shall be conditioned on the faithful compliance of the licensee, including the directors, officers, members, partners, trustees and employees of the licensee with the Mortgage Broker Licensure Act. The bond shall be payable to any person injured by a wrongful act, default, fraud or misrepresentation of the licensee or employees of the licensee and to this state for the benefit of the person injured. Only one bond is required for any person, firm, association, partnership or corporation regardless of the number of

officers, directors, members, partners or trustees who are employed by or are members of such firm, association, partnership or corporation. No suit may be commenced on the bond after the expiration of one (1) year following the commission of the act on which the suit is based, except that claims for fraud or mistake are limited to the limitation period provided for in paragraph 3 of Section 95 of Title 12 of the Oklahoma Statutes. If an injured person commences an action for a judgment to collect from the bond, the injured person shall notify the Administrator of the action in writing at the time of the commencement of the action and shall provide copies of all documents relating to the action to the Administrator upon request.

7. The bond required by paragraph 6 of this subsection shall be in the amount of Ten Thousand Dollars (\$10,000.00) for licensees whose investors are limited solely to institutional investors and in the amount of Fifteen Thousand Dollars (\$15,000.00) for licensees whose investors include any noninstitutional investors.

8. For purposes of this section:

- a. "institutional investor" means a state or national bank, a state or federal savings and loan association, a state or federal savings bank, a state or federal credit union, a federal government agency or instrumentality, a quasi-federal government agency, a financial enterprise, a licensed real estate broker or salesman, a profit sharing or pension trust, or an insurance company, and
- b. "investor" means any person who directly or indirectly provides funds to a mortgage broker which funds are or are intended to be used in the making of a loan, and any person who purchases a loan, or any interest therein, from a mortgage broker or in a transaction

that has been directly or indirectly arranged or negotiated by a mortgage broker.

9. In lieu of the bond required by paragraph 6 of this subsection, an applicant for a license or a licensee may deposit with the Administrator cash or an alternative to cash. The deposit shall be in an amount equal to the bond required in paragraph 7 of this subsection. The Administrator may accept any of the following as an alternative to cash:

- a. Certificates of Deposit or investment certificates which are payable or assigned to the State Treasurer, issued by banks or savings banks doing business in this state and fully insured by the Federal Deposit Insurance Corporation or any successor institution,
- b. Certificates of Deposit, investment certificates or share accounts which are payable or assigned to the State Treasurer, issued by a savings and loan association doing business in this state and fully insured by the Federal Deposit Insurance Corporation or any successor institution, or
- c. Certificates of Deposit, investment certificates or share accounts which are payable or assigned to the State Treasurer, issued by a credit union doing business in this state and fully insured by the National Credit Union Administration or any successor institution.

10. The Administrator shall deposit the cash or alternatives to cash received with the State Treasurer. The State Treasurer shall hold the cash or alternatives to cash in the name of this state to guarantee the faithful performance of all legal obligations of the person required to post bond pursuant to this section. The person is entitled to receive any accrued interest earned from the alternatives to cash. The State Treasurer may impose a fee to

reimburse the State Treasurer for administrative expenses required to maintain the account. The fee shall not exceed Ten Dollars (\$10.00) for each cash or alternative to cash deposit and shall be paid by the applicant or licensee. The State Treasurer may prescribe rules relating to the terms and conditions of each type of security provided by this section.

11. In addition to such other terms and conditions the Administrator prescribes by rule or order, the principal amount of the deposit shall be released only upon written authorization of the Administrator or upon the order of a court of competent jurisdiction. The principal amount of the deposit shall not be released before the expiration of three (3) years from the first to occur of any of the following:

- a. the date of substitution of a bond for a cash alternative,
- b. the surrender of the license of a licensee,
- c. the revocation of the license of a licensee, or
- d. the expiration of the license of a licensee.

12. A licensee shall not employ any person unless the licensee:

- a. conducts a reasonable investigation of the background, honesty, truthfulness, integrity and competency of the employee before hiring the employee, and
- b. keeps a record of the background investigation for a minimum of two (2) years after termination of the employee from employment with the licensee.

13. A license is not transferable nor may it be assigned and control of a licensee may not be acquired through a stock purchase or other device without the prior written consent of the Administrator. Written consent shall not be given if the Administrator finds that any of the grounds for denial, revocation or suspension of a license as set forth in Section 2088 of this title are applicable to the acquiring person. For purposes of this

paragraph, "control" means the power to vote more than twenty percent (20%) of outstanding voting shares of a licensed corporation, partnership, association or trust.

14. The licensee is liable for any damage caused by any employees while acting within the scope of employment as an employee of the licensee.

15. The examination and course of study requirements of this section shall be waived by the Administrator for any person applying for a license who, within six (6) months immediately prior to the submission of the application to the Administrator, has been a licensee or a responsible person pursuant to the Mortgage Broker Licensure Act.

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

C. The Administrator, on determining that the applicant is qualified and upon payment of the fees by the applicant, shall issue a license to the applicant which is evidenced by a continuous certificate. The Administrator shall grant or deny a license within sixty (60) days after receipt of the completed application and appropriate fees. An applicant who has been denied a license may not reapply for the license for one (1) year from the date of the previous application.

D. A licensee shall pay the renewal fee on or before December 31. Licenses not renewed by December 31 will be suspended and the licensee shall not act as a mortgage broker until the license is renewed or a new license is issued pursuant to the Mortgage Broker Licensure Act. A person may renew a suspended license by paying the renewal fee plus Twenty-five Dollars (\$25.00) for each day after December 31 that a license renewal fee is not received by the Administrator and making application for renewal in the manner prescribed by the Administrator. Licenses which are not renewed by

February 1 of the subsequent year shall expire. A license shall not be granted to the holder of an expired license except as provided in the Mortgage Broker Licensure Act for the issuance of an original license.

E. On or before December 31, a licensee may request inactive status for the following license year, and the license shall be placed on inactive status after payment to the Administrator of the inactive status renewal fee prescribed in this section and the surrender of the license to the Administrator. During inactive status, an inactive licensee is not required to maintain a bond and shall not act as a mortgage broker. A licensee may not be on inactive status for more than two (2) consecutive years, nor for more than four (4) years in any ten-year period. The license is deemed expired for violation of any of the limitations of this subsection.

F. An inactive licensee may return to active status notwithstanding the requirement of Section 2085 of this title by making a request in writing to the Administrator for reactivation and paying the prorated portion of the annual fee that would have been charged to the licensee to maintain normal active status. The licensee shall also provide the Administrator with proof that the licensee meets all of the other requirements for acting as a mortgage broker, including meeting the bond requirement or depositing the appropriate cash or cash alternative with the State Treasurer.

G. A licensee shall prominently display the mortgage broker license in the office of the mortgage broker.

H. Every licensed mortgage broker shall designate and maintain a principal place of business in this state for the transaction of business. The license shall specify the address of the principal place of business. If a licensee wishes to maintain one or more locations for the transaction of business in addition to a principal

place of business, the licensee shall first obtain a branch office license from the Administrator and designate a person for each branch office to oversee the operations of that branch office. The licensee shall submit a fee as set forth in this section for each branch office license issued. If the Administrator determines that the applicant is qualified, the Administrator shall issue a branch office license indicating the address of the branch office. The licensee shall conspicuously display the branch office license in the branch office. If the address of the principal place of business or of any branch office is changed, the licensee shall immediately notify the Administrator of the change and the Administrator shall endorse the change of address on the license for a fee as prescribed in this section.

I. 1. Initial and renewal license fees shall be Three Hundred Dollars (\$300.00) for each three-year period.

2. Branch office fees shall be One Hundred Fifty Dollars (\$150.00) for each three-year period.

3. Inactive status fees shall be Fifty Dollars (\$50.00) for each year.

4. A fee of Ten Dollars (\$10.00) shall be charged for each change of address on a branch office license.

5. Individual and renewal license fees for a mortgage loan originator license shall be One Hundred Dollars (\$100.00) for each three-year period.

These fees shall be deposited in the Oklahoma Mortgage Brokers Recovery Fund.

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

~~E. K.~~ A ~~residential~~ mortgage broker who held a current license as of November 1, ~~1997~~ 2002, which was issued under the ~~Credit Services Organization~~ Mortgage Broker Licensure Act shall be granted

an initial license by the Administrator pursuant to the provisions of this section.

L. To be eligible to be a licensed mortgage loan originator, a person must make application to the Administrator of Consumer Credit. The person making application must meet the following criteria:

1. The person must be an individual who is at least eighteen (18) years of age;

2. The person must be a citizen of the United States of America or a lawfully admitted alien;

3. The person must designate in the application the name of the licensed mortgage broker sponsoring the mortgage loan originator;

4. The person must have at least eighteen (18) months of experience as a mortgage loan originator as evidenced by documentary proof of full-time employment as a mortgage loan originator with a licensed mortgage broker or a person exempt from licensure under Section 2083 of this title, or passes a mortgage loan originator test pursuant to Section 12 of this act not more than one (1) year preceding the application; and

5. The person has not been convicted of a criminal offense the Administrator determines directly relates to the occupation of a mortgage loan originator.

SECTION 8. AMENDATORY 59 O.S. 2001, Section 2086, is amended to read as follows:

Section 2086. A. A mortgage broker shall have a written correspondent or loan brokerage agreement with a lender before any solicitation of, or contracting with, the public.

B. Every contract between a mortgage broker and a borrower shall be in writing and shall contain the entire agreement of the parties.

C. 1. Upon receipt of a loan application and before the receipt of any monies from a borrower, a mortgage broker shall

provide to each borrower a full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a ~~residential~~ mortgage loan, ~~and~~ or specifying the fee or fees which inure to the benefit of the mortgage broker and other such disclosures as may be required by rule of the Commission on Consumer Credit.

2. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable.

3. This subsection shall not be construed to require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

D. If a borrower is unable to obtain a loan for any reason and the borrower has paid for an appraisal, title report, or credit report, the mortgage broker shall give a copy of the appraisal, title report, or credit report to the borrower and transmit the originals to any other mortgage broker or lender to whom the borrower directs that the documents be transmitted. The mortgage broker must provide the copies or transmit the documents within five (5) business days after the borrower has made the request in writing.

E. 1. Except as otherwise permitted by this subsection, a mortgage broker shall not receive a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed upon by the borrower and mortgage broker.

2. A mortgage broker may solicit or receive fees for third-party provider goods or services in advance. The mortgage broker may not charge more for the goods and services than the actual costs of the goods or services charged by the third-party provider.

SECTION 9. AMENDATORY 59 O.S. 2001, Section 2088, is amended to read as follows:

Section 2088. A. The Administrator of Consumer Credit may upon 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;

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

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

B. Cause shall be established upon clear and convincing evidence that any ~~licensee~~ mortgage broker or ~~its~~ employee of a mortgage broker 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 or obtain a license as required under the Mortgage Broker Licensure Act or to comply with an order lawfully issued pursuant to the Mortgage Broker Licensure Act; or

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

~~C. In addition to any sanctions authorized by the Mortgage Broker Licensure Act, the Administrator, the Attorney General, or the district attorney may apply to the district court in the county in which a violation of 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 10. AMENDATORY 59 O.S. 2001, 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 the Mortgage Broker Licensure Act who engages in the business of a mortgage broker or who willingly and knowingly violates any provision of 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 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 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 11. AMENDATORY 59 O.S. 2001, 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 and mortgage loan originators required to be licensed under the provisions of the Mortgage Broker Licensure Act.

B. 1. Except as provided in paragraph 2 of this subsection, the Committee shall be comprised of ~~three (3)~~ five (5) licensed mortgage brokers, of whom three shall be appointed by the Governor and two shall be appointed by the Oklahoma Association of Mortgage Brokers. 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~~ two members shall be appointed for a term of one (1) year each, ~~one member~~ two members shall be appointed for a term of two (2) years each, 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 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2092 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Administrator of consumer credit shall appoint the Mortgage Broker Advisory Committee to serve as a testing committee to create, periodically update and establish standards for passing a test for mortgage brokers and all mortgage loan originators. The test is subject to the approval of the Administrator.

B. Each applicant for an original license as a mortgage broker or as a mortgage loan originator, before issuance of the license, shall personally take and pass the written test given under the supervision of the Administrator. The test must reasonably examine the applicant's knowledge of:

1. The obligations between principal and agent, the applicable canons of business ethics, the provisions of the Mortgage Broker Licensure Act and the rules adopted under the Mortgage Broker Licensure Act;

2. The arithmetical computations common to mortgage brokerage;

3. The principles of real estate lending; and

4. The general purposes and legal effect of mortgages, deeds of trust and security agreements.

C. The Administrator shall administer the test to applicants for licenses not less than once every three (3) months. The Administrator shall reasonably prescribe the time, place and conduct of testing and collect a fee for administration of the test to be assessed to all persons taking the test. The fee is One Hundred Fifty Dollars (\$150.00) per testing. An applicant may not take the test more than two times within a twelve-month period.

D. All tests shall be given, conducted and graded in a fair and impartial manner and without unfair discrimination between individuals tested. The Administrator shall inform the applicant of the result of the test within thirty (30) business days.

E. For testing purposes, the Administrator shall prepare a handbook for mortgage brokers and mortgage loan originators and distribute the handbook to all applicants for a fee that shall not exceed the actual cost of producing and distributing the handbook.

F. For the purposes of this section, "applicant" means a person who has submitted a completed application in the form prescribed by law. In the case of a mortgage broker, the application must be accompanied by a letter of inquiry to a surety company authorized to do business in this state regarding procurement of a bond pursuant to the requirements of the Mortgage Broker Licensure Act, to be issued upon completion of all requirements for the granting of a license under the Mortgage Broker Licensure Act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2093 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Beginning November 1, 2005, as a condition of renewal or reactivation of the license, each licensee shall submit to the Administrator evidence of completion of a specified number of hours of continuing education courses approved by the Administrator, within the thirty-six (36) months immediately preceding the term for which the license is to be issued. The number of hours, or its

equivalent, required for each licensed term shall be determined by the Mortgage Broker Advisory Committee and promulgated by rule.

Each licensee shall be required to complete and include as part of said continuing education a certain number of required subjects as prescribed by rule.

B. The continuing education courses required by this section shall be satisfied by courses approved by the Administrator and offered by:

1. The Commission;

2. A technology center school;

3. A college or university;

4. A private school;

5. The Oklahoma Association of Mortgage Brokers, the National Association of Mortgage Brokers, or any affiliate thereof;

6. The Oklahoma Bar Association, American Bar Association, or any affiliate thereof; or

7. An education provider.

C. The Administrator shall maintain a list of courses which are approved by the Administrator.

D. The Administrator shall not issue an active renewal license or reactivate a license unless the continuing education requirement set forth in this section is satisfied within the prescribed time period.

E. The provisions of this section do not apply:

1. During the period a license is on inactive status; or

2. To a nonresident licensee licensed in this state if the licensee maintains a current license in another state and has satisfied the continuing education requirement for license renewal in that state.

SECTION 14. This act shall become effective November 1, 2002.

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