

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 819

By: Ford

AS INTRODUCED

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 2083, 2088 and 2089, which relate to mortgage broker licensure; clarifying and adding to exemptions; extending enforcement authority; and providing an effective date.

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

SECTION 1. 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 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 Veterans Administration;

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 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;

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 2. 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 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 3. 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 4. This act shall become effective November 1, 2002.

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