

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

2001 Edition

2009 Summer
Supp.

West Group
Publisher

To amend, on a temporary basis, the Mortgage Lender and Broker Act of 1996 to provide for the District of Columbia's compliance with Title V of the Housing and Economic Recovery Act of 2008 by adding new definitions, providing for a new exemption, providing a new licensing category, providing new bases for application denial, providing for fees and other assessments to be set by rulemaking, authorizing the Commissioner of the Department of Insurance, Securities, and Banking to contract with third parties to collect fees and administer tests related to the licensing of mortgage brokers, lenders, and loan originators, and conforming other sections with the new licensing requirements.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Mortgage Lender and Broker Temporary Amendment Act of 2008".

Sec. 2. The Mortgage Lender and Broker Act of 1996, effective September 9, 1996 (D.C. Law 11-155; D.C. Official Code § 26-1101 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 26-1101) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase "to be occupied by the borrower as the borrower's primary residence".

(2) New paragraphs (1A) and (1B) are added to read as follows:

"(1A) "Clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

"(1B) "Commissioner" means the Commissioner of the Department of Insurance, Securities, and Banking."

(3) New paragraphs (2A), (2B), and (2C) are added to read as follows:

"(2A) "Conference of State Bank Supervisors" means the professional association of state officials responsible for chartering, regulating, and supervising state-chartered commercial and savings banks and state-licensed branches and agencies of foreign

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banks.

“(2B) “Depository institution” shall:

“(A) Have the same meaning as provided in section 3 of the Federal Deposit Insurance Act, approved September 21, 1950 (64 Stat. 873; 12 U.S.C. § 1813); and

“(B) Include any credit union.

“(2C) “Federal banking agency” 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, or the Federal Deposit Insurance Corporation.”.

(4) Paragraph (5)(A) is amended by striking the phrase “to be occupied by the borrower”.

(5) A new paragraph (5A) is added to read as follows:

“(5A) “Independent contractor” means an individual who is required to obtain and maintain a license under this act to engage in residential mortgage loan origination activities as a loan processor or underwriter.”.

(6) Paragraph (7) is amended by striking the phrase “mortgage lender” and inserting the phrase “mortgage loan originator, loan officer, mortgage lender” in its place.

(7) Paragraph (8) is amended by striking the phrase “mortgage lender” and inserting the phrase “mortgage loan originator, loan officer, mortgage lender” in its place.

(8) A new paragraph (9A) is added to read as follows:

“(9A) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee of and at the direction of, and subject to the supervision and instruction of, a person licensed, or exempt from licensing, under this act.

(9) Paragraph (12) is amended to read as follows:

“(12) “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 section 103(v) of the Truth in Lending Act, approved May 29, 1968 (82 Stat. 147; 15 U.S.C. § 1602(v)), or residential real estate upon which is constructed, or intended to be constructed, a dwelling.”.

(10) New paragraphs (12A-i), (12A-ii), and (12A-iii) are added to read as follows:

“(12A-i)(A) “Mortgage loan originator” or “loan officer” means an individual who:

“(i) Takes a residential mortgage application;

“(ii) Offers or negotiates terms of a residential mortgage loan; or

“(iii) Solicits, or offers to solicit, a mortgage loan on behalf of a borrower for compensation or gain.

“(B) The term shall not include:

“(i) An individual who is not otherwise described in subparagraph (A) of this paragraph;

“(ii) An individual or entity solely involved in extension of credit relating to timeshare plans, as defined in 11 U.S.C. § 101(53D).

“(iii) An individual who only performs real estate brokerage activities and is licensed or registered in accordance with District of Columbia law, unless the individual is compensated by a mortgage lender, a mortgage broker, mortgage loan originator, or loan officer, or by any agent of a mortgage lender, mortgage broker, mortgage loan originator, or loan officer.

“(12A-ii) “Mortgage uniform licensing form” means the SSR application form for mortgage brokers, mortgage lenders, and mortgage loan originators approved by the Commissioner.

“(12A-iii) “Nationwide Mortgage Licensing System and Registry” or “NMLSR” 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, mortgage lenders, mortgage brokers, and loan officers.”.

(11) New paragraphs (15A) and (15B) are added to read as follows:

“(15A) “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 subparagraph (A), (B), (C), or (D) of this paragraph.

“(15B) “Registered mortgage loan originator” or “Registered loan officer” means any individual who is:

“(A) A mortgage loan originator or loan officer;

“(B) An employee of:

“(i) A depository institution;

“(ii) A subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

“(iii) An institution regulated by the Farm Credit Administration; and

“(C) Registered with, and maintains a unique identifier through, the

NMLSR.”.

(12) Paragraph (16) is repealed.

(13) A new paragraph (16A) is added to read as follows:

“(16A) “SRR” means the limited liability corporation which owns and operates the NMLSR.”.

(14) New paragraphs (17A) and (17B) are added to read as follows:

“(17A) “Takes a residential mortgage loan application” means:

“(A) Recording the borrower’s application information in any form for use in a credit decision; or

“(B) Receiving the borrower’s application information in any form for use in a credit decision.

“(17B) “Unique identifier” means a number or other identifier assigned by protocols established by the NMLSR.”.

(b) Section 3 (D.C. Official Code § 26-1102) is amended as follows:

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(1) Paragraph (10) is amended by striking the phrase “; and” at the end of the paragraph and inserting a semicolon in its place.

(2) Paragraph (11) is amended by striking the period at the end of the paragraph and inserting the phrase “; and” in its place.

(3) A new paragraph (12) is added to read as follows:

“(12) Persons acting as registered mortgage loan originators, when acting for a federal banking agency.”.

(c) Section 4 (D.C. Official Code § 26-1103) is amended as follows:

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(1) Subsection (a) is amended to read as follows:

“(a)(1) No person shall engage in business as a mortgage loan originator, loan officer, mortgage lender, mortgage broker, or any permissible combination thereof, or hold himself out to the public to be a mortgage loan originator, loan officer, mortgage lender, mortgage broker, or any permissible combination thereof, unless such person has first obtained a license under this act. Each licensee shall register with and maintain a valid unique identifier issued by the NMLSR.

“(2) Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall have, and maintain, a valid unique identifier issued by the NMLSR.

“(3) An individual engaging solely in loan processor or underwriting activities, who does 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 shall not be required to obtain and maintain a license under this act.”.

(2) Subsection (b) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

“(1) Engage in business as a mortgage loan originator, loan officer, mortgage lender, or mortgage broker;”.

(B) Paragraph (3) is amended to read as follows:

“(3) Meet the minimum liquidity and capital requirements as prescribed by the Commissioner.”.

(3) A new subsection (c-1) is added to read as follows:

“(c-1) The Commissioner shall deny an application if the applicant has:

“(1) Had a mortgage loan originator license revoked by any governmental jurisdiction;

“(2) Been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for licensing and registration; or

“(3) At any time preceding such date of application, been convicted of, or pled guilty or nolo contendere to a felony, if such felony involved an act of fraud or dishonesty, a breach of trust, or money laundering.”.

(4) Subsection (d)(1) is amended to read as follows:

“(1) Complete and sign an application made under oath on the form that the Commissioner requires.”.

(5) Subsection (e)(7) is amended to read as follows:

“(7) Whether the applicant seeks a license to act as a mortgage loan originator, loan officer, mortgage lender, mortgage broker, or any permissible combination thereof; and”.

(6) Subsection (f) is amended to read as follows:

“(f) With each application for licensure, the applicant shall pay the applicable fees prescribed by the Commissioner and any third-party fees.”.

(7) Subsection (h) is amended as follows:

(A) Paragraph (2) is amended by striking the word “and” at the end of the paragraph.

(B) Paragraph (3) is amended by striking the period and inserting a semicolon in its place.

(C) Paragraph (3) is amended as follows:

(i) Designate the existing text as subparagraph (A).

(ii) A new subparagraph (B) is added to read as follows:

“(B) The applicant shall demonstrate that the applicant has met net worth and surety bond requirements or, as prescribed by the Commissioner, paid into a District of Columbia fund.”.

(D) New paragraphs (4) through (6) are added to read as follows:

“(4) Meet educational requirements prescribed by the Commissioner;

“(5) Provide proof of compliance with pre-licensure testing and post-licensure continuing education requirements as prescribed by the Commissioner; and

“(6) Comply with any other provision prescribed by the Commissioner.”.

(8) A new subsection (h-1) is added to read as follows:

“(h-1) The Commissioner shall require, by rule, that an applicant, and any such other person as the Commissioner considers appropriate, applying for licensure under this act, submit his name, contact information and other identifying information, fingerprints, written consent to a criminal background check, an independent credit report, and information related to any administrative, civil, or criminal findings by any governmental jurisdiction with the applicant’s application. For the purposes of this act, the Commissioner may use the NMLSR as an agent for requesting information from, and distributing information to, the Federal Bureau of Investigation, the Department of Justice, any governmental agency, or any source so directed by the Commissioner.”.

(9) Subsection (i) is amended as follows:

(A) Subparagraph (1)(A) is amended by striking the phrase “mortgage lenders or mortgage brokers” and inserting the phrase “mortgage lenders, mortgage brokers, mortgage loan originators, or loan officers” in its place.

(B) Paragraphs (2) through (4) are repealed.

(C) A new paragraph (6) is added to read as follows:

“(6) Surety bond requirements shall be prescribed by the Commissioner.”.

(d) Section 5 (D.C. Official Code § 26-1104) is amended as follows:

(1) Subsection (c) is amended by adding a new sentence at the end to read as follows:

“To assist in the performance of the Commissioner’s duties under this act, the Commissioner may contract with a third party, including the SRR, the Conference of State Bank Supervisors, or its affiliates or subsidiaries, to perform any functions, including the collection of licensing and processing fees, collection of contact information and other identifying information, fingerprints, written consent to a criminal background check, personal history and experience, and conduct of examinations related to mortgage loan originator, loan officer, mortgage lender, or mortgage broker activities, that the Commissioner may consider appropriate.”.

(2) Subsection (d)(1) is amended by striking the phrase “mortgage lender or mortgage broker” and inserting the phrase “mortgage lender, mortgage broker, mortgage loan originator, or loan officer” in its place.

(e) Section 8(d) (D.C. Official Code § 26-1107(d)) is amended as follows:

(1) Paragraphs (1) and (2) are repealed.

(2) New paragraphs (3) and (4) are added to read as follows:

“(3) With each renewal application, the applicant shall demonstrate that the applicant continues to meet the minimum standards for license issuance under this act and that the applicant has satisfied the annual continuing education requirements under this act.

“(4) With each renewal application, the applicant shall pay all applicable fees and assessments as prescribed by the Commissioner and all third-party fees.”.

(f) Section 10(d) (D.C. Official Code § 26-1109(d)) is amended by striking the phrase

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“mortgage broker” and inserting the phrase “independent contractor or mortgage broker” in its place.

(g) Section 13 (D.C. Official Code § 26-1112) is amended by adding new subsections (f), (g), (h), and (i) to read as follows:

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“(f) To carry out the purposes of this section, the Commissioner may do any of the following:

“(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 to improve efficiencies and reduce regulatory burdens 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 licensee or person subject to this act;

“(4) Accept and rely on examination or investigation reports made by other government officials within or without the District of Columbia;

“(5) Accept audit reports made by an independent certified public accountant for the licensee, or person subject to this act, in the course of an 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;

“(6) Assess the licensee, or person subject to this act, the cost of the services in paragraph (1) of this subsection.”.

“(g) This section shall remain in effect whether such licensee, or person subject to this act, acts or claims to act under any licensing or registration law of the District of Columbia, or claims to act without such authority.

“(h) No licensee, or person subject to investigation or examination under this section, shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

“(i) All examination fees shall be prescribed by the Commissioner.”.

(h) Section 14 (D.C. Official Code § 26-1113) is amended as follows:

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(1) Subsection (a)(1) is amended by striking the phrase “to be occupied by the borrower”.

(2) Subsection (a-1) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

“(a-1)(1) Within 3 business days of an application for a non-conventional mortgage loan, the licensee shall provide to the borrower the written disclosures executed by the lender that are required under this section.”.

(B) Paragraph (3)(J) through (L) are amended to read as follows:

“(J) \$_____/month = Your principal + initial interest + taxes and insurance.

“(K) \$_____/month = Your principal + adjusted interest + taxes and insurance.

“(L) \$_____/month = Your principal + maximum interest + taxes and insurance.”.

(C) Paragraph (9) is amended to read as follows:

“(9) Within 5 business days of receiving the information pursuant to this section, the borrower may cancel the application for a mortgage loan with no loss of any security deposit or any other funds applied to guarantee an interest rate, not including reasonable fees incurred to process the application. The borrower shall be notified of this right to cancel at the time the information pursuant to this section is provided.”.

(i) Section 15 (D.C. Official Code § 26-1114) is amended as follows:

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(1) Subsection (a) is amended as follows:

(A) The lead-in text is amended by striking the phrase “mortgage broker or lender” wherever it appears and inserting the phrase “mortgage broker, mortgage lender, mortgage loan originator, or loan officer” in its place.

(B) Paragraph (11) is amended to read as follows:

“(11) Engage in the business as a mortgage loan originator, mortgage lender, loan officer, or mortgage broker, or hold himself out to the public to be a mortgage loan originator, loan officer, mortgage lender, or mortgage broker, without a license under section 5 or without an exemption under section 3.”.

(2) A new subsection (d) is added to read as follows:

“(d) A mortgage loan originator or loan officer required to be licensed under this act shall not:

“(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 or individual subject to this act 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) Assist or aid or abet any person in the conduct of business under this act without a valid license as required under this act;

“(7) Fail to make disclosures as required by this act and any other applicable federal or District law, including regulations thereunder;

“(8) Fail to comply with this act or rules promulgated under this act, or fail to

comply with any other federal or District law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this act;

“(9) Make, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, 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 NMLSR or in connection with any investigation 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 act;

“(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.”.

(j) Section 17 (D.C. Official Code § 26-1116) is amended as follows:

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(1) The lead-in text is amended by striking the phrase “mortgage lender or mortgage broker” and inserting the phrase “mortgage lender, mortgage broker, mortgage loan originator, or loan officer” in its place.

(2) Paragraph (2) is amended by striking the phrase “lender or broker” and inserting the phrase “mortgage lender, mortgage broker, mortgage loan originator, or loan officer” in its place.

(k) Section 19(b)(2) (D.C. Official Code § 26-1118(b)(2)) is amended by striking the phrase “\$1,000” and inserting the phrase “\$25,000” in its place.

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(l) Section 21 (D.C. Official Code § 26-1120) is amended by striking the phrase “mortgage lender or mortgage broker” and inserting the phrase “mortgage lender, mortgage broker, mortgage loan originator, or loan officer” in its place.

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(m) New sections 22a, 22b, and 22c are added to read as follows:

“ Sec. 22a. Confidential information.

“(a) To assist in the performance of the Commissioner’s duties under this act, the Commissioner may:

“(1) Share documents, materials, or other information, including confidential and privileged documents, materials, or information subject to this act, with other local, state, federal, and international regulatory agencies, with the Conference of State Bank Supervisors,

SRR, NMLSR, their affiliates, or subsidiaries, or with state, federal, and international law enforcement authorities; provided, that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

“(2) Receive documents, materials, or information, including confidential and privileged documents, materials, or other information, from the Conference of State Bank Supervisors, SRR, NMLSR, their affiliates, or subsidiaries, or from regulatory and law enforcement officials of foreign or other domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information;

“(3) Enter into agreements with the entities set forth in paragraph (1) of this subsection governing sharing and use of information consistent with the act; or

“(4) Authorize a national criminal background check and submission of fingerprints and other identifying information, submitted through the NMLSR, and other information with, and receive criminal history record information from, the NMLSR, the Metropolitan Police Department, and the Federal Bureau of Investigation for the purposes of facilitating determinations regarding eligibility for licensure under this act.

“Sec. 22b. Nationwide Mortgage Licensing System and Registry reporting requirements.

“(a) The Commissioner shall regularly report violations of this act, as well as enforcement actions and other relevant information, to the NMLSR. The reports shall be subject to the provisions of section 22a.

“(b) Each licensee shall submit to the NMLSR reports of condition, which shall be in such form and shall contain such information as the NMLSR may require.

“Sec. 22c. Nationwide Mortgage Licensing System and Registry information challenge process.

“The Commissioner shall establish a process whereby licensees may challenge information entered into the NMLSR by the Commissioner.”.

Sec. 3. Applicability.

Except for section 2(c)(1), (g), (j), and (l), this act shall not apply until the Commissioner of the Department of Insurance, Securities, and Banking (“Commissioner”) has promulgated rules implementing this act. The mortgage loan originator requirements shall not apply until such time as the District of Columbia, through the Commissioner, has become a part of the Nationwide Mortgage Licensing System and Registry (“NMLSR”) and the NMLSR is operational to receive and process applications for licensing of District of Columbia loan originators or by December 31, 2009, whichever is later.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia