

THE SECONDARY MORTGAGE LOAN ACT (EXCERPT)
Act 125 of 1981

493.56a Registration or license; expiration; renewal; filing financial statement; exemption; fees; failure to submit reports or fees; disposition of money received; "MBLSLA fund" defined; limitation on fees; annual report; additional reports; false statement as felony.

Sec. 6a. (1) A registration or license, unless it is renewed, expires on December 31 of each year. A person may renew a registration or license by filing an application for license or registration renewal and paying the annual operating fee for the succeeding year. The application and payment shall be received by the commissioner on or before a date prescribed by the commissioner.

(2) Not later than 90 days after close of the fiscal year of a licensee or registrant, the licensee or registrant shall annually deliver to the commissioner a financial statement for the fiscal year prepared from the licensee's or registrant's books and records. At the licensee's or registrant's option, the financial statement may be any of the following:

(a) On a form prescribed by the commissioner.

(b) A report substantially similar to the form prescribed by the commissioner, which the licensee or registrant represents to the commissioner to be true and complete.

(c) In a format prepared and certified by an independent certified public accountant licensed by a regulatory authority of any state or political subdivision of the United States.

(3) A registrant that is a licensee or registrant under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and that timely files with the commissioner the financial statement required under section 7 of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1657, is exempt from the filing requirement of subsection (2).

(4) At the time of making an initial application for a license under this act, and at the time of making the first application for a license after the suspension or revocation of a license, an applicant for a license shall pay to the commissioner a fee for investigating the applicant for a license and the annual operating fee established by the commissioner under subsection (5). To renew a license or registration that has not been suspended or revoked, the applicant shall only pay to the commissioner the annual operating fee.

(5) If an initial license or registration described in subsection (4) will have an effective date of July 1 or later, the initial annual operating fee for that license is 1/2 of the annual operating fee.

(6) The commissioner shall annually establish a schedule of fees that are sufficient to pay, but not to exceed, the reasonably anticipated costs of the office of financial and insurance regulation for administering and enforcing this act. The fee schedule shall include all of the following:

(a) For the investigation of an applicant for a license, a fee of not less than \$400.00 or more than \$1,000.00.

(b) Subject to subsection (5), an annual operating fee for each licensee or registrant, based upon the number of secondary mortgage loans the licensee or registrant brokered to other parties that were closed during the previous calendar year, the number of secondary mortgage loans closed by the licensee or registrant during the previous calendar year, and the dollar volume of secondary mortgage loans serviced by the licensee or registrant as of December 31 of the previous calendar year. The annual operating fee set by the commissioner under this subsection shall be based upon information in reports filed under subsection (13).

(c) For amending or reissuing a license or registration, a fee of not less than \$15.00 or more than \$200.00.

(d) A licensee or registrant shall pay the actual travel, lodging, and meal expenses incurred by employees of the office of financial and insurance regulation who travel out of state to examine or investigate the records of the licensee or registrant and the cost of independent investigators employed under section 6b(3)(e).

(7) Fees received under this act are not refundable.

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

(9) A licensee or registrant that fails to submit to the commissioner the reports as required by subsections (2) and (13) is subject to a penalty of \$25.00 for each day a required report is delinquent or \$1,000.00, whichever is less.

(10) A license or registration renewal fee that is not received on or before December 31 is subject to a penalty of \$25.00 for each day the fee is delinquent or \$1,000.00, whichever is less.

(11) Money received from the fees described in this section shall be deposited in the MBLSLA fund. As used in this subsection, "MBLSLA fund" means the restricted account created under section 8(8) of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1658.

(12) The annual operating fees set by the commissioner shall not exceed the levels needed to cover the

estimated cost of enforcement of this act.

(13) On or before a date to be determined by the commissioner, a licensee or registrant shall annually file with the commissioner a report giving information, as required by the commissioner, concerning the business and operations of the licensee or registrant under this act during the immediately preceding calendar year. In addition, the commissioner may require a licensee or registrant to file special reports as the commissioner considers reasonably necessary for the proper supervision of licensees or registrants under this act. Reports required under this section shall be in the form prescribed by the commissioner, signed, and affirmed. A person who willfully and knowingly subscribes and affirms a false statement in a report required under this subsection is guilty of a felony, punishable by imprisonment for not more than 15 years.

History: Add. 1997, Act 91, Imd Eff. Aug. 1, 1997;—Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008;—Am. 2009, Act 77, Eff. July 31, 2010.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act