



SENATE BILL No. 871

February 20, 1996, Introduced by Senator BOUCHARD and referred to the Committee on Financial Services.

A bill to amend sections 1a, 2, 3, 4, 5, 6, 7, 8, 10, 20, 22, 23, 25, and 29 of Act No. 173 of the Public Acts of 1987, entitled

"Mortgage brokers, lenders, and servicers licensing act," sections 1a and 4 as amended by Act No. 451 of the Public Acts of 1988, section 2 as amended by Act No. 159 of the Public Acts of 1988, sections 8 and 20 as amended by Act No. 51 of the Public Acts of 1992, and section 25 as amended by Act No. 260 of the Public Acts of 1994, being sections 445.1651a, 445.1652, 445.1653, 445.1654, 445.1655, 445.1656, 445.1657, 445.1658, 445.1660, 445.1670, 445.1672, 445.1673, 445.1675, and 445.1679 of the Michigan Compiled Laws; and to add sections 22a and 34.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1a, 2, 3, 4, 5, 6, 7, 8, 10, 20, 22,
2 23, 25, and 29 of Act No. 173 of the Public Acts of 1987,

1 sections 1a and 4 as amended by Act No. 451 of the Public Acts of
2 1988, section 2 as amended by Act No. 159 of the Public Acts of
3 1988, sections 8 and 20 as amended by Act No. 51 of the Public
4 Acts of 1992, and section 25 as amended by Act No. 260 of the
5 Public Acts of 1994, being sections 445.1651a, 445.1652,
6 445.1653, 445.1654, 445.1655, 445.1656, 445.1657, 445.1658,
7 445.1660, 445.1670, 445.1672, 445.1673, 445.1675, and 445.1679 of
8 the Michigan Compiled Laws, are amended and sections 22a and 34
9 are added to read as follows:

10 Sec. 1a. As used in this act, unless the context requires
11 otherwise:

12 (a) "Affiliate" means a person or group of persons that
13 directly or indirectly through 1 or more intermediaries controls,
14 is controlled by, or is under common control with another person
15 and engaged in a business ~~related to transactions governed~~ OR
16 TRANSACTION REGULATED by this act.

17 (b) "Commissioner" means the commissioner of the financial
18 institutions bureau of the department of commerce or his or her
19 authorized agent.

20 (c) "CONSTRUCTION LOAN" MEANS A MORTGAGE LOAN FOR THE PUR-
21 POSE OF CONSTRUCTING A 1-TO-4 FAMILY DWELLING, WHICH LOAN IS
22 APPROVED AND CLOSED PRIOR TO COMPLETION OF THE CONSTRUCTION OF
23 THE IMPROVEMENT ON THE REAL PROPERTY.

24 (D) ~~(c)~~ "Depository financial institution" means a state
25 or nationally chartered bank, or a state or federally chartered
26 savings and loan association or savings bank, or a state or

1 federally chartered credit union, or an entity of the federally
2 chartered farm credit system.

3 (E) ~~(d)~~ "Firm commitment" means an underwriting in which a
4 broker-dealer commits to buy the mortgage loan or the entire
5 issue of securities based upon or backed by 1 or more mortgage
6 loans and assumes all financial responsibility for any unsold
7 securities.

8 (F) ~~(e)~~ "Individual investor" means a person residing in
9 this state or having its principal place of business in this
10 state, other than a bank, savings bank, savings and loan associa-
11 tion, credit union, trust company, insurance company, investment
12 company as defined in the investment company act of 1940, chapter
13 686, 15 U.S.C. 80a-1 to 80a-64, pension or profit sharing plan,
14 the assets of which are managed by a bank or trust company or
15 other institutional manager, financial institution, institutional
16 manager, broker-dealer ~~which~~ THAT is a member of the New York
17 stock exchange or registered under the uniform securities act,
18 Act No. 265 of the Public Acts of 1964, being sections 451.501 to
19 451.818 of the Michigan Compiled Laws, the federal national mort-
20 gage association, the government national mortgage association,
21 the federal home loan mortgage corporation, or a mortgage lender
22 or mortgage servicer.

23 (G) ~~(f)~~ "License" means a license ~~to act as a mortgage~~
24 ~~broker, mortgage lender, or mortgage servicer~~ issued ~~pursuant~~
25 ~~to~~ UNDER this act.

1 (H) ~~(g)~~ "Licensee" means a ~~mortgage broker, mortgage~~
2 ~~lender, or mortgage servicer~~ PERSON licensed or required to be
3 licensed under this act.

4 (I) ~~(h)~~ "Mortgage broker" means ~~any~~ A person who,
5 directly or indirectly, does 1 or ~~more~~ BOTH of the following:

6 (i) Serves or offers to serve as an agent for ~~any~~ A person
7 in an attempt to obtain a mortgage loan. ~~, or~~

8 (ii) Serves or offers to serve as an agent for ~~any~~ A
9 person who ~~desires~~ MAKES OR OFFERS to make mortgage loans.

10 (J) ~~(i)~~ "Mortgage lender" means ~~any~~ A person who,
11 directly or indirectly, makes or offers to make mortgage loans.

12 (K) ~~(j)~~ "Mortgage loan" means ~~any~~ A loan secured by a
13 first mortgage on real property LOCATED IN THIS STATE AND used,
14 or improved to be used, as a dwelling and designed for occupancy
15 by 4 or fewer families or a land contract covering real property
16 LOCATED IN THIS STATE used, or improved to be used, as a dwelling
17 and designed for occupancy by 4 or fewer families. A MORTGAGE
18 LOAN DOES NOT INCLUDE A HOME IMPROVEMENT INSTALLMENT CONTRACT
19 UNDER THE HOME IMPROVEMENT FINANCE ACT, ACT NO. 332 OF THE PUBLIC
20 ACTS OF 1965, BEING SECTIONS 445.1101 TO 445.1431 OF THE MICHIGAN
21 COMPILED LAWS.

22 (l) ~~(k)~~ "Mortgage servicer" means ~~any~~ A person who,
23 directly or indirectly, services or offers to service mortgage
24 loans.

25 (M) ~~(l)~~ "Person" means an individual, ~~sole proprietor~~
26 ~~ship, or a corporation, partnership, or any other group of~~

1 ~~individuals, however organized~~ CORPORATION, PARTNERSHIP,
2 ASSOCIATION, GOVERNMENTAL ENTITY, OR ANY OTHER LEGAL ENTITY.

3 (N) "REAL ESTATE BROKER" MEANS A BROKER OR ASSOCIATE BROKER
4 LICENSED UNDER ARTICLE 25 OF THE OCCUPATIONAL CODE, ACT NO. 299
5 OF THE PUBLIC ACTS OF 1980, BEING SECTIONS 339.2501 TO 339.2518
6 OF THE MICHIGAN COMPILED LAWS.

7 (O) ~~(m)~~ "Real estate salesperson" means ~~, for the pur-~~
8 ~~poses of this act only,~~ a salesperson ~~or an associate broker,~~
9 licensed under article 25 of the occupational code, Act No. 299
10 of the Public Acts of 1980, being sections 339.2501 to ~~339.2515~~
11 339.2518 of the Michigan Compiled Laws.

12 (P) ~~(n)~~ "Register" means filing a notice with the commis-
13 sioner on a form prescribed by the commissioner that notifies the
14 commissioner of the intent to engage in the activities of a mort-
15 gage broker, mortgage lender, or mortgage servicer in this state
16 AND THE PAYMENT OF ANY FEES REQUIRED UNDER THIS ACT, ALONG WITH
17 THE OTHER DOCUMENTS, PROOFS, AND FEES REQUIRED BY THE
18 COMMISSIONER.

19 (Q) ~~(o)~~ "Registrant" means a ~~mortgage broker, mortgage~~
20 ~~lender, or mortgage servicer~~ PERSON registered or required to be
21 registered under this act.

22 (R) ~~(p)~~ "Service" means ~~to receive more than 3~~ THE COL-
23 LECTION OR REMITTANCE, OR THE RIGHT OR OBLIGATION TO COLLECT OR
24 REMIT, FOR A LENDER, NOTEOWNER, NOTEHOLDER, MORTGAGE SERVICER, OR
25 THE LICENSEE'S OR REGISTRANT'S OWN ACCOUNT OF 4 OR MORE install-
26 ment payments of the principal, interest, or an amount placed in

1 escrow ~~pursuant to~~ UNDER a mortgage loan, MORTGAGE SERVICING
2 AGREEMENT, OR AN AGREEMENT WITH THE MORTGAGOR.

3 Sec. 2. (1) A person shall not act as a mortgage broker,
4 mortgage lender, or mortgage servicer without first obtaining a
5 license or registering under this act, unless ~~the~~ 1 OR MORE OF
6 THE FOLLOWING APPLY:

7 (A) THE person is solely performing services as ~~a~~
8 ~~full-time~~ AN employee of ~~a~~ ONLY 1 mortgage broker, mortgage
9 lender, or mortgage servicer. ~~or the~~

10 (B) THE person is exempted from the act ~~pursuant to~~ UNDER
11 section 25. ~~, or the~~

12 (C) THE person is licensed AS A CLASS 1 LICENSEE under the
13 consumer financial services act, ACT NO. 161 OF THE PUBLIC ACTS
14 OF 1988, BEING SECTIONS 487.2051 TO 487.2072 OF THE MICHIGAN
15 COMPILED LAWS.

16 (2) NO LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE OF THE
17 AMENDATORY ACT THAT ADDED THIS SUBSECTION, A PERSON THAT IS
18 LICENSED TO MAKE REGULATORY LOANS UNDER THE REGULATORY LOAN ACT
19 OF 1963, ACT NO. 21 OF THE PUBLIC ACTS OF 1939, BEING SECTIONS
20 493.1 TO 493.26 OF THE MICHIGAN COMPILED LAWS, OR IS LICENSED TO
21 MAKE SECONDARY MORTGAGE LOANS UNDER ACT NO. 125 OF THE PUBLIC
22 ACTS OF 1981, BEING SECTIONS 493.51 TO 493.81 OF THE MICHIGAN
23 COMPILED LAWS, AND IS REGISTERED WITH THE COMMISSIONER SHALL FILE
24 WITH THE COMMISSIONER AN APPLICATION FOR A LICENSE UNDER SECTION
25 3(1) OR SHALL DISCONTINUE ALL ACTIVITIES WHICH ARE SUBJECT TO
26 THIS ACT.

1 (3) NO LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE OF THE
2 AMENDATORY ACT THAT ADDED THIS SUBSECTION, A MORTGAGE BROKER,
3 MORTGAGE LENDER, OR MORTGAGE SERVICER THAT WAS EXEMPT FROM REGU-
4 LATION UNDER THIS ACT AND IS A SUBSIDIARY OR AFFILIATE OF A
5 DEPOSITORY FINANCIAL INSTITUTION OR A SUBSIDIARY OR AFFILIATE OF
6 A DEPOSITORY FINANCIAL INSTITUTION HOLDING COMPANY, WHICH DEPOSI-
7 TORY FINANCIAL INSTITUTION DOES NOT MAINTAIN A MAIN OFFICE OR
8 BRANCH OFFICE IN THIS STATE, SHALL REGISTER UNDER SECTION 6 OR
9 SHALL DISCONTINUE ALL ACTIVITIES WHICH ARE SUBJECT TO THIS ACT.

10 (4) EXCEPT FOR A STATE OR NATIONALLY CHARTERED BANK, SAVINGS
11 BANK, OR AN AFFILIATE OF A BANK OR SAVINGS BANK, THE PERSON
12 SUBJECT TO THIS ACT SHALL NOT INCLUDE IN ITS NAME OR ASSUMED
13 NAME, THE WORDS "BANK", "BANKER", "BANKING", "BANC", "BANKCORP",
14 "BANCORP", OR ANY OTHER WORDS OR PHRASES THAT WOULD IMPLY THAT
15 THE PERSON IS A BANK, IS ENGAGED IN THE BUSINESS OF BANKING, OR
16 IS AFFILIATED WITH A BANK OR SAVINGS BANK. IT IS NOT A VIOLATION
17 OF THIS SUBSECTION FOR A LICENSEE OR REGISTRANT TO USE THE TERM
18 "MORTGAGE BANKER" OR "MORTGAGE BANKING" IN ITS NAME OR ASSUMED
19 NAME. A PERSON SUBJECT TO THIS ACT WHOSE NAME OR ASSUMED NAME ON
20 JANUARY 1, 1995 CONTAINED A WORD PROHIBITED BY THIS SECTION MAY
21 CONTINUE TO USE THE NAME OR ASSUMED NAME.

22 Sec. 3. (1) An application for, ~~a license~~ or renewal of,
23 a license shall be made in writing to the commissioner on ~~forms~~
24 A FORM prescribed by the commissioner. If the commissioner
25 determines after investigation that the experience, character,
26 business reputation, and general fitness of the applicant and its
27 officers, directors, shareholders, partners, and affiliates

1 command the confidence of the public and warrant the belief that
 2 the applicant and its officers, directors, shareholders, part-
 3 ners, and affiliates will comply with the law ~~—~~ and that
 4 grounds for revoking, suspending, or denying a license ~~pursuant~~
 5 ~~to~~ UNDER this act do not exist, the commissioner shall issue a
 6 license to, or renew the license of, the applicant to act as a
 7 mortgage broker, mortgage lender, or mortgage servicer.

8 (2) A LICENSE ISSUED UNDER THIS SECTION DOES NOT APPROVE THE
 9 USE OF OR INDEMNIFY THE LICENSEE AGAINST CLAIMS FOR THE IMPROPER
 10 USE OF THE BUSINESS NAME STATED IN THE LICENSE.

11 Sec. 4. (1) Except as otherwise provided in this section,
 12 at the time of filing an application for a license or renewal of
 13 a license, THE APPLICANT SHALL DO ALL OF THE FOLLOWING:

14 (A) PROVIDE PROOF OF FINANCIAL RESPONSIBILITY IN THE FOLLO-
 15 WING AMOUNTS:

16 (i) \$25,000.00 FOR an applicant who acts as a mortgage
 17 broker and who receives funds from a prospective borrower ~~prior~~
 18 ~~to~~ BEFORE the closing of the mortgage loan or ~~an applicant~~ who
 19 acts as a mortgage lender. ~~shall deposit with the commissioner~~
 20 ~~\$15,000.00 as proof of financial responsibility, and~~

21 (ii) \$125,000.00 FOR an applicant who acts as a mortgage
 22 servicer. ~~shall deposit \$100,000.00 as proof of financial~~
 23 ~~responsibility by 1 of the following means:~~

24 (B) PROVIDE PROOF OF FINANCIAL RESPONSIBILITY BY 1 OF THE
 25 FOLLOWING:

26 (i) ~~(a)~~ A corporate surety bond payable to the
 27 commissioner, executed by a corporate surety approved by the

1 commissioner, which expires no earlier than the date the license
2 shall expire.

3 (ii) ~~(b)~~ An irrevocable letter of credit upon which the
4 applicant is the obligor, which expires no earlier than the date
5 the license shall expire, issued by a bank, savings bank, savings
6 and loan association, or credit union the deposits of which are
7 insured by an agency of the federal government, and the terms of
8 which letter of credit are approved by the commissioner.

9 (2) The bond or letter of credit deposited under
10 subsection (1) shall be conditioned upon the conduct of the busi-
11 ness in accordance with the provisions of this act ~~—~~ and all
12 rules promulgated by the commissioner, and the payment of all
13 money that becomes due.

14 (3) In place of depositing a bond or letter of credit, an
15 applicant may PAY A NONREFUNDABLE ADMINISTRATIVE FEE ESTABLISHED
16 BY THE COMMISSIONER NOT TO EXCEED \$100.00 AND furnish 1 of the
17 following as proof of financial responsibility:

18 (a) Deposit with the state treasurer, under terms prescribed
19 by the commissioner, obligations of the United States, or obliga-
20 tions which are guaranteed fully as to principal and interest by
21 the United States, or any general obligations of any state or any
22 political subdivision of the United States, with a maturity date
23 of 3 years or less, in an amount equal to, or greater than, the
24 amount of the required bond. Interest earned under obligations
25 shall accrue to the account of the applicant.

26 (b) Deposit with the state treasurer, under terms prescribed
27 by the commissioner, a certificate of deposit of a federally

1 insured financial institution with a maturity date of 3 years or
2 less for an amount payable which is equal to, or greater than,
3 the amount of the required bond and which is not available for
4 withdrawal except by direct order of the commissioner. Interest
5 earned under the certificate shall accrue to the account of the
6 applicant.

7 (4) Upon application as prescribed by the commissioner, the
8 commissioner may reduce, waive, or modify the requirements under
9 this section for a mortgage servicer who services not more than
10 300 mortgage loans and who does not collect money for the purpose
11 of paying taxes or insurance pursuant to the mortgage loan.

12 ~~(5) A mortgage broker shall be exempt from the requirements~~
13 ~~of this section if he or she:~~

14 ~~(a) Deposits all funds received from a prospective borrower~~
15 ~~into an escrow account and does not possess or control the funds~~
16 ~~associated with the loan application prior to the closing or~~
17 ~~denial of the mortgage loan.~~

18 ~~(b) Submits to the commissioner an opinion by a certified~~
19 ~~public accountant based on current financial information verify-~~
20 ~~ing a net worth as required by section 5. Nothing in this sub-~~
21 ~~section shall prohibit the disbursement of funds by the escrow~~
22 ~~agent to third parties for the actual cost of a property~~
23 ~~appraisal and credit report in connection with a mortgage loan~~
24 ~~application. Escrow accounts created pursuant to this subsection~~
25 ~~shall be established in a manner approved by the commissioner and~~
26 ~~shall be deposited only in a depository institution insured by~~
27 ~~the federal deposit insurance corporation, the federal savings~~

1 ~~and loan insurance corporation, or the national credit union~~
2 ~~share insurance fund.~~

3 (5) ~~(6)~~ The commissioner shall waive the requirements of
4 this section and section 5 upon application by a mortgage serv-
5 icer who is a licensed real estate broker or real estate sales-
6 person, services more than 75 land contracts, has a satisfactory
7 record of compliance with applicable state and federal law, and
8 does not engage in any other activity regulated by this act.

9 ~~(7) The commissioner shall order a mortgage broker which is~~
10 ~~exempt from this section pursuant to subsection (5), and which~~
11 ~~takes possession of funds associated with a loan application~~
12 ~~prior to the closing or denial of the mortgage loan, to cease and~~
13 ~~desist from brokering mortgages until the mortgage broker pro-~~
14 ~~vides proof of financial responsibility pursuant to this~~
15 ~~section.~~

16 Sec. 5. ~~Each~~ A licensee who ~~shall solely act~~ ACTS as a
17 mortgage broker and who receives funds from a prospective bor-
18 rower ~~prior to~~ BEFORE the closing of the mortgage loan ~~or a~~
19 SHALL MAINTAIN A NET WORTH OF NOT LESS THAN \$25,000.00. A
20 licensee who ~~shall act solely~~ ACTS as a mortgage lender shall
21 ~~have a minimum~~ MAINTAIN A net worth ~~in an amount determined by~~
22 ~~the commissioner not exceeding~~ OF NOT LESS THAN \$25,000.00.
23 ~~Each~~ A licensee who ~~shall act~~ ACTS as a mortgage servicer
24 shall ~~have a minimum~~ MAINTAIN A net worth in an amount deter-
25 mined by the commissioner not exceeding \$100,000.00. Net worth
26 shall be determined at the conclusion of the fiscal year of the
27 licensee immediately preceding the date an application for a

1 license, or renewal of a license, is submitted to the
2 commissioner. Net worth shall be DISCLOSED ON A FORM PRESCRIBED
3 BY THE COMMISSIONER OR ON A FORM PREPARED OR REVIEWED BY A CERTI-
4 FIED PUBLIC ACCOUNTANT AND SHALL BE computed in accordance with
5 generally accepted accounting principles. ~~, but the~~ THE follow-
6 ing assets shall be excluded in the computation of net worth:

7 (a) That portion of an applicant's assets pledged to secure
8 obligations of any person ~~or entity~~ other than that of the
9 applicant.

10 (b) Any asset except construction loans receivable, secured
11 by first mortgages from related companies, due from officers or
12 stockholders of the applicant or persons in which the applicant's
13 officers or stockholders have an interest.

14 (c) An amount in excess of the lower of the cost or market
15 value of mortgage loans in foreclosure, or real property acquired
16 through foreclosure.

17 (d) An investment shown on the balance sheet in joint ven-
18 tures, subsidiaries, or affiliates, which is greater than the
19 market value of the assets.

20 (e) Good will or value placed on insurance renewals or prop-
21 erty management contract renewals or other similar intangible
22 value.

23 (f) Organization costs.

24 Sec. 6. (1) The following shall register with the commis-
25 sioner ON A FORM PRESCRIBED BY THE COMMISSIONER:

1 (a) A mortgage broker, mortgage lender, or mortgage servicer
2 approved as a seller or servicer by the federal national mortgage
3 association or the federal home loan mortgage corporation.

4 (b) A mortgage broker, mortgage lender, or mortgage servicer
5 approved as an issuer or servicer by the government national
6 mortgage association.

7 ~~(c) A mortgage broker, mortgage lender, or mortgage serv-~~
8 ~~icer licensed to make regulatory loans pursuant to the regulatory~~
9 ~~loan act of 1963, Act No. 21 of the Public Acts of 1939, being~~
10 ~~sections 493.1 to 493.26 of the Michigan Compiled Laws, or~~
11 ~~licensed to make secondary mortgage loans pursuant to Act No. 125~~
12 ~~of the Public Acts of 1981, being sections 493.51 to 493.81 of~~
13 ~~the Michigan Compiled Laws.~~

14 (C) ~~(d) Except as provided in subsection (7), a~~ A real
15 estate broker or real estate salesperson licensed under article
16 25 of the occupational code, Act No. 299 of the Public Acts of
17 1980, being sections 339.2501 to ~~339.2515~~ 339.2518 of the
18 Michigan Compiled Laws, who acts as a mortgage broker for not
19 more than 1 licensee or 1 registrant, or who acts as a mortgage
20 broker, mortgage lender, or mortgage servicer only in connection
21 with real estate sales in which the real estate broker or sales-
22 person affiliated with the real estate broker is engaged and who
23 receives for such services additional compensation beyond the
24 customary commission on real estate sales.

25 (D) A MORTGAGE BROKER, MORTGAGE LENDER, OR MORTGAGE SERVICER
26 WHICH IS A SUBSIDIARY OR AFFILIATE OF A DEPOSITORY FINANCIAL
27 INSTITUTION OR A DEPOSITORY FINANCIAL INSTITUTION HOLDING COMPANY

1 IF THE DEPOSITORY INSTITUTION DOES NOT MAINTAIN A MAIN OFFICE OR
2 A BRANCH OFFICE IN THIS STATE.

3 (2) A registrant ~~shall~~ IS not ~~be~~ required to comply with
4 section 3, 4, OR 5 ~~, or 7~~ and ~~shall~~ IS not ~~be~~ subject to
5 annual examination by the commissioner. ~~or be required to file~~
6 ~~annual reports with the commissioner.~~

7 (3) A mortgage broker, mortgage lender, or a mortgage serv-
8 icer which is a subsidiary or affiliate of a depository financial
9 institution or a subsidiary or affiliate of a holding company of
10 a depository financial institution shall not be subject to sec-
11 tion 29(1)(b) or (c).

12 (4) Notwithstanding section 25(m), a mortgage broker, mort-
13 gage lender, or a mortgage servicer which is a subsidiary or
14 affiliate of a depository financial institution or a subsidiary
15 or affiliate of a holding company of a depository financial
16 institution may register and become subject to the provisions of
17 the act applicable to registrants.

18 ~~(5) A registration, unless it is renewed, shall expire on~~
19 ~~June 30 of each year. A registration may be renewed by register-~~
20 ~~ing with the commissioner and paying the annual fee for the suc-~~
21 ~~ceeding year. The registration and notice shall be received by~~
22 ~~the commissioner on or before June 15 of each year.~~

23 (5) ~~(6)~~ If a real estate broker or real estate salesperson
24 acts as a mortgage broker, mortgage lender, or mortgage servicer
25 not in connection with real estate sales in which the real estate
26 broker or real estate salesperson affiliated with the real estate
27 broker is engaged, the real estate broker or real estate

1 salesperson shall be licensed or registered as otherwise required
2 under this act.

3 (6) ~~(7)~~ A real estate broker or real estate salesperson,
4 in connection with real estate sales in which the real estate
5 broker or real estate salesperson affiliated with the real estate
6 broker is engaged, who acts as a mortgage broker on 10 or fewer
7 mortgage loans in any 12-month period from July 1 to June 30 and
8 who receives for such services additional compensation beyond the
9 customary commission on real estate sales shall be exempt from
10 the registration or licensing requirements of this act for that
11 12-month period. IF THE BROKER AND ALL REAL ESTATE SALESPERSONS
12 AFFILIATED WITH THE BROKER IN AGGREGATE BROKERED MORE THAN 30
13 MORTGAGE LOANS AS DESCRIBED IN THIS SUBSECTION IN THE SAME
14 12-MONTH PERIOD FROM JULY 1 TO JUNE 30, THEN SUCH BROKER SHALL
15 OBTAIN A LICENSE OR SHALL REGISTER AS REQUIRED BY THIS ACT.

16 (7) A REGISTRATION ACCEPTED BY THE COMMISSIONER UNDER THIS
17 SECTION DOES NOT APPROVE THE USE OF OR INDEMNIFY THE REGISTRANT
18 AGAINST CLAIMS FOR THE IMPROPER USE OF THE BUSINESS NAME STATED
19 IN THE REGISTRATION.

20 Sec. 7. (1) A REGISTRATION OR license, unless it is
21 renewed, shall expire June 30 of each year. A REGISTRATION OR
22 license may be renewed by filing A REGISTRATION OR an application
23 for LICENSE renewal and paying the annual OPERATING fee for the
24 succeeding year. The REGISTRATION OR application and payment
25 shall be received by the commissioner on, or before, June 15 of
26 each year.

1 (2) Not later than ~~75~~ 90 days after the close of the
2 fiscal year of a licensee OR REGISTRANT, the licensee OR
3 REGISTRANT shall annually deliver to the commissioner a financial
4 statement for the fiscal year prepared from the licensee's OR
5 REGISTRANT'S books and records. At the licensee's OR
6 REGISTRANT'S option, the financial statement may be any of the
7 following:

8 (A) ~~(i)~~ A form prescribed by the commissioner.

9 (B) ~~(ii)~~ A report substantially similar to the form pre-
10 scribed by the commissioner, which report the licensee OR
11 REGISTRANT represents to the commissioner to be true and
12 complete.

13 (C) ~~(iii)~~ In a format prepared and certified by an inde-
14 pendent certified public accountant licensed by a regulatory
15 authority of any state or political subdivision of the United
16 States.

17 Sec. 8. (1) At the time of making an initial application
18 for a license under this act, and at the time of making the first
19 application for a license after the suspension or revocation of a
20 license, the applicant shall pay to the commissioner a fee for
21 investigating the applicant and ~~an~~ THE MINIMUM annual ~~license~~
22 OPERATING fee ~~as provided by~~ ESTABLISHED BY THE COMMISSIONER
23 UNDER subsection (3). To renew a license that has not been sus-
24 pended or revoked, the applicant shall only pay to the commis-
25 sioner the annual ~~license~~ OPERATING fee. ~~A~~ AT THE TIME OF
26 FILING A REGISTRATION OR A RENEWAL OF A REGISTRATION, A

1 registrant shall pay to the commissioner an annual ~~registration~~
2 OPERATING fee as provided by subsection (3).

3 (2) If the initial or renewed license or registration as
4 provided in subsection (1) would have an effective date within 6
5 months of the expiration date provided for in section 7, the ini-
6 tial or renewal annual ~~license or registration~~ OPERATING fee
7 for that license ~~only is~~ OR REGISTRATION SHALL BE 1/2 of the
8 annual ~~license or registration~~ OPERATING fee.

9 (3) The commissioner shall annually establish the schedule
10 of fees sufficient to pay, BUT NOT TO EXCEED, the bureau's
11 REASONABLY ANTICIPATED costs of administering this act. The fees
12 are as follows:

13 (a) For the investigation of an applicant for a license, not
14 less than ~~\$200.00~~ \$400.00 or more than \$1,000.00. ~~\$600.00,~~
15 ~~except for those mortgage servicers who service between 75 and~~
16 ~~200 land contracts, whose investigation fee will not be less than~~
17 ~~\$200.00 or more than \$400.00 after a 4 year freeze at the current~~
18 ~~level. All subsequent increases will be limited to \$50.00 per~~
19 ~~year until the maximum allowable level under this section is~~
20 ~~reached.~~

21 (b) ~~For the issuance or annual renewal of a license or reg-~~
22 ~~istration, not less than \$300.00 or more than \$800.00, except for~~
23 ~~those mortgage servicers who service between 75 and 200 land con-~~
24 ~~tracts, whose annual renewal of a license or registration will~~
25 ~~not be less than \$300.00 or more than \$500.00 after a 4 year~~
26 ~~freeze at the current level. All subsequent increases will be~~
27 ~~limited to \$50.00 per year until the maximum allowable level~~

1 ~~under this section is reached.~~ EXCEPT AS SET FORTH IN
2 SUBDIVISION (C), A LICENSEE OR REGISTRANT ANNUALLY SHALL PAY AN
3 OPERATING FEE BASED UPON THE NUMBER OF CLOSED MORTGAGE LOANS THE
4 LICENSEE OR REGISTRANT BROKERED TO OTHER PARTIES, THE NUMBER OF
5 MORTGAGE LOANS CLOSED BY THE LICENSEE OR REGISTRANT DURING THE
6 PREVIOUS CALENDAR YEAR, AND THE DOLLAR VOLUME OF LOANS SERVICED
7 BY THE LICENSEE OR REGISTRANT AS OF DECEMBER 31 OF THE PREVIOUS
8 CALENDAR YEAR. THE OPERATING FEE DURING THE FIRST YEAR AFTER
9 ENACTMENT OF THIS AMENDATORY LANGUAGE SHALL BE NOT LESS THAN
10 \$500.00 AND NOT MORE THAN \$2,500.00. THEREAFTER, IN THE DISCRE-
11 TION OF THE COMMISSIONER, SUBJECT TO THE LIMITATION SET FORTH IN
12 THIS SUBSECTION, THE MAXIMUM OPERATING FEE MAY BE INCREASED AT AN
13 ANNUAL RATE OF NOT MORE THAN 10% IN THE SECOND, THIRD, AND FOURTH
14 YEARS FOLLOWING ENACTMENT, AND IN THE FIFTH AND SUBSEQUENT YEARS,
15 AT AN ANNUAL RATE OF NOT MORE THAN 5%. FOR PURPOSES OF THIS SUB-
16 DIVISION, "MORTGAGE LOAN" INCLUDES ONLY MORTGAGE LOANS SUBJECT TO
17 THIS ACT.

18 (c) For amending OR REISSUING a license or registration, not
19 less than ~~\$20.00~~ \$50.00 or more than ~~\$75.00~~ \$200.00.

20 (d) ~~For examination of the licensee or investigation of a~~
21 ~~registrant or licensee, not less than \$40.00 or more than \$70.00~~
22 ~~per hour for each examiner involved in an examination. In addi-~~
23 ~~tion, a~~ A licensee OR REGISTRANT shall pay the actual travel,
24 lodging, and meal expenses incurred by bureau employees who
25 travel out of state to examine the records of the licensee OR
26 INVESTIGATE THE LICENSEE OR REGISTRANT and the cost of
27 independent investigators employed under section 20(1)(e).

1 (4) Fees received pursuant to this act are not refundable.

2 (5) If any fees or penalties provided for in this act are
3 not paid when required, the attorney general may maintain an
4 action against the delinquent licensee or registrant for the
5 recovery of the fees or penalties together with interest and
6 costs.

7 (6) A licensee or registrant who fails to submit to the com-
8 missioner a report required by section 7 or section 21 is subject
9 to a penalty of \$25.00 for each day the report is delinquent or
10 \$1,000.00, whichever is less.

11 (7) A licensee or registrant whose license or registration
12 renewal fee is not ~~paid~~ RECEIVED on or before June 30 is
13 subject to a penalty of \$25.00 for each day the fee is delinquent
14 or \$1,000.00, whichever is less.

15 (8) Money received under this act shall be deposited in the
16 state treasury and credited to the financial institutions bureau
17 to be used only for the operation of the financial institutions
18 bureau.

19 (9) THE ANNUAL OPERATING FEE SET BY THE COMMISSIONER UNDER
20 SUBSECTION (3)(B) SHALL BE BASED UPON INFORMATION IN REPORTS
21 FILED UNDER SECTION 21.

22 Sec. 10. (1) A licensee or registrant may surrender a
23 license or registration by delivering to the commissioner the
24 license or registration with written notice that the licensee or
25 registrant surrenders the license or registration. The surren-
26 der, revocation, or suspension of a license or registration under
27 this act shall not affect the licensee's or registrant's civil or

1 criminal liability for acts committed prior to the surrender,
2 revocation, or suspension. The surrender of a license or regis-
3 tration does not affect a proceeding to suspend or revoke a
4 license or registration.

5 (2) Except as otherwise provided by law, a revocation, sus-
6 pension, or surrender of a license or registration shall not
7 impair or affect the obligation of a preexisting contract between
8 the licensee or registrant and another person.

9 (3) A LICENSEE OR REGISTRANT WHOSE LICENSE OR REGISTRATION
10 HAS BEEN DESTROYED OR LOST MAY COMPLY WITH THIS SECTION BY SUB-
11 MITTING TO THE COMMISSIONER A NOTARIZED AFFIDAVIT OF THE LOSS
12 ACCOMPANIED BY WRITTEN NOTICE THAT THE LICENSEE OR REGISTRANT
13 SURRENDERS THE LICENSE OR REGISTRATION.

14 Sec. 20. (1) In the conduct of any examination or investi-
15 gation under this act, the commissioner may do any of the
16 following:

17 (a) Compel the attendance of a person by subpoena.

18 (b) Administer oaths.

19 (c) Interrogate a person under oath concerning the business
20 and conduct of affairs of a person subject to this act, and
21 require the production of books, records, or papers relative to
22 the inquiry.

23 (d) Have free access during regular business hours to the
24 offices, places of business, or other location where the licensee
25 or registrant, or an affiliate of a licensee or registrant, main-
26 tains business related documents, and to the books, accounts,
27 papers, records, files, documents, safes, and vaults of a

1 licensee or registrant. The information obtained during the
2 examination or investigation shall be confidential and shall not
3 be available for public inspection or copying, or divulged to any
4 person, except as provided in this section. The information may
5 be disclosed as follows:

6 (i) To the attorney general.

7 (ii) To any regulatory agency.

8 (iii) In connection with an enforcement action brought pur-
9 suant to this or another applicable act.

10 ~~(iv) Under subpoena, to any party in a private action.~~

11 (iv) ~~(v)~~ To law enforcement officials.

12 (v) ~~(vi)~~ To persons authorized by the Ingham county cir-
13 cuit court to receive the information.

14 (e) Employ independent investigators to conduct a part or
15 all of the investigation, in the case of an investigation other
16 than ~~the annual~~ AN examination.

17 (2) A person subpoenaed under this section who willfully
18 refuses or willfully neglects to appear at the time and place
19 named in the subpoena, or to produce books, accounts, records,
20 files, or documents required by the commissioner, or who refuses
21 to be sworn or, unless permitted by law, refuses to answer as a
22 witness, is guilty of a misdemeanor.

23 (3) ~~Except as otherwise provided by this act, the commis-~~
24 ~~sioner may only conduct 1 examination of a licensee in any~~
25 ~~12-month period from July 1 to June 30. The cost of 1 examina-~~
26 ~~tion of a licensee in any 12-month period from July 1 to June 30~~
27 ~~shall be assessed to the licensee. In addition UNLESS~~

1 CIRCUMSTANCES WARRANT ADDITIONAL EXAMINATIONS, the commissioner
2 is entitled to conduct 1 EXAMINATION OF EACH LICENSEE DURING THE
3 CALENDAR YEAR. THE COMMISSIONER MAY CONDUCT an investigation of
4 a licensee or registrant against whom a complaint has been filed.
5 ~~, but the licensee or registrant shall only pay the cost of the~~
6 ~~investigation if the licensee or registrant repeatedly violates a~~
7 ~~material provision of this act. To avoid unnecessary duplication~~
8 ~~of examinations, the commissioner shall cooperate with any agency~~
9 ~~of the state or federal government, other states, the federal~~
10 ~~national mortgage association, or the federal home loan mortgage~~
11 ~~corporation and shall accept examinations of the foregoing in~~
12 ~~connection with, or in place of, an examination by the commis-~~
13 ~~sioner under this act, unless the commissioner determines that~~
14 ~~the examinations are not available or do not provide information~~
15 ~~necessary to enable the commissioner to fulfill his or her~~
16 ~~responsibilities under this act. The commissioner shall attempt~~
17 ~~to examine at the same time the books and records summarizing any~~
18 ~~other activity in which the licensee is engaged, pursuant to~~
19 ~~another statute, which grants the commissioner regulatory respon-~~
20 ~~sibility over the licensee engaged in the activity.~~

21 Sec. 22. It shall be a violation of ~~the~~ THIS act if a
22 licensee or registrant:

23 (a) Does not conduct the business in accordance with law, or
24 has violated any other provision of this act, or a rule promul-
25 gated or order issued under this act.

26 (b) Engages in fraud, deceit, or material misrepresentation
27 in connection with any transaction governed by this act.

1 (c) Intentionally or due to gross or wanton negligence,
2 repeatedly fails to provide borrowers material disclosures of
3 information as required by state or federal law.

4 (d) Suppresses or withholds from the commissioner any infor-
5 mation ~~which~~ THAT the licensee or registrant possesses and
6 ~~which~~ THAT, if submitted, would have made the licensee or reg-
7 istrant ineligible for licensing or registration under this act
8 OR WOULD HAVE WARRANTED THE COMMISSIONER'S DENIAL OF A LICENSE
9 APPLICATION OR REFUSAL TO ACCEPT A REGISTRATION.

10 (e) Violates any provision of Act No. 125 of the Public Acts
11 of 1966, being sections 565.161 to 565.163 of the Michigan
12 Compiled Laws, regulating the handling of mortgage escrow
13 accounts by mortgagees.

14 (f) Fails to place in escrow IN A MANNER APPROVED BY THE
15 COMMISSIONER any money, funds, deposits, checks, drafts, or other
16 negotiable instruments entrusted to the person as a mortgage
17 broker, mortgage lender, or mortgage servicer ~~, in a manner~~
18 ~~approved by the commissioner~~ FOR PAYMENT TO OR ON BEHALF OF AN
19 INVESTOR, OR WHICH MONEY, FUND, DEPOSIT, CHECK, DRAFT, OR OTHER
20 NEGOTIABLE INSTRUMENT IS REFUNDABLE AT CLOSING OF THE MORTGAGE
21 LOAN, or fails to deposit and retain the funds in a trust or
22 escrow account ~~—~~ maintained by the person ~~—~~ with a financial
23 institution, the deposits of which are insured by the federal
24 deposit insurance corporation ~~, the federal savings and loan~~
25 ~~insurance corporation,~~ or the national credit union share insur-
26 ance fund until the proper disbursement.

1 (g) Refuses to permit an examination OR INVESTIGATION by the
2 commissioner of the books and affairs of the licensee or
3 registrant, or has refused or failed, within a reasonable time,
4 to furnish any information or make any report that may be
5 required by the commissioner pursuant to this act.

6 (h) Is convicted of a felony, or any misdemeanor of which an
7 essential element is fraud.

8 (i) Refuses or fails to pay, within a reasonable time, those
9 expenses assessed to the licensee or registrant pursuant to this
10 act.

11 (j) Fails to make restitution after having been ordered to
12 do so by the commissioner or an administrative agency, or fails
13 to make restitution or pay damages to persons injured by the
14 licensee's or registrant's business transactions after having
15 been ordered to do so by a court.

16 (k) Fails to make a mortgage loan pursuant to, and in
17 accordance with, a written commitment to make a mortgage loan
18 issued to, and accepted by, a person when the person has timely
19 and completely satisfied all the conditions of the commitment
20 prior to the expiration of the commitment.

21 (L) REQUIRES A PROSPECTIVE BORROWER TO DEAL EXCLUSIVELY WITH
22 THE LICENSEE OR REGISTRANT IN REGARD TO A MORTGAGE LOAN
23 APPLICATION.

24 (M) TAKES A SECURITY INTEREST IN REAL PROPERTY BEFORE CLOS-
25 ING THE MORTGAGE LOAN TO SECURE PAYMENT OF FEES ASSESSED IN CON-
26 NECTION WITH A MORTGAGE LOAN APPLICATION.

1 SEC. 22A. (1) A LICENSEE OR REGISTRANT SHALL NOT, DIRECTLY
2 OR INDIRECTLY, MAKE A FALSE, MISLEADING, OR DECEPTIVE
3 ADVERTISEMENT REGARDING MORTGAGE LOANS OR THE AVAILABILITY OF
4 MORTGAGE LOANS.

5 (2) A LICENSEE SHALL NOT ADVERTISE ANY SIZE OF LOAN, SECUR-
6 ITY REQUIRED FOR A LOAN, RATE OF CHARGE, OR OTHER CONDITION OF
7 LENDING EXCEPT WITH THE FULL INTENT OF MAKING LOANS AT THOSE
8 RATES, OR LOWER RATES, AND UNDER THOSE CONDITIONS, TO MORTGAGE
9 LOAN APPLICANTS WHO MEET THE STANDARDS OR QUALIFICATIONS PRE-
10 SCRIBED BY THE LICENSEE.

11 Sec. 23. (1) A licensee or registrant may require a bor-
12 rower to pay reasonable and necessary charges which are the
13 actual expenses incurred by the licensee or registrant in connec-
14 tion with the making, closing, disbursing, extending, readjust-
15 ing, or renewing of a mortgage loan AND A LOAN PROCESSING FEE.
16 The charges shall be in addition to interest authorized by law,
17 and are not a part of the interest collected or agreed to be paid
18 on the mortgage loan within the meaning of the law of this state
19 which limits the rate of interest which may be exacted in a
20 transaction. ~~Reasonable and necessary charges shall consist of~~
21 ~~recording fees, title examination, or title insurance, the prepa-~~
22 ~~ration of a deed, appraisal, or credit report, and a loan pro-~~
23 ~~cessing fee.~~ The charges shall be paid only once by the borrower
24 to the licensee or registrant. This section is not intended to
25 override the federal preemption of state usury laws contained in
26 the depository institutions deregulation and monetary control act
27 of 1980, Public Law 96-221.

1 (2) A LICENSEE OR REGISTRANT WHICH ASSESSES OR ACCEPTS A FEE
2 TO GUARANTEE A SPECIFIED RATE OF INTEREST ON A MORTGAGE LOAN
3 SHALL SPECIFY THE TERMS AND CONDITIONS OF THE GUARANTEE IN
4 WRITING. THE TERMS AND CONDITIONS OF THE GUARANTEE SHALL NOT
5 EXTEND BEYOND THE EXPIRATION OF THE GUARANTEE UNLESS EXTENDED IN
6 WRITING BY ALL THE PARTIES.

7 Sec. 25. This act does not apply to the following:

8 (a) A depository financial institution whether or not the
9 depository financial institution is acting in a capacity of a
10 trustee or fiduciary.

11 (b) A salesperson acting as an agent for a residential
12 builder or residential maintenance and alteration contractor, or
13 a residential builder or residential maintenance and alteration
14 contractor licensed under article 24 of the occupational code,
15 Act No. 299 of the Public Acts of 1980, being sections 339.2401
16 to 339.2412 of the Michigan Compiled Laws, when a mortgage is
17 made or negotiated in connection with the sale or financing of a
18 residential structure or improvement constructed or improved by
19 that residential builder or residential maintenance and alter-
20 ation contractor.

21 (c) A real estate broker or real estate salesperson
22 ~~licensed under article 25 of Act No. 299 of the Public Acts of~~
23 ~~1980, being sections 339.2501 to 339.2518 of the Michigan~~
24 ~~Compiled Laws, and~~ who is not a mortgage broker, mortgage
25 lender, or mortgage servicer, or who only acts as a mortgage
26 broker in connection with a real estate sale or lease and acts

1 without additional compensation beyond the customary commission
2 on such sales or leases.

3 (d) A real estate salesperson who acts for a real estate
4 broker as a mortgage broker, mortgage lender, or mortgage serv-
5 icer and who receives for such services compensation only from
6 the real estate broker for which the salesperson is an agent or
7 employee.

8 (e) A person licensed under Act No. 125 of the Public Acts
9 of 1981, being sections 493.51 to 493.81 of the Michigan Compiled
10 Laws, not making, brokering, or servicing mortgage loans as
11 described in this act in a 12-month period from July 1 to June
12 30.

13 ~~(f) A home improvement installment contract entered into~~
14 ~~pursuant to the home improvement finance act, Act No. 332 of the~~
15 ~~Public Acts of 1965, being sections 445.1101 to 445.1431 of the~~
16 ~~Michigan Compiled Laws.~~

17 (F) ~~(g)~~ Agencies or corporate instrumentalities of the
18 United States and of this state and its political subdivisions,
19 including the public employees' retirement system.

20 (G) ~~(h)~~ A mortgage lender ~~which~~ THAT IN THE AGGREGATE
21 WITH ANY AFFILIATES makes 10 or fewer mortgage loans in a
22 12-month period from July 1 to June 30.

23 (H) ~~(i)~~ A mortgage servicer ~~which~~ THAT IN THE AGGREGATE
24 WITH ANY AFFILIATES services 10 or fewer mortgage loans in a
25 12-month period from July 1 to June 30.

26 (I) ~~(j)~~ A mortgage servicer ~~which~~ THAT IN THE AGGREGATE
27 WITH ANY AFFILIATES services only 75 or fewer land contracts, of

1 which 10 or fewer require the collection of money for the payment
2 of taxes or insurance. This subdivision and subdivision ~~(i)~~
3 (H) do not exempt a mortgage servicer who collects money for the
4 payment of taxes or insurance from the provisions of Act No. 125
5 of the Public Acts of 1966, being sections 565.161 to ~~565.163~~
6 565.164 of the Michigan Compiled Laws. All fees shall be
7 returned to any mortgage servicer described in this subdivision
8 who applied for a license and paid the fees required by this act
9 and who on ~~the effective date of this subdivision~~ DECEMBER 27,
10 1988 is exempted from licensing.

11 (J) ~~(k)~~ An individual licensed to practice law in this
12 state and not engaged in the business of negotiating loans
13 secured by real property, when the individual renders services in
14 the course of his or her practice as an attorney-at-law.

15 (K) ~~(l)~~ A person who makes mortgage loans exclusively for
16 the benefit of employees of that person if the proceeds of the
17 loan are used to assist the employee in meeting his or her hous-
18 ing needs.

19 (l) ~~(m)~~ A person acting as a fiduciary with respect to any
20 employee pension benefit plan qualified under the internal reve-
21 nue code who makes mortgage loans solely to plan participants
22 from plan assets.

23 (M) ~~(n)~~ A mortgage broker, mortgage lender, or a mortgage
24 servicer which is a subsidiary or affiliate of a depository
25 financial institution or a subsidiary or affiliate of a holding
26 company of a depository financial institution WHICH DEPOSITORY

1 FINANCIAL INSTITUTION MAINTAINS ITS MAIN OFFICE OR A BRANCH
2 OFFICE IN THIS STATE.

3 (N) ~~(O)~~ A nonprofit corporation established pursuant to
4 the neighborhood reinvestment corporation act, title VI of Public
5 Law 95-557, 42 U.S.C. 8101 to 8107.

6 Sec. 29. (1) A person or any owner, partner, member, offi-
7 cer, director, trustee, employee, agent, broker, or their repre-
8 sentative acting on the authority of such person who willfully or
9 intentionally does any of the following is guilty of a misde-
10 meanor ~~and shall be fined~~ PUNISHABLE BY A FINE OF not more than
11 \$5,000.00, or ~~imprisoned~~ IMPRISONMENT for not more than 3
12 years, or both:

13 (a) Engages in this state in the business of a mortgage
14 broker, mortgage lender, or mortgage servicer without a license
15 or registration required under this act.

16 (b) Transfers or assigns a mortgage loan, other than a land
17 contract not considered to be an equitable mortgage, or a secur-
18 ity directly representing an interest in 1 or more mortgage
19 loans, other than land contracts not considered to be equitable
20 mortgages, ~~prior to~~ OR A LOAN MADE UNDER A STATE OR FEDERAL
21 GOVERNMENT PROGRAM THAT ALLOWS THE LENDER TO ESCROW MORE THAN 25%
22 OF THE LOAN PROCEEDS FOR A LIMITED PERIOD OF TIME OR A CONSTRUC-
23 TION LOAN, BEFORE the disbursement of 75% or more of the proceeds
24 of the mortgage loan to, or for the benefit of, the borrower.

25 (c) Transfers or assigns a mortgage loan or a security rep-
26 resenting an interest in 1 or more mortgage loans to an

1 individual investor unless 1 or more of the following ~~applies~~

2 APPLY:

3 (i) The transfer or assignment is made through a
4 broker-dealer which is a member of the New York stock exchange.

5 (ii) The transfer or assignment is made through a
6 broker-dealer who meets all of the following criteria:

7 (A) The broker-dealer is ~~licensed pursuant to~~ REGISTERED
8 UNDER the uniform securities act, Act No. 265 of the Public Acts
9 of 1964, being sections 451.501 to 451.818 of the Michigan
10 Compiled Laws.

11 (B) The broker-dealer is not an affiliate of the mortgage
12 lender unless the person acquired the broker-dealer ~~license~~
13 REGISTRATION, directly or indirectly, ~~prior to~~ BEFORE
14 September 1, 1987 ~~pursuant to the uniform securities act,~~ UNDER
15 Act No. 265 of the Public Acts of 1964, was affiliated with a
16 mortgage lender ~~prior to~~ BEFORE September 1, 1987, and has con-
17 tinuously maintained that ~~license~~ REGISTRATION subsequent to
18 September 1, 1987. For purposes of this ~~subdivision~~
19 SUBPARAGRAPH, if an aggregate of more than 10% of the outstanding
20 voting stock or interest in a corporation, unincorporated organi-
21 zation, partnership, or other legal entity that is a
22 broker-dealer or mortgage lender is sold, transferred, assigned,
23 or otherwise conveyed subsequent to September 1, 1987, the
24 ~~license~~ REGISTRATION shall be considered to not have been con-
25 tinuously maintained.

26 (C) The broker-dealer acquired the mortgage loan or security
27 on a firm commitment.

1 (iii) The transfer or assignment is made to a person who the
 2 transferor or assignor believes, or has reasonable grounds to
 3 believe, is 1 of the following:

4 (A) A business entity having either net income from opera-
 5 tions after taxes in excess of \$100,000.00 in its last fiscal
 6 year or its latest 12-month period, or a net worth in excess of
 7 \$1,000,000.00 at the time of purchase.

8 (B) An individual who, after the purchase, has an investment
 9 of more than \$50,000.00 in such loans or securities, including
 10 installment payments to be made within 1 year after purchase by
 11 the individual, has either personal income before taxes in excess
 12 of \$100,000.00 for his or her last fiscal year or latest 12-month
 13 period and is capable of bearing the economic risk, or net worth
 14 in excess of \$1,000,000.00, and has the knowledge and experience
 15 in financial and business matters that he or she is capable of
 16 evaluating the merits and risks of the prospective investment, or
 17 has obtained the advice of an attorney, certified public accoun-
 18 tant, or investment ~~advisor~~ ADVISER registered under the
 19 investment ~~advisors~~ ADVISERS act of 1940, or an investment
 20 ~~advisor~~ ADVISER registered under ~~the uniform securities act,~~
 21 Act No. 265 of the Public Acts of 1964 ~~, being sections 451.501~~
 22 ~~to 451.818 of the Michigan Compiled Laws,~~ with respect to the
 23 merits and risks of the prospective investment.

24 (iv) A transferor or assignor does not maintain its princi-
 25 pal place of business in this state and the transferee or
 26 assignee is not a resident of this state ~~nor maintains~~ AND DOES
 27 NOT MAINTAIN its principal place of business in this state.

1 (2) If the commissioner finds that a licensee or registrant
2 has violated this act or the rules promulgated under this act,
3 the commissioner may DO 1 OR MORE OF THE FOLLOWING:

4 (a) Assess a civil fine against ~~a~~ THE licensee, regis-
5 trant, or a person who controls the licensee or registrant of not
6 more than \$1,000.00 for each violation, except that the licensee,
7 registrant, or a person shall not be fined more than \$10,000.00
8 for a transaction resulting in more than 1 violation, plus the
9 costs of investigation.

10 (b) Suspend or revoke a license or registration or refuse to
11 issue A LICENSE or renew a license OR REGISTRATION.

12 (C) REQUIRE THE LICENSEE OR REGISTRANT OR A PERSON WHO CON-
13 TROLS THE LICENSEE OR REGISTRANT TO MAKE RESTITUTION TO EACH
14 INJURED INDIVIDUAL, IF THE COMMISSIONER FINDS THAT THE VIOLATION
15 OF THIS ACT OR A RULE PROMULGATED UNDER THIS ACT RESULTED IN AN
16 INJURY TO 1 OR MORE INDIVIDUALS.

17 (3) ~~The~~ A civil fine ASSESSED UNDER SUBSECTION (2) may be
18 sued for and recovered by and in the name of the commissioner and
19 may be collected and enforced by summary proceedings by the
20 attorney general. Each individual injured by a violation of this
21 act or a rule shall constitute a separate violation. In deter-
22 mining UNDER SUBSECTION (2) the amount of a fine, whether to sus-
23 pend or revoke a license or registration, ~~or~~ whether to refuse
24 to issue or renew a license, OR THE AMOUNT OF RESTITUTION, the
25 commissioner shall consider the extent to which the violation was
26 a knowing and willful violation, the extent of the injury
27 suffered because of the violation, the corrective action taken by

1 the licensee or registrant to ensure that the violation will not
2 be repeated, and the record of the licensee or registrant in com-
3 plying with this act. Any proceedings under this subsection
4 shall be subject to the procedures of the administrative proce-
5 dures act of 1969, Act No. 306 of the Public Acts of 1969, being
6 sections 24.201 to 24.328 of the Michigan Compiled Laws.

7 ~~(4) A licensee, registrant, or a person who controls a~~
8 ~~licensee or registrant, who violates a section of this act or a~~
9 ~~rule promulgated under this act resulting in an injury to 1 or~~
10 ~~more individuals, shall be required to make restitution to each~~
11 ~~injured individual. The license or registration of the person~~
12 ~~required to make restitution may be suspended by the commissioner~~
13 ~~until the restitution is made.~~

14 (4) ~~(5)~~ Subsection (2) ~~shall~~ DOES not apply to a viola-
15 tion of this act ~~which~~ THAT results from a bona fide error
16 ~~which~~ THAT occurs notwithstanding the adoption and observance
17 of reasonable procedures intended to prevent the occurrence of
18 the error.

19 SEC. 34. (1) THE COMMISSIONER SHALL PRIORITIZE AND PAY
20 CLAIMS AGAINST A PROOF OF FINANCIAL RESPONSIBILITY FILED WITH THE
21 COMMISSIONER UNDER SECTION 4 IN A MANNER THAT, IN HIS OR HER DIS-
22 CRETION, BEST PROTECTS THE PUBLIC INTEREST.

23 (2) CLAIMS MAY ONLY BE FILED AGAINST A LICENSEE'S PROOF OF
24 FINANCIAL RESPONSIBILITY AS PROVIDED UNDER THIS SECTION BY THE
25 LICENSEE'S BORROWERS, MORTGAGE LOAN APPLICANTS, LOAN SERVICING
26 CUSTOMERS, AND THE COMMISSIONER.

1 (3) CLAIMS FILED AGAINST A PROOF OF FINANCIAL RESPONSIBILITY
2 BY A BORROWER OR LOAN APPLICANT SHALL INVOLVE ONLY MORTGAGE LOANS
3 OR MORTGAGE APPLICATIONS SECURED OR TO BE SECURED BY RESIDENTIAL
4 REAL PROPERTY LOCATED IN THIS STATE. THE AMOUNT OF THE CLAIM
5 SHALL NOT EXCEED ACTUAL FEES IN CONNECTION WITH A LOAN APPLICA-
6 TION, OVERCHARGES OF PRINCIPAL AND INTEREST, AND EXCESS ESCROW
7 COLLECTIONS CHARGED BY THE LICENSEE AND PAID BY THE CLAIMANT TO
8 THE LICENSEE.

9 (4) THE COMMISSIONER MAY FILE A CLAIM AGAINST A PROOF OF
10 FINANCIAL RESPONSIBILITY FOR PAYMENT OF FINES OR FEES DUE AND
11 PAYABLE TO THE COMMISSIONER OR THE BUREAU AND REIMBURSEMENT OF
12 EXPENSES INCURRED IN INVESTIGATING THE LICENSEE AND EXPENSES
13 INCURRED IN DISTRIBUTING PROCEEDS OF THE PROOF OF FINANCIAL
14 RESPONSIBILITY. A CLAIM FILED UNDER THIS SUBSECTION SHALL BE
15 PAID IN FULL PRIOR TO PAYMENT OF OTHER CLAIMS AGAINST A PROOF OF
16 FINANCIAL RESPONSIBILITY, UNLESS THE COMMISSIONER, IN HIS OR HER
17 DISCRETION, WAIVES IN WHOLE OR IN PART THE RIGHT TO PRIORITY OF
18 PAYMENT.

19 (5) IN THE EVENT THAT VALID CLAIMS EXCEED THE AMOUNT OF THE
20 PROOF OF FINANCIAL RESPONSIBILITY, EACH CLAIMANT SHALL BE ENTI-
21 TLED ONLY TO A PRO RATA AMOUNT OF HIS OR HER VALID CLAIM.