

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

493.56b Powers of commissioner.

Sec. 6b. (1) The commissioner shall exercise general supervision and control over brokers, lenders, and servicers doing business in this state.

(2) In addition to the other powers granted by this act, the commissioner may do any of the following:

- (a) Deny an application for a license or registration.
- (b) Conduct examinations and investigations of any person, as necessary to enforce this act and the rules promulgated under this act.
- (c) Investigate complaints filed against licensees or registrants.
- (d) Advise the attorney general or the prosecuting attorney of a county in which a broker, lender, or servicer is conducting business that the commissioner believes a licensee, registrant, or other person is violating this act. The attorney general or prosecuting attorney shall bring a legal action to enjoin the operation of the business of the broker, lender, or servicer or prosecute violations of this act.
- (e) Bring an action in the Ingham county circuit court to enjoin a person from participating in, continuing to practice, or from engaging in a practice that is an unsafe or injurious practice or that violates this act or a rule promulgated under this act.
- (f) Order a person to cease and desist from a violation of this act or a rule promulgated under this act under section 14.
- (g) Suspend, revoke, or refuse to issue a license or registration under section 11.
- (h) Assess a civil fine under section 27.
- (i) Appoint a conservator under section 12a.
- (j) Issue an order to prohibit a person from being employed by, an agent of, or control person of, a licensee or registrant under section 14a.
- (k) Censure a licensee or registrant.

(3) In the conduct of any examination or investigation under this act, the commissioner may do any of the following:

- (a) Issue a subpoena under section 15.
- (b) Administer oaths under section 15.
- (c) Interrogate a person under oath concerning the business and conduct of affairs of a person subject to this act, and require the production of books, records, or papers relative to the inquiry.
- (d) Have free access during regular business hours to the offices, places of business, or other location where the licensee, registrant, or an affiliate of a licensee or registrant, maintains business-related documents, and to the books, accounts, papers, records, files, documents, safes, and vaults of a licensee or registrant. The information obtained during the examination or investigation is exempt from the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be available for public inspection or copying or divulged to any person except as follows:
 - (i) To the attorney general.
 - (ii) To a regulatory agency.
 - (iii) In connection with an enforcement action brought under this or another applicable act.
 - (iv) To law enforcement officials.
 - (v) To persons authorized by the Ingham county circuit court to receive the information.
- (e) Employ independent investigators to conduct a part or all of an investigation, in the case of an investigation other than an examination.

History: Add. 1997, Act 91, Imd. Eff. Aug. 1, 1997;—Am. 2002, Act 392, Imd. Eff. May 30, 2002;—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