

CHAPTER 96
FORMERLY
SENATE BILL NO. 73

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE TO IMPLEMENT THE UNITED STATES SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 (U.S. PUBLIC LAW 110-289).

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Title 5 of the Delaware Code by deleting existing Chapter 24 in its entirety and substituting in lieu thereof a new Chapter 24 to read as follows:

“CHAPTER 24. MORTGAGE LOAN ORIGINATORS.

§ 2401. TITLE.

This Chapter may be cited as the ‘Delaware Secure and Fair Enforcement for Mortgage Licensing Act of 2009 or Delaware S.A.F.E. Mortgage Licensing Act of 2009’.

§2402. PURPOSE.

(a) The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon Delaware’s consumers, Delaware’s economy, the neighborhoods and communities of Delaware, and the housing and real estate industry. The General Assembly finds that accessibility to mortgage credit is vital to this State’s citizens. The General Assembly also finds that it is essential for the protection of the citizens of Delaware and the stability of Delaware’s economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The General Assembly further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process. The purpose of this Chapter is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators.

(b) Therefore, the General Assembly establishes within this Chapter an effective system of supervision and enforcement of the mortgage lending industry, including:

(1) the authority to issue licenses to conduct business under this Chapter, including the authority to write rules or regulations or adopt procedures necessary to the licensing of persons covered under this Chapter;

(2) the authority to deny, suspend, condition or revoke licenses issued under this Chapter; and

(3) the authority to examine, investigate and conduct enforcement actions as necessary to carry out the intended purposes of this Chapter, including the authority to subpoena witnesses and documents, enter orders, including cease and desist orders, order restitution and monetary penalties and order the removal and ban of individuals from office or employment.

§ 2403. DEFINITIONS.

In this Chapter, unless the context otherwise requires:

(1) ‘Commissioner’ means the State Bank Commissioner.

- (2) 'Depository institution' has the same meaning as in §3 of the United States Federal Deposit Insurance Act, and includes any credit union.
- (3) 'Federal banking agencies' means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.
- (4) 'Immediate family member' means a spouse, child, sibling, parent, grandparent or grandchild. This includes step-parents, step-children, step-siblings, and adoptive relationships.
- (5) 'Individual' means a natural person.
- (6) 'Loan processor or underwriter' means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing under Chapters 21 or 22 of this Title.
- a. For purposes of this paragraph (6), 'clerical or support duties' may include subsequent to the receipt of an application:
1. the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
 2. communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.
- b. An individual engaging solely in loan processor or underwriter activities, shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.
- (7) 'Mortgage loan originator' means an individual who for compensation or gain or in the expectation of compensation or gain:
- a. takes a residential mortgage loan application; or
 - b. offers or negotiates terms of a residential mortgage loan;
 - c. but does not include:
 1. an individual engaged solely as a loan processor or underwriter, except as otherwise provided in §2404(d);
 2. a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Delaware law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and
 3. a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in §101(53D) of Title 11, United States Code.
- (8) 'Nationwide Mortgage Licensing System and Registry' means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.
- (9) 'Nontraditional mortgage product' means any mortgage product other than a 30 year fixed rate mortgage.

(10) 'Person' means a natural person, corporation, company, limited liability company, partnership, association, or other entity.

(11) 'Real estate brokerage activity' means any activity that involves offering or providing real estate brokerage services to the public, including:

- a. acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- b. bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- c. negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);
- d. engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and
- e. offering to engage in any activity, or act in any capacity, described in subparagraphs a., b., c., or d. of this paragraph.

(12) 'Registered mortgage loan originator' means any individual who:

- a. meets the definition of mortgage loan originator and is an employee of:
 1. a depository institution;
 2. a subsidiary that is:
 - A. owned and controlled by a depository institution; and
 - B. regulated by a federal banking agency; or
 3. an institution regulated by the Farm Credit Administration; and
- b. is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(13) 'Residential mortgage loan' means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in §103(v) of the United States Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(14) 'Residential real estate' means any real property located in Delaware, upon which is constructed, or intended to be constructed, a dwelling.

(15) 'Unique identifier' means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

§ 2404. LICENSE AND REGISTRATION REQUIRED.

(a) An individual, unless specifically exempted from this Chapter under subsection (c) of this section, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this State without first obtaining and then annually maintaining a license issued by the Commissioner under this Chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry. Every person licensed under this Chapter shall be a financial institution for purposes of Part I of this Title.

(b) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection (a) of this section shall be July 31,

2010, or such later date approved by the Secretary of the United States Department of Housing and Urban Development, pursuant to the authority granted under United States Public Law 110-289, §1508(a).

(c) The following are exempt from this Chapter:

- (1) registered mortgage loan originators, when acting for an entity described in clauses 1., 2., or 3. of §2403(12)a.;
- (2) any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;
- (3) any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence; and
- (4) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

(d) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license under subsection (a) of this section. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(e) For the purposes of implementing an orderly and efficient licensing process, the Commissioner may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the Commissioner may establish expedited review and licensing procedures.

§ 2405 LICENSE APPLICATION

(a) Applicants for a license shall apply in a form as prescribed by the Commissioner. Each such form shall request such information as the Commissioner may designate and may be changed or updated as necessary by the Commissioner in order to carry out the purposes of this Chapter.

(b) In order to fulfill the purposes of this Chapter, the Commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this Chapter.

(c) For the purpose of participating in the Nationwide Mortgage Licensing System and Registry, the Commissioner is authorized to waive or modify, in whole or in part, by rule, regulation or order, any or all of the requirements of this Chapter and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry.

(d) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

(1) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(2) personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain:

a. an independent credit report obtained from a consumer reporting agency described in §603(p) of the United States Fair Credit Reporting Act; and

b. information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(e) For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsections (d)(1) and (d)(2)b. of this section, the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any governmental agency, notwithstanding the provisions of §8527 of Title 11 of the Delaware Code.

(f) For the purposes of this section and in order to reduce the points of contact which the Commissioner may have to maintain for purposes of subsection (d)(2) of this section, the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Commissioner, notwithstanding the provisions of §8527 of Title 11 of the Delaware Code.

(g) As part of an application, the applicant shall pay to the Commissioner as an investigation fee the sum of \$250 which shall not be refundable. The applicant shall also pay a license fee of \$250, which shall be payable annually thereafter, and that sum shall be allocated to and for the assistance of the Delaware Emergency Mortgage Assistance Program. No abatement in the amount of the license fee shall be made if the license is issued for less than one (1) year or if the license is surrendered, suspended, canceled or revoked prior to the expiration of the period for which such license was issued.

§ 2406. ISSUANCE OF LICENSE; EXPIRATION AND SURRENDER.

(a) The Commissioner shall not issue a mortgage loan originator license unless the Commissioner makes at a minimum the following findings:

(1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacating of such revocation shall not be deemed a revocation.

(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:

a. during the 7-year period preceding the date of the application for licensing and registration; or

b. at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

c. provided that any pardon of a conviction shall not be a conviction for the purposes of this subsection.

(3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this Chapter. For purposes of this paragraph (3), applicants have shown that they are not financially responsible when they have shown a disregard in the management of their own financial condition. A determination that an applicant has not shown financial responsibility may include, but not be limited to:

- a. current outstanding judgments, except judgments solely as a result of medical expenses;
- b. current outstanding tax liens or other government liens and filings;
- c. foreclosures within the past three years; or
- d. a pattern of seriously delinquent accounts within the past three years.

(4) The applicant has completed the pre-licensing education requirement described in §2407;

(5) The applicant has passed a written test that meets the test requirement described in §2408; and

(6) The applicant has met the surety bond requirement described in §2415.

(b) (1) If the Commissioner refuses to issue a license, the Commissioner shall notify the applicant in writing of that refusal, of the reasons for the refusal, and of the applicant's right to request a hearing; provided, however, the Commissioner shall retain any investigation or other fee charged for the expense of processing an initial application, notwithstanding that the application was rejected.

(2) The Commissioner shall send a copy of the notice to the applicant at that person's last known mailing address by certified mail, return receipt requested. If the applicant sends the Commissioner a written request for a hearing within 10 days of the notice's mailing date, the Commissioner shall then hold that hearing in accordance with Chapter 101 of Title 29.

(c) Every license issued under this Chapter shall expire on December 31 of each year.

(d) A licensee may surrender a license by delivering to the Commissioner a written notice of license surrender.

(e) An expiration or surrender of a license shall not affect civil or criminal liability for acts committed prior to that event, and if the expiration or surrender occurs after the Commissioner issues a written order under §2413(b), the Commissioner may proceed as if the expiration or surrender had not taken place.

(f) Every license issued pursuant to this Chapter shall remain in effect until the license shall have expired, or been surrendered, revoked or suspended, and upon any of those events, the Commissioner shall notify the mortgage loan originator and any affected licensee under this Title of that fact and that the mortgage loan originator may not engage in the business of a mortgage loan originator with respect to any dwelling located in this State.

§ 2407. PRE-LICENSING EDUCATION.

(a) In order to meet the pre-licensing education requirement referred to in §2406(a)(4), a person shall complete at least 20 hours of education approved in accordance with subsection

(b) of this section, which shall include at least:

- (1) 3 hours of federal law and regulations;
- (2) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a) of this section, pre-licensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a pre-licensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any pre-licensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Pre-licensing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The pre-licensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsection (a) of this section for any other state shall be accepted as credit towards completion of the pre-licensing education requirements in this State.

(f) A person previously licensed under this Chapter subsequent to the effective date of this Chapter applying to be licensed again must prove that they have completed all of the continuing education requirements for the year in which the license was last held.

§ 2408. TESTING.

(a) In order to meet the written test requirement referred to in §2406(a)(5), an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(1) ethics;

(2) federal law and regulation pertaining to mortgage origination;

(3) state law and regulation pertaining to mortgage origination; and

(4) federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) (1) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(2) An individual may retake a test 3 consecutive times with each consecutive taking occurring at least 30 days after the preceding test.

(3) After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again.

(4) A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

§ 2409. STANDARDS FOR LICENSE RENEWAL.

(a) Every licensee who desires to continue to engage in the business of a mortgage loan originator with respect to any dwelling located in this State shall, at least 30 days prior to the expiration of a license, apply to the Commissioner for a license renewal in a form as prescribed by the Commissioner. Each such form shall request such information as the Commissioner may designate and may be changed or updated as necessary by the Commissioner in order to carry out the purposes of this Chapter.

(b) The minimum standards for license renewal for mortgage loan originators shall include the following:

(1) the mortgage loan originator continues to meet the minimum standards for license issuance under §2406(a)(1)-(6);

(2) the mortgage loan originator has satisfied the annual continuing education requirements described in §2410; and

(3) the mortgage loan originator has paid all required fees for renewal of the license.

(c) The Commissioner may mandate that an application for a license renewal shall be treated as a new application if the renewal application is not on file with the office of the Commissioner at least thirty (30) days prior to the expiration of the license.

§ 2410. CONTINUING EDUCATION.

(a) In order to meet the annual continuing education requirements referred to in §2409(b)(2), a licensed mortgage loan originator shall complete at least 8 hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) 3 hours of federal law and regulations;

(2) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a) of this section, continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Continuing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) A licensed mortgage loan originator:

(1) except as provided in subsection (h) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(2) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

(g) The continuing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsection (a) of this section for any other state shall be accepted as credit towards completion of the continuing education requirements in this State.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(i) A person meeting the requirements of §2409(b)(1) and (3) may make up any deficiency in continuing education as established by rule or regulation of the Commissioner.

§ 2411. AUTHORITY TO REQUIRE LICENSE.

(a) In addition to any other duties imposed upon the Commissioner by law, the Commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry.

(b) In order to carry out this requirement, the Commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. Notwithstanding any other statute to the contrary, the Commissioner may, for this purpose, establish by rule, regulation or order requirements as necessary, including but not limited to:

(1) background checks for:

a. criminal history through fingerprint or other databases;

b. civil or administrative records;

c. credit history; or

d. any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(2) the payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;

(3) the setting or resetting as necessary of renewal or reporting dates; and

(4) requirements for amending or surrendering a license or any other such activities as the Commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

§ 2412. NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY INFORMATION CHALLENGE PROCESS.

The Commissioner shall establish a process whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the Commissioner.

§ 2413. LICENSE REVOCATION OR SUSPENSION.

(a) The Commissioner may revoke, suspend, condition, or refuse to renew any license, or publicly reprimand a licensee under this Chapter upon finding that the licensee:

(1) has violated or failed to comply with any provision of this Chapter; any rule, regulation, order, or supervisory letter promulgated by the Commissioner under the authority of this Title; or any other law, rule or regulation of this State or the federal government;

(2) has failed at any time to meet the requirements of §2406 or §2409 of this Chapter; or

(3) has withheld information or made a material misstatement in an initial or renewal application for a license.

(b) Whenever the Commissioner determines to take any action under this section, the Commissioner shall issue a written order that shall include a statement of the facts upon which the action is based and a notice that the licensee may request a hearing in accordance with Chapter 101 of Title 29.

(c) (1) Except as provided in paragraph (2) of this subsection, an order under this section shall not become effective less than 10 days after its mailing date.

(2) The Commissioner may issue an order under this section which shall become effective immediately upon issuance whenever in the opinion of the Commissioner, the public health, safety or welfare clearly requires emergency action and the Commissioner's order so states.

(d) (1) Upon its issuance, the Commissioner shall send a copy of the order to the licensee at that person's last known mailing address by certified mail, return receipt requested.

(2) If the licensee sends the Commissioner a written request for a hearing within 10 days of the order's mailing date, the Commissioner shall then hold a hearing in accordance with Chapter 101 of Title 29, and except as provided in subsection (c)(2) of this section, the order then shall not become effective until the conclusion of the hearing.

(3) At the conclusion of the hearing, the Commissioner may affirm the order as originally issued, or modify, amend or rescind the order.

(e) No action taken under this section shall impair or affect the obligation of any pre-existing lawful contract between any licensee and any person.

§ 2414. ENFORCEMENT AUTHORITIES, VIOLATIONS AND PENALTIES.

(a) Upon finding that a person subject to this Chapter has violated or failed to comply with any provision of this Chapter; any rule, regulation, order or supervisory letter promulgated by the Commissioner under the authority of this Title; or any other law, rule or regulation of this State or the federal government, the Commissioner may:

(1) order that person to cease and desist from that violation or failure, from conducting any business subject to this Chapter, or from engaging in any harmful activities;

(2) impose a civil money penalty on that person pursuant to subsection (b) of this section;

(3) order restitution against that person for that violation or failure;

(4) remove or ban that person from any employment by, or affiliation with, any financial institution; and

(5) order such other affirmative action as the Commissioner deems necessary.

(b) (1) The maximum civil money penalty for each violation or failure to comply described in subsection (a) of this section shall be \$25,000.

(2) Any civil money penalty under this section may be in addition to any other action or remedy available to the Commissioner or any order, judgment, penalty, fine or sentence imposed by a court or other governmental agency in any administrative, civil or criminal proceeding.

(3) Any civil money penalty under this section shall be paid to the State Treasurer for deposit in the General Fund.

(c) An order issued under this section shall include a statement of the facts upon which it is based; a specification of the activities prohibited, civil money penalty imposed, restitution to be paid, employment or affiliation prohibited, or other affirmative action required; and a

notice that the person against whom the order was issued may request a hearing in accordance with Chapter 101 of Title 29.

(d) (1) Except as provided in paragraph (2) of this subsection, an order issued under this section shall not become effective less than 10 days after issuance.

(2) The Commissioner may issue an order under this section which shall become effective immediately upon issuance whenever in the opinion of the Commissioner, the violation or failure to comply specified in subsection (a) of this section represents an immediate danger or substantial harm to the public.

(e) (1) Upon issuance of an order under this section, the Commissioner shall send a copy of the order to the person against whom it is issued at that person's last known mailing address by certified mail, return receipt requested.

(2) If the person against whom the order was issued sends the Commissioner a written request for a hearing within 10 days of the order's mailing date, the Commissioner shall then hold that hearing in accordance with Chapter 101 of Title 29, and except as provided in subsection (d)(2) of this section, the order shall not become effective until the conclusion of the hearing.

(3) At the conclusion of the hearing, the Commissioner may affirm the order as originally issued, or modify, amend or rescind the order.

(f) The authority granted by this section shall be in addition to the authority granted by Part I of this Title.

§ 2415. SURETY BOND REQUIRED.

(a) Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event that the mortgage loan originator is an employee or exclusive agent of a licensee under Chapters 21 or 22 of this Title, the surety bond of the licensee under those Chapters can be used in lieu of the mortgage loan originator's surety bond requirement, and in that event, the amount of the bond prescribed in this section, if greater, shall apply instead of the limits specified in those Chapters.

(1) The surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in subsection (b) of this section.

(2) The surety bond shall be in a form as prescribed by the Commissioner.

(3) The Commissioner may promulgate rules or regulations with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this Chapter.

(b) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of loans originated as determined by the Commissioner.

(c) When an action is commenced on a licensee's bond the Commissioner may require the filing of a new bond.

(d) Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

§2416. CONFIDENTIALITY.

In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing:

(1) Except as otherwise provided in United States Public Law 110-289, §1512, the requirements under any federal or State law regarding the privacy or confidentiality of any information or material obtained by or provided to the Nationwide Mortgage Licensing

System and Registry pursuant to this Chapter, and any privilege arising under federal or State law (including the rules of any federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or State law.

(2) For these purposes, the Commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators or other associations representing governmental agencies.

(3) Information or material that is subject to a privilege or confidentiality under paragraph (1) of this section shall not be subject to:

a. disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

b. subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(4) Any State law relating to the disclosure or confidentiality of any information or material described in this section, including §8527 of Title 11 of the Delaware Code, that is inconsistent with this section shall be superseded.

(5) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

§ 2417. INVESTIGATION AND EXAMINATION AUTHORITY.

(a) In addition to any other authority allowed under this Title, the Commissioner shall have the authority to conduct investigations and examinations as follows:

(1) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, public reprimand, or general or specific inquiry or investigation to determine compliance with this Chapter, the Commissioner shall have the authority to access, receive and use any books, accounts, records, files, documents, information or evidence including but not limited to:

a. criminal, civil and administrative history information, including nonconviction data as specified in Title 11 of the Delaware Code; and

b. personal history and experience information including independent credit reports obtained from a consumer reporting agency described in §603(p) of the United States Fair Credit Reporting Act; and

c. any other documents, information or evidence the Commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence.

(2) For the purposes of investigating violations or complaints arising under this Chapter, or for the purposes of examination, the Commissioner may review, investigate, or examine any person subject to this Chapter, as often as necessary in order to carry out the purposes of this Chapter. The Commissioner may also direct, subpoena, or order the attendance of and examine under oath, all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry.

(3) Each person subject to this Chapter shall make available to the Commissioner upon request all books and records relating to such person's business operations.

(4) The Commissioner shall have access to all books and records of any licensee under Chapters 21 or 22 of this Title and may interview such licensee's officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers concerning the business operations of any person subject to this Chapter.

(5) Each person subject to this Chapter shall make or compile reports or prepare other information as directed by the Commissioner in order to carry out the purposes of this section including but not limited to:

a. accounting compilations;

b. information lists and data concerning loan transactions in a format prescribed by the Commissioner; or

c. such other information deemed necessary to carry out the purposes of this Chapter.

(6) In making any examination or investigation authorized by this Chapter, the Commissioner may control access to any documents and records of the person under examination or investigation. The Commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe the documents or records of the person subject to this Chapter have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this Chapter, the person subject to this Chapter or the owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(b) In order to carry out the purposes of this section, the Commissioner may:

(1) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(2) enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence obtained under this section;

(3) use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the person subject to this Chapter;

(4) accept and rely on examination or investigation reports made by other government officials, within or without this State;

- (5) accept audit reports made by an independent certified public accountant for the person subject to this Chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the Commissioner; and
- (6) assess persons who are subject to investigation or examination under this section the cost of the services described in this subsection (b) and all other costs or expenses incurred as part of that investigation or examination.
- (c) The authority of this section shall remain in effect, whether a person subject to this Chapter acts or claims to act under any licensing or registration law of this State, or claims to act without such authority.
- (d) No person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

§ 2418. PROHIBITED ACTS AND PRACTICES.

It is a violation of this Chapter for a person subject to this Chapter to:

- (1) directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) engage in any unfair or deceptive practice toward any person;
- (3) obtain property by fraud or misrepresentation;
- (4) solicit or enter into a contract with a borrower that provides in substance that the person subject to this Chapter may earn a fee or commission through 'best efforts' to obtain a loan even though no loan is actually obtained for the borrower;
- (5) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- (6) conduct any business covered by this Chapter without holding a valid license as required under this Chapter, or assist or aid and abet any person in the conduct of business under this Chapter without a valid license as required under this Chapter;
- (7) fail to make disclosures as required by this Chapter and any other applicable federal or State law including regulations thereunder;
- (8) fail to comply with this Chapter or rules or regulations promulgated under this Chapter, or fail to comply with any other federal or State law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this Chapter
- (9) make, in any manner, any false or deceptive statement or representation, or engage in 'bait and switch' advertising;
- (10) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation or examination conducted by the Commissioner or another governmental agency;
- (11) make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to

any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(12) collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by this Chapter;

(13) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer; or

(14) fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

§ 2419. REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

Notwithstanding any State privacy law, the Commissioner is required to report regularly violations of this Chapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in §2416.

§ 2420. UNIQUE IDENTIFIER SHOWN.

The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or websites, and any other documents as established by rule, regulation or order of the Commissioner.

§ 2421. RECORDKEEPING.

Every licensee shall maintain such books, accounts and records as will enable the Commissioner to enforce full compliance with this Chapter, which books, accounts and records shall be in such form, shall contain such information and shall be kept in such manner as the Commissioner may require. Such records shall be kept at such place and shall be preserved for such length of time as the Commissioner may specify.

§ 2422. BROAD ADMINISTRATIVE AUTHORITY.

The Commissioner shall have the broad administrative authority to administer, interpret and enforce this Chapter, and to promulgate rules or regulations implementing this Chapter, in order to carry out the intentions of the General Assembly.

§ 2423. PENALTY.

Violation of §2404 of this Title is a Class A misdemeanor.”

Section 2. Every person licensed under existing Chapter 24 of Title 5 of the Delaware Code to which new Chapter 24 of Title 5 applies shall at all times remain a financial institution under Part I of Title 5 until a final determination is made concerning the issuance of a license to that person under new Chapter 24. Until the effective date for §2404(a) as specified in §2404(b) of new Chapter 24 of Title 5, the provisions of existing Chapter 24 shall continue to apply to all licenses issued under that existing Chapter; provided however, that the State Bank Commissioner may extend the duration of any such license up to the effective date for §2404(a) of new Chapter 24. At any time after July 30, 2009, the State Bank Commissioner may also begin issuing licenses under the new Chapter 24.

Section 3. Amend §2111 of Title 5 of the Delaware Code by adding a new subsection (c) to read as follows:

“(c) Each licensee shall submit to the Nationwide Mortgage Licensing System and Registry developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.”

Section 4. Amend §2211 of Title 5 of the Delaware Code by designating the existing language of that section as subsection (a) and adding a new subsection (b) to read as follows:

“(b) Each licensee that engages in the business of making mortgage loans, as defined by §2403(13) of this Title, shall submit to the Nationwide Mortgage Licensing System and Registry developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.”

Section 5. If any provision of this Act or its application to any person or circumstance is held invalid, the remainder of the Act or the application of the provision to other persons or circumstances is not affected.

Section 6. This Act shall take effect on July 30, 2009.

Approved July 06, 2009