

Act No. 391
Public Acts of 2002
Approved by the Governor
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**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Senator Steil

ENROLLED SENATE BILL No. 777

AN ACT to amend 1987 PA 173, entitled "An act to define and regulate mortgage brokers, mortgage lenders, and mortgage servicers; to prescribe the powers and duties of the financial institutions bureau and certain public officers and agencies; to provide for the promulgation of rules; and to provide remedies and penalties," by amending sections 1a, 11, and 22 (MCL 445.1651a, 445.1661, and 445.1672), sections 1a and 22 as amended by 1996 PA 210, and by adding sections 18a, 18b, 18c, 18d, and 18e.

The People of the State of Michigan enact:

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

(a) "Affiliate" means a person or group of persons that directly or indirectly through 1 or more intermediaries controls, is controlled by, or is under common control with another person and engaged in a business or transaction regulated by this act.

(b) "Commissioner" means the commissioner of the office of financial and insurance services of the department of consumer and industry services or his or her authorized agent.

(c) "Construction loan" means a mortgage loan for the purpose of constructing a 1-to-4 family dwelling, which loan is approved and closed before completion of the construction of the improvement on the real property.

(d) "Control person" means a director or executive officer of a licensee or a person who has the authority to participate in the direction, directly or indirectly through 1 or more other persons, of the management or policies of a licensee or registrant.

(e) "Depository financial institution" means a state or nationally chartered bank, a state or federally chartered savings and loan association, savings bank, or credit union, or an entity of the federally chartered farm credit system.

(f) "Executive officer" means an officer, member, or partner of a licensee or registrant, including chief executive officer, president, vice president, chief financial officer, controller, compliance officer, or any other similar position.

(g) "Financial licensing act" means the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, and any of the acts listed in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

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

(i) "Individual investor" means a person residing in this state or having its principal place of business in this state, other than a bank, savings bank, savings and loan association, credit union, trust company, insurance company, investment company as defined in the investment company act of 1940, title I of chapter 686, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-3 and 80a-4 to 80a-64, pension or profit sharing plan, the assets of which are managed by a bank or trust company or other institutional manager, financial institution, institutional manager, broker-dealer that is a member of the New York stock exchange or registered under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, the federal national mortgage association, the government national mortgage association, the federal home loan mortgage corporation, or a mortgage lender or mortgage servicer.

(j) "License" means a license issued under this act.

(k) "Licensee" means a person licensed or required to be licensed under this act.

(l) "Mortgage broker" means a person who, directly or indirectly, does 1 or both of the following:

(i) Serves or offers to serve as an agent for a person in an attempt to obtain a mortgage loan.

(ii) Serves or offers to serve as an agent for a person who makes or offers to make mortgage loans.

(m) "Mortgage lender" means a person who, directly or indirectly, makes or offers to make mortgage loans.

(n) "Mortgage loan" means a loan secured by a first mortgage on real property located in this state and used, or improved to be used, as a dwelling and designed for occupancy by 4 or fewer families or a land contract covering real property located in this state used, or improved to be used, as a dwelling and designed for occupancy by 4 or fewer families. A mortgage loan does not include a home improvement installment contract under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

(o) "Mortgage servicer" means a person who, directly or indirectly, services or offers to service mortgage loans.

(p) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(q) "Real estate broker" means a broker or associate broker licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.

(r) "Real estate salesperson" means a salesperson licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.

(s) "Register" means filing a notice with the commissioner on a form prescribed by the commissioner that notifies the commissioner of the intent to engage in the activities of a mortgage broker, mortgage lender, or mortgage servicer in this state and the payment of any fees required under this act, along with the other documents, proofs, and fees required by the commissioner.

(t) "Registrant" means a person registered or required to be registered under this act.

(u) "Service" means the collection or remittance, or the right or obligation to collect or remit, for a lender, noteowner, noteholder, mortgage servicer, or the licensee's or registrant's own account of 4 or more installment payments of the principal, interest, or an amount placed in escrow under a mortgage loan, mortgage servicing agreement, or an agreement with the mortgagor.

Sec. 11. (1) The commissioner shall exercise general supervision and control over mortgage brokers, mortgage lenders, and mortgage servicers doing business in this state.

(2) In addition to the other powers granted to the commissioner by this act, the commissioner shall have all of the following powers:

(a) To promulgate reasonable rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as necessary to implement and administer this act.

(b) To deny an application for a license.

(c) To conduct examinations and investigations of any person as necessary for the efficient enforcement of this act and the rules promulgated under this act.

(d) To advise the attorney general or the prosecuting attorney of the county in which the business is conducted that the commissioner believes a licensee, registrant, or person is violating this act. The attorney general or prosecuting attorney may take appropriate legal action to enjoin the operation of the business or prosecute violations of this act.

(e) To bring an action in the Ingham county circuit court in the name and on behalf of this state against the licensee, registrant, or any other person who is participating in, or about to participate in, any unsafe or injurious practice or act in violation of this act or a rule promulgated under this act, to enjoin the person from participating in or continuing the practice or engaging in the act.

(f) To order a person to cease and desist from a violation of this act or a rule promulgated under this act in accordance with section 16.

(g) To suspend or revoke a license or registration in accordance with section 29.

(h) To require that restitution be made in accordance with section 29.

(i) To assess a civil fine in accordance with section 29.

(j) To censure a licensee or registrant.

(k) To issue an order to prohibit a person from being employed by, an agent of, or control person of a licensee or registrant as provided under section 18a.

Sec. 18a. (1) If in the opinion of the commissioner a person has engaged in fraud, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or control person of a licensee or registrant under this act or a licensee or registrant under a financial licensing act. For purposes of this section, "fraud" shall include actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a hearing to be held not more than 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act.

(4) An order issued under subsection (2) or (3) is effective upon service upon the person. The commissioner shall also serve a copy of the order upon the licensee or registrant of which the person is an employee, agent, or control person. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to applicants for mortgage loans, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or control person of any licensee or registrant. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect pending the completion of a review as provided under this section and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the hearing required under subsection (2) to review the suspension shall be held not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a felony involving fraud, dishonesty, or breach of trust, the commissioner may issue an order suspending or prohibiting that person from being a licensee or registrant and from being employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

(9) The commissioner shall mail a copy of any notice or order issued under this section to the licensee or registrant of which the person subject to the notice or order is an employee, agent, or control person.

Sec. 18b. (1) A hearing under section 16 or 18a shall be conducted under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Within 30 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render a decision that shall include findings of fact supporting the decision and serve upon each party to the proceeding a copy of the decision and an order consistent with the decision.

(2) Except for a consent order, a party to the proceeding, or a person affected by an order issued under section 16 or 18a may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

(3) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (2) does not stay the commissioner's order.

Sec. 18c. The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under section 15, 16, or 18a.

Sec. 18d. Any current or former executive officer, director, agent, or control person who violates a final order issued under section 18a is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

Sec. 18e. A control person who is subject to an order issued under section 18a and who meets all of the following requirements is not in violation of the order:

(a) The control person shall not in any manner, directly or indirectly, participate in the control of a licensee or registrant after the date the order is issued.

(b) The control person shall within 6 months after the date the order is final transfer any interest the control person owns in a licensee or registrant to an unrelated third party.

Sec. 22. It is a violation of this act for a licensee or registrant to do any of the following:

(a) Fail to conduct the business in accordance with law, this act, or a rule promulgated or order issued under this act.

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

(c) Intentionally or due to gross or wanton negligence, repeatedly fail to provide borrowers material disclosures of information as required by law.

(d) Suppress or withhold from the commissioner any information that the licensee or registrant possesses and that, if submitted, would have made the licensee or registrant ineligible for licensing or registration under this act or would have warranted the commissioner's denial of a license application or refusal to accept a registration.

(e) Fail to comply with 1966 PA 125, MCL 565.161 to 565.164, regulating the handling of mortgage escrow accounts by mortgagees.

(f) Until proper disbursement is made, fail to place in a trust or escrow account held by a federally insured depository financial institution in a manner approved by the commissioner any money, funds, deposits, checks, drafts, or other negotiable instruments received by the licensee that the borrower is obligated to pay to a third party, including amounts paid to the holder of the mortgage loan, amounts for property taxes and insurance premiums, or amounts paid under an agreement that requires if the mortgage loan is not closed the amounts paid shall be refunded to the prospective borrower or if the mortgage loan is closed the amounts paid shall be applied to fees and costs incurred at the time the mortgage loan is closed. Fees and costs include, but are not limited to, title insurance premiums and recording fees. Fees and costs do not include amounts paid to cover costs incurred to process the mortgage loan application, to obtain an appraisal, or to receive a credit report.

(g) Refuse to permit an examination or investigation by the commissioner of the books and affairs of the licensee or registrant, or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner under this act.

(h) To be convicted of a felony, or any misdemeanor of which an essential element is fraud.

(i) Refuse or fail to pay, within a reasonable time, those expenses assessed to the licensee or registrant under this act.

(j) Fail to make restitution after having been ordered to do so by the commissioner or an administrative agency, or fail to make restitution or pay damages to persons injured by the licensee's or registrant's business transactions after having been ordered to do so by a court.

(k) Fail to make a mortgage loan in accordance with a written commitment to make a mortgage loan issued to, and accepted by, a person when the person has timely and completely satisfied all the conditions of the commitment before the expiration of the commitment.

(l) Require a prospective borrower to deal exclusively with the licensee or registrant in regard to a mortgage loan application.

(m) Take a security interest in real property before closing the mortgage loan to secure payment of fees assessed in connection with a mortgage loan application.

(n) Except as provided under section 18e, knowingly permit a person to violate an order that has been issued under this act or any other financial licensing act that prohibits that person from being employed by, an agent of, or a control person of the licensee or registrant.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Sam E. Randall

Clerk of the House of Representatives.

Approved _____

Governor.