

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 26.
BANKS AND OTHER FINANCIAL
INSTITUTIONS.

CHAPTER 11.
MORTGAGE LENDERS AND BROKERS.

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DISTRICT OF COLUMBIA OFFICIAL CODE
CHAPTER 11. MORTGAGE LENDERS AND BROKERS.

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CHAPTER 11. MORTGAGE LENDERS AND BROKERS.

§ 26-1101. DEFINITIONS.

For the purposes of this chapter, the term:

(1) "Borrower" means a person who submits an application for a loan secured by a first or subordinate mortgage or deed of trust on a single to 4-family home.

(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.

(2) "Commitment" means a written, specific, binding agreement between a borrower and a lender which sets forth the terms of the loan being extended to the borrower.

(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 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.

(3) "District" means the District of Columbia.

(3A) "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) "Federally approved seller-servicers" means a mortgage lender that has been approved as a seller-servicer by:

(A) The Federal Home Loan Mortgage Corporation;

(B) The Federal National Mortgage Association; or

(C) The Government National Mortgage Association.

(5) "Financing agreement" means a written agreement between a borrower and a lender which sets forth the terms of a purchase money loan or a refinancing of an existing loan that:

(A) Results in or is secured by a first or subordinate mortgage or deed of trust on a single to 4-family home; and

(B) Is offered or extended to the borrower.

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

(6) "Interest in real property" includes:

(A) A confessed judgment note or consent judgment required or obtained by any person acting as a mortgage lender or mortgage broker for the purpose of acquiring a lien on residential real property;

(B) A sale and leaseback required or obtained by any person acting as a mortgage lender or mortgage broker for the purpose of creating a lien on residential real property;

(C) A mortgage, deed of trust, or lien other than a judgment lien, on residential real property; and

(D) Any other security interest that has the effect of creating a lien on residential real property in the District of Columbia.

(7) "License" means a license issued by the Superintendent under this chapter to authorize a person to engage in business as a mortgage loan originator, loan officer, mortgage lender, or mortgage broker.

(8) "Licensee" means a person who is licensed as a mortgage loan originator, loan officer, mortgage lender, or mortgage broker under this chapter.

(9) "Loan application" means the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a pre-qualification and not an application for a mortgage loan. The subsequent addition of an identified property to the submission converts the submission to an application for a mortgage loan.

(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 chapter.

(10) "Mortgage broker" means any person who, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly accepts or offers to accept an application for a mortgage loan, solicits or offers to solicit a mortgage loan on behalf of a borrower, or negotiates or offers to negotiate the terms and conditions of a mortgage loan on behalf of a lender.

(11) "Mortgage lender" means:

(A) Any person who:

(i) Repealed.

(ii) Makes a mortgage loan to any person; or

(iii) Engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to any other person.

(B) A mortgage lender does not include:

(i) A financial institution that accepts deposits and is regulated under this title;

(ii) The Federal Home Loan Mortgage Corporation;

(iii) The Federal National Mortgage Association;

(iv) The Government National Mortgage Association; or

(v) Any person engaged exclusively in the acquisition of all or any portion of a mortgage loan under any federal, state, or local governmental program of mortgage loan purchases.

(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.

(12A) "Non-conventional mortgage loan" means any mortgage loan that is not a fixed-rate mortgage loan with an amortization period of 30 years or less.

(12B)(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); or

(iii) An individual who only performs real estate brokerage activities and is licensed or registered in accordance with District of Columbia law, unless the person 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.

(12C) "Mortgage uniform licensing form" means the SSR application form for mortgage brokers, mortgage lenders, and mortgage loan originators approved by the Commissioner.

(12D) "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.

(13) "Nonprofit corporation" means a corporation no part of the income of which is distributable to its members, directors or officers. Nothing in this chapter shall be construed as prohibiting the payment of reasonable compensation for services rendered and the making of distribution upon dissolution of final liquidation.

(14) "Person" means an individual, firm, corporation, business trust, estate, trust, partnership, association, 2 or more persons having a joint or common interest, or any other legal or commercial entity, or group of individuals however organized.

(15) "Principal" means any person who, directly or indirectly, owns or controls 10% or more of the outstanding stock of a stock corporation or 10% or greater interest in a nonstock corporation or a limited liability company.

(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.

(16) Repealed.

(16A) "Sponsor" means the licensed mortgage lender or mortgage broker with whom the mortgage loan originator is employed or associated.

(16B) "SRR" means the limited liability corporation which owns and operates the NMLSR.

(17) "Superintendent" means the Superintendent of the District of Columbia Office of Banking and Financial Institutions.

(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.

(18) "Washington, D.C. metropolitan region" means the District of Columbia, the counties of Montgomery and Prince Georges in the State of Maryland, the counties of Arlington and Fairfax, and the cities of Alexandria and Falls Church in the Commonwealth of Virginia.

(Sept. 9, 1996, D.C. Law 11-155, § 2, 43 DCR 4213; June 6, 1998, D.C. Law 12-116, § 2(a), 45 DCR 1959; Jan. 29, 2008, D.C. Law 17-90, § 2(a), 54 DCR 11925; July 18, 2009, D.C. Law 18-38, § 2(a), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1001.

Effect of Amendments

D.C. Law 17-90 added par. (12A).

D.C. Law 18-38, in par. (1), deleted "to be occupied by the borrower as the borrower's primary residence" following "home"; added pars. (1A), (1B), (2A), (2B), (3A), (5A), (9A), (12B), (12C), (12D), (15A), (15B), (16A), (16B), (17A), and (17B); in par. (5)(A), deleted "to be occupied by the borrower" following "home"; in pars. (7) and (8), substituted "mortgage loan originator, loan officer, mortgage lender," for "mortgage lender"; rewrote par. (12); and repealed par. (16). Prior to amendment or repeal, pars. (12) and (16) read as follows:

"(12) 'Mortgage loan' means any loan or other extension of credit that is secured, in whole or in part, by any interest in residential real property in the District of Columbia."

"(16) 'Residential real property' means any owner-occupied real property located in the District of Columbia, which property has a dwelling on it designed principally as a residence with accommodations for not more than 4 families. This term does not include any real property held primarily for rental, investment, or the generation of income through any commercial or industrial enterprise."

Temporary Amendments of Section

Section 2(a) of D.C. Law 12-3 rewrote (9); and repealed (11)(A)(i).

Section 6(b) of D.C. Law 12-3 provides that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 12-101 rewrote (9); and repealed (11)(A)(i).

Section 6(b) of D.C. Law 12-101 provides that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 17-350, in par. (1), deleted "to be occupied by the borrower as the borrower's primary residence"; added pars. (1A), (1B), (2A), (2B), (2C) 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."

"(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 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."

; in par. (5)(A), deleted "to be occupied by the borrower"; added par. (5A) 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."

; in pars. (7) and (8), substituted "mortgage loan originator, loan officer, mortgage lender" for "mortgage lender"; added par. (9A), amended par. (12), added pars. (12A-i), (12A-ii), (12A-iii), (15A), and (15B) 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."

"(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."

"(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.

"(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."

; repealed par. (16); and added pars. (16A), (17A), and (17B) to read as follows:

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

"(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."

Section 5(b) of D.C. Law 17-350 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary amendment of section, see § 2(a) of the Mortgage Lender and Broker Act of 1996 Emergency Amendment Act of 1997 (D.C. Act 12-23, March 3, 1997, 44 DCR 1773), § 2(a) of the Mortgage Lender and Broker Act of 1996 Second Emergency Amendment Act of 1997 (D.C. Act 12-245, January 13, 1998, 45 DCR 656), and § 2(a) of the Mortgage Lender and Broker Act of 1996 Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-308, March 20, 1998, 45 DCR 1920).

For temporary (90 day) amendment of section, see § 2(a) of Mortgage Lender and Broker Emergency Amendment Act of 2008 (D.C. Act 17-617, December 22, 2008, 56 DCR 189).

For temporary (90 day) amendment of section, see § 2(a) of Mortgage Lender and Broker Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-31, March 16, 2009, 56 DCR 2327).

Legislative History of Laws

Law 11-155, the "Mortgage Lender and Broker Act of 1996," was introduced in Council and assigned Bill No. 11-637, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on May 7, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 19, 1996, it was assigned Act No. 11-309 and transmitted to both Houses of Congress for its review. D.C. Law 11-155 became effective on September 9, 1996.

Law 12-3, the "Mortgage Lender and Broker Act of 1996 Temporary Amendment Act of 1997," was

introduced in Council and assigned Bill No. 12-82. The Bill was adopted on first and second readings on February 4, 1997, and March 4, 1997, respectively. Signed by the Mayor on March 19, 1997, it was assigned Act No. 12-45 and transmitted to both Houses of Congress for its review. D.C. Law 12-3 became effective on May 23, 1997.

Law 12-101, the "Mortgage Lender and Broker Act of 1996 Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-475. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 27, 1998, it was assigned Act No. 12-277 and transmitted to both Houses of Congress for its review. D.C. Law 12- 101 became effective on April 30, 1998.

Law 12-116, the "Mortgage Lender and Broker Act of 1996 Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-426, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on February 3, 1998, and March 3, 1998, respectively. Signed by the Mayor on March 17, 1998, it was assigned Act No. 12-313 and transmitted to both Houses of Congress for its review. D.C. Law 12-116 became effective on June 6, 1998.

Law 17-90, the "Mortgage Disclosure Amendment Act of 2007", was introduced in Council and assigned Bill No. 17-167 which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on October 2, 2007, and November 6, 2007, respectively. Signed by the Mayor on November 27, 2007, it was assigned Act No. 17-208 and transmitted to both Houses of Congress for its review. D.C. Law 17-90 became effective on January 29, 2008.

Law 18-38, the "Mortgage Lender and Broker Amendment Act of 2009", was introduced in Council and assigned Bill No. 18-133, which was referred to the Committee on Public Service and Consumer Affairs. The Bill was adopted on first and second readings on April 7, 2009, and May 5, 2009, respectively. Signed by the Mayor on May 21, 2009, it was assigned Act No. 18-89 and transmitted to both Houses of Congress for its review. D.C. Law 18-38 became effective on July 18, 2009.

Miscellaneous Notes

Section 4 of D.C. Law 17-90 provides that section 2 shall apply 30 days after the effective date of this act.

§ 26-1102. EXEMPTIONS.

The provisions of this chapter shall not apply to:

- (1) Any bank, trust company, savings bank, savings and loan association, or credit union incorporated or chartered under the laws of the United States, any state or territory of the United States, or the District, and any other financial institution incorporated or chartered under the laws of the District or of the United States, that accepts deposits and is regulated under Title 26 of the District of Columbia Official Code.
- (2) Any insurance company authorized to do business in the District;
- (3) Any corporate instrumentality of the United States government including:
 - (A) The Federal Home Loan Mortgage Corporation;
 - (B) The Federal National Mortgage Association; and
 - (C) The Government National Mortgage Association;
- (4) Repealed.
- (5) Any person who takes back a deferred purchase money mortgage in connection with the sale of:
 - (A) Residential real property owned by, and titled in the name of, that person; or
 - (B) A new residential dwelling that the person built.
- (6) A person making a mortgage loan to a borrower who is the person's spouse, child, child's spouse, parent, sibling, grandparent, grandchild, or grandchild's spouse;
- (7) Nonprofit corporations making mortgage loans to promote home ownership or improvements for very low, lower, and moderate income households as defined in Chapter 25 of Title 14 of the District of Columbia Municipal Regulations;
- (8) Agencies of the federal government, the District, or any state or municipal government, or any quasi-governmental agency making mortgage loans under the specific authority of the laws or regulations of any state, the District, or the United States, including, without limitation, the Housing Finance Agency of the District of Columbia with respect to its activities in offering, accepting, completing, and processing mortgage loan applications under its programs;
- (9) Persons acting as fiduciaries with respect to any employee pension benefit plan qualified under the Internal Revenue Code who make mortgage loans solely to plan participants from plan assets;
- (10) Persons licensed by the District of Columbia as attorneys, real estate brokers, or real estate

salespersons, not actively and principally engaged in negotiating, placing, or finding mortgage loans, when rendering services as an attorney, real estate broker, or real estate salesperson; however, a real estate broker or a real estate salesperson who receives any fee, commission, kickback, rebate, or other payment for directly or indirectly negotiating, placing, or finding a mortgage loan for others shall not be exempt from the provisions of this chapter;

(11) Persons acting in a fiduciary capacity conferred by authority of any court; and.

(12) Persons acting as registered mortgage loan originators.

(Sept. 9, 1996, D.C. Law 11-155, § 3, 43 DCR 4213; June 6, 1998, D.C. Law 12-116, § 2(b), 45 DCR 1959; May 7, 2002, D.C. Law 14-132, § 601(a)(1), 49 DCR 2551; July 18, 2009, D.C. Law 18-38, § 2(b), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1002.

Effect of Amendments

D.C. Law 14-132 repealed par. (4) which had read as follows:

"(4) Any person who makes or brokers 3 or fewer mortgage loans per calendar year;"

D.C. Law 18-38, rewrote par. (1); in par. (10), deleted "and" from the end; in par. (11), substituted "; and" for a period at the end; and added par. (12). Prior to amendment, par. (1) read as follows:

"(1) Any bank, trust company, savings bank, savings and loan association, or credit union incorporated or chartered under the laws of the United States, any state or territory of the United States, or the District, and any other financial institution incorporated or chartered under the laws of the District or of the United States, that accepts deposits and is regulated under this title, and subsidiaries and affiliates of such entities which maintain their principal office or a branch office in the District of Columbia and in which the lender, subsidiary, or affiliate is subject to the general supervision or regulation of, or subject to audit or examination by, a regulatory body or agency of the United States, any state or territory of the United States, or the District;"

Temporary Amendments of Section

Section 2(b) of D.C. Law 17-350, in par. (10), substituted a semicolon for "; and"; in par. (11), substituted "; and" for a period; and added par. (12) to read as follows:

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

Section 5(b) of D.C. Law 17-350 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 601(a)(1) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

For temporary (90 day) amendment of section, see § 2(b) of Mortgage Lender and Broker Emergency Amendment Act of 2008 (D.C. Act 17-617, December 22, 2008, 56 DCR 189).

For temporary (90 day) amendment of section, see § 2(b) of Mortgage Lender and Broker Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-31, March 16, 2009, 56 DCR 2327).

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

For legislative history of D.C. Law 12-116, see Historical and Statutory Notes following § 26-1101.

For Law 14-132, see notes following § 26-603.

For Law 18-38, see notes following § 26-1101.

References in Text

The Internal Revenue Code, referred to in (9), is codified as Title 26 of the U.S. Code.

§ 26-1103. LICENSE REQUIREMENTS.

(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 chapter. 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 chapter.

(b) To qualify for a license, an applicant shall satisfy the Superintendent that the applicant, including its members, officers, directors, and principals is of good moral character and has sufficient financial responsibility, business experience, and general fitness to:

- (1) Engage in business as a mortgage loan originator, loan officer, mortgage lender, or mortgage broker;
- (2) Warrant the belief that the business will be conducted lawfully, honestly, fairly, and efficiently; and
- (3) Meet the minimum liquidity and capital requirements as prescribed by the Commissioner.

(b-1) An applicant for a mortgage loan originator's license shall have a sponsor.

(c) The Superintendent may deny an application for a license to any person who has committed any act prior to the granting of the license that would be a ground for suspension or revocation of a license under this chapter.

(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 the 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.

(d) To apply for a license an applicant shall:

- (1) Complete and sign an application made under oath on the form that the Commissioner requires;
- (2) Comply with all conditions and provisions of the application for licensure.

(e) The application shall include:

- (1) If the applicant is an individual, the applicant's name, business address, and telephone number, and residential address and telephone number;
- (2) If the applicant is a partnership, limited liability company, or other noncorporate business association, the business name, business address, and telephone number, and the residential address and telephone number of each:
 - (A) General partner, if the applicant is a limited partnership;
 - (B) General partner who holds an interest in the partnership of more than 10%, if the applicant is a general partnership; or
 - (C) Member, if the applicant is a limited liability company or a noncorporate business association;
- (3) If the applicant is a corporation:
 - (A) The name, address, and telephone number of the corporate entity; and
 - (B) The name, business telephone number, and residential address and telephone number of the president, senior vice presidents, secretary, and treasurer, each director and each stockholder owning or controlling 10% or more of any class of stock in the corporation;
- (4) The name under which the mortgage lender or mortgage broker business is to be conducted;
- (5) The name and address of the applicant's registered agent, if any;
- (6) The address of the location of the business to be licensed;
- (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
- (8) Such other information concerning the financial responsibility, background, experience, and activities of the applicant and its members, officers, directors, and principals as the Superintendent may require.

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

(g) The Superintendent may, from time to time, increase or decrease the fees set forth in this section. The fees shall be fixed at such rates, and computed on such bases and in such manner as may, in the judgement of the Superintendent, be necessary to defray the approximate costs of carrying out the

regulatory functions set forth in this chapter. These fees shall not be abated by surrender, suspension, or revocation of a license.

(h) For each license for which an applicant applies, the applicant shall:

- (1) Submit a separate application;
- (2) Pay a separate license fee;
- (3)(A) File a separate surety bond or other financial guaranty under subsection (i) of this section;
(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;
- (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 requirement prescribed by the Commissioner.

(h-1)(1) The Commissioner shall require, by rule, that an applicant applying for licensure under this chapter, and any such other person as the Commissioner considers appropriate, 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.

(2) For the purposes of this chapter, 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.

(h-2) The Commissioner may waive or defer any licensing requirement, other than requirements mandated by sections 1505, 1506, and 1508 (d) of the Housing and Economic Recovery Act of 2008, approved July 30, 2008 (122 Stat. 2816; 12 U.S.C. § 5105, 5106, and 5108 (d)), for good cause shown in writing.

(i) An applicant for an original license or for the renewal of a license shall file a surety bond with each original application and any renewal application for the license.

(1) The surety bond shall:

- (A) Run to the Commissioner for the benefit of the District and any person who has been damaged by a licensee as a result of violating any law or regulation governing the activities of mortgage loan originators, mortgage lenders, or mortgage brokers;
- (B) Be issued by a surety company authorized to do business in the District;
- (C) Be conditioned upon the applicant complying with all District laws regulating the activities of mortgage lenders, mortgage brokers, and mortgage loan lending and performing all written agreements with borrowers or prospective borrowers, accounting for all funds received by the licensee in conformity with a standard system of accounting consistently applied; and
- (D) Be continuously maintained thereafter for as long as any license issued under this chapter remains in force.

(2) Repealed.

(3) Repealed.

(4) Repealed.

(5) Any person who may be damaged by noncompliance of a licensee with any condition of such bond may proceed on such bond against the principal or surety thereon, or both, to recover damages. Regardless of the number of years the bond remains in effect, the number of premiums paid, the number of renewals of the license, or the number of claims made, the aggregate liability under the bond shall not exceed the penal sum of the bond.

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

(j) Any license issued pursuant to this section shall be issued as a Financial Services endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47 of the District of Columbia Official Code.

(Sept. 9, 1996, D.C. Law 11-155, § 4, 43 DCR 4213; June 6, 1998, D.C. Law 12-116, § 2(c), 45 DCR 1960; Apr. 20, 1999, D.C. Law 12-261, § 2003(s), 46 DCR 3142; Oct. 3, 2001, D.C. Law 14-28, § 3202(a), 48 DCR 6981; Oct. 28, 2003, D.C. Law 15-38, § 3(r), 50 DCR 6913; July 18, 2009, D.C. Law 18- 38, § 2(c), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1003.

D.C. Law 14-28 rewrote subsec. (f)(3), which had read:

"(3) A license fee of \$500."

D.C. Law 15-38, in subsec. (j), substituted "Financial Services endorsement to a basic business license under the basic" for "Class A Financial Services endorsement to a master business license under the master".

D.C. Law 18-38 rewrote the section, which had read as follows:

"(a) No person shall engage in business as a mortgage lender or mortgage broker, or both, or hold himself out to the public to be a mortgage lender or mortgage broker for 60 days after September 9, 1996, unless such person has first obtained a license under this chapter.

"(b) To qualify for a license, an applicant shall satisfy the Superintendent that the applicant, including its members, officers, directors, and principals is of good moral character and has sufficient financial responsibility, business experience, and general fitness to:

"(1) Engage in business as a mortgage lender or mortgage broker;

"(2) Warrant the belief that the business will be conducted lawfully, honestly, fairly, and efficiently; and

"(3) In the case of an applicant for a license to act as a mortgage lender, capitalize the business by maintaining at least \$200,000 of funds available, and in the case of an applicant for a license to act as a mortgage broker, capitalize the business by maintaining at least \$10,000 of funds available.

"(c) The Superintendent may deny an application for a license to any person who has committed any act prior to the granting of the license that would be a ground for suspension or revocation of a license under this chapter.

"(d) To apply for a license an applicant shall:

"(1) Complete, sign, and submit to the Superintendent an application made under oath on the form that the Superintendent requires; and

"(2) Comply with all conditions and provisions of the application for licensure.

"(e) The application shall include:

"(1) If the applicant is an individual, the applicant's name, business address, and telephone number, and residential address and telephone number;

"(2) If the applicant is a partnership, limited liability company, or other noncorporate business association, the business name, business address, and telephone number, and the residential address and telephone number of each:

"(A) General partner, if the applicant is a limited partnership;

"(B) General partner who holds an interest in the partnership of more than 10%, if the applicant is a general partnership; or

"(C) Member, if the applicant is a limited liability company or a noncorporate business association;

"(3) If the applicant is a corporation:

"(A) The name, address, and telephone number of the corporate entity; and

"(B) The name, business telephone number, and residential address and telephone number of the president, senior vice presidents, secretary, and treasurer, each director and each stockholder owning or controlling 10% or more of any class of stock in the corporation;

"(4) The name under which the mortgage lender or mortgage broker business is to be conducted;

"(5) The name and address of the applicant's registered agent, if any;

"(6) The address of the location of the business to be licensed;

"(7) Whether the applicant seeks a license to act as a mortgage lender, mortgage broker, or both; and

"(8) Such other information concerning the financial responsibility, background, experience, and activities of the applicant and its members, officers, directors, and principals as the Superintendent may require.

"(f) With each application, the applicant shall pay to the Superintendent:

"(1) A nonrefundable investigation fee of \$100;

"(2) A nonrefundable application fee of \$500; and

"(3) A license fee of \$500 for a mortgage broker license, \$600 for a mortgage lender license, or \$700 for a dual mortgage broker and lender license.

"(g) The Superintendent may, from time to time, increase or decrease the fees set forth in this section. The fees shall be fixed at such rates, and computed on such bases and in such manner as may, in the judgement

of the Superintendent, be necessary to defray the approximate costs of carrying out the regulatory functions set forth in this chapter. These fees shall not be abated by surrender, suspension, or revocation of a license.

"(h) For each license for which an applicant applies, the applicant shall:

"(1) Submit a separate application;

"(2) Pay a separate license fee; and

"(3) File a separate surety bond or other financial guaranty under subsection (i) of this section.

"(i) An applicant for an original license or for the renewal of a license shall file a surety bond with each original application and any renewal application for the license.

"(1) The surety bond shall:

"(A) Run to the Superintendent for the benefit of any person who has been damaged by a licensee as a result of violating any law or regulation governing the activities of mortgage lenders or mortgage brokers;

"(B) Be issued by a surety company authorized to do business in the District;

"(C) Be conditioned upon the applicant complying with all District laws regulating the activities of mortgage lenders, mortgage brokers, and mortgage loan lending and performing all written agreements with borrowers or prospective borrowers, accounting for all funds received by the licensee in conformity with a standard system of accounting consistently applied; and

"(D) Be continuously maintained thereafter for as long as any license issued under this chapter remains in force.

"(2) If an applicant has not conducted business in the District in any of the 3 calendar years preceding the year in which an original application for a license is filed, the surety bond required under this subsection shall be in the amount of \$12,500.

"(3) If an applicant has conducted business as a mortgage lender or mortgage broker in the District in any of the 3 calendar years preceding the year in which an original or renewal application is filed, the applicant shall provide a sworn statement setting forth the total dollar amount of mortgage loans applied for and accepted or mortgage loans applied for, procured, and accepted by the mortgage lender or mortgage broker during the latest calendar year such business was conducted. The bond required in this circumstance shall be determined as follows:

"(A) Where the total dollar amount of stated loans was \$1,000,000 or less, the bond shall be in the amount of \$12,500;

"(B) Where the total dollar amount of stated loans was more than \$1,000,000 but not more than \$2,000,000, the bond shall be in the amount of \$17,500;

"(C) Where the total dollar amount of stated loans was more than \$2,000,000 but not more than \$3,000,000, the bond shall be in the amount of \$25,000; and

"(D) Where the total dollar amount of stated loans was more than \$3,000,000, the bond shall be in the amount of \$50,000.

"(4) Subject to approval by the Superintendent, if an applicant files 4 or more original or renewal applications at the same time, the applicant may provide a blanket surety bond for all licensed offices in the amount of \$200,000.

"(5) Any person who may be damaged by noncompliance of a licensee with any condition of such bond may proceed on such bond against the principal or surety thereon, or both, to recover damages. The aggregate liability under the bond shall not exceed the penal sum of the bond.

"(j) Any license issued pursuant to this section shall be issued as a Financial Services endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47 of the District of Columbia Official Code."

Temporary Amendments of Section

Section 2(c) of D.C. Law 17-350 rewrote subsecs. (a), (b)(1), and (b)(3) 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."

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

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

; added subsec. (c-1) 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."

; rewrote subsecs. (d)(1), (e)(7), and (f) to read as follows:

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

"(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"

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

; in subsec. (h)(2), deleted "and" at the end; in subsec. (h)(3), substituted a semicolon for a period, designated the existing text as subpar. (A) and added subpar. (B) 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."

; added subsecs. (h)(4) through (6) 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."

; added subsec. (h-1) 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."

; in subsec. (i), substituted "mortgage lenders, mortgage brokers, mortgage loan originators, or loan officers" for "mortgage lenders or mortgage brokers" in par. (1)(A), repealed pars. (2) through (4), and added par. (6) to read as follows:

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

Section 5(b) of D.C. Law 17-350 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary amendment of section, see § 2(a) of the Mortgage Lender and Broker Act of 1996 Time Extension Emergency Act of 1996 (D.C. Act 11-439, December 4, 1996, 44 DCR 6656), and § 2(a) of the Mortgage Lender and Broker Act of 1996 Time Extension Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-21, March 3, 1997, 44 DCR 1768).

For temporary amendment of section, see § 2(b) of the Mortgage Lender and Broker Act of 1996 Emergency Amendment Act of 1997 (D.C. Act 12-23, March 3, 1997, 44 DCR 1773), § 2(b) of the Mortgage Lender and Broker Act of 1996 Second Emergency Amendment Act of 1997 (D.C. Act 12-245, January 13, 1998, 45 DCR 656), and § 2(b) of the Mortgage Lender and Broker Act of 1996 Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-308, March 20, 1998, 45 DCR 1920).

For temporary (90 day) amendment of section, see § 2902 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 3(r) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

For temporary (90 day) amendment of section, see § 2(c) of Mortgage Lender and Broker Emergency Amendment Act of 2008 (D.C. Act 17-617, December 22, 2008, 56 DCR 189).

For temporary (90 day) amendment of section, see § 2(c) of Mortgage Lender and Broker Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-31, March 16, 2009, 56 DCR 2327).

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

For legislative history of D.C. Law 12-3, see Historical and Statutory Notes following § 26-1101.

For legislative history of D.C. Law 12-101, see Historical and Statutory Notes following § 26-1101.

For legislative history of D.C. Law 12-116, see Historical and Statutory Notes following § 26-1101.

Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

For Law 14-28, see notes following § 26-131.10.

For Law 15-38, see notes following § 26-901.

For Law 18-38, see notes following § 26-1101.

Miscellaneous Notes

Temporary amendment of section: Section 2(b) of D.C. Law 12-3, in (b)(3), substituted "maintaining" for "having" twice.

Section 6(b) of D.C. Law 12-3 provides that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 12-101, in (b)(3), substituted "maintaining" for "having" twice.

Section 6(b) of D.C. Law 12-101 provides that the act shall expire after 225 days of its having taken effect.

Fees credited to the Office of Banking and Financial Institutions Enterprise Fund: Section 1804(4) of D.C. Law 12-60 provided that all fees received pursuant to § 26-1003(f) shall be credited to the Office of Banking and Financial Institutions Enterprise Fund.

Section 3 of D.C. Law 18-38 provides:

"Sec. 3. Applicability.

"Except for section 2(c)(1), (g), (j), and (o), this act shall not apply until the Commissioner of the Department of Insurance, Securities, and Banking has promulgated rules implementing this act."

§ 26-1104. ISSUANCE OF LICENSE.

(a) When an applicant for a license files the application and bond and pays the fees required by this chapter, the Superintendent shall investigate to determine if the applicant meets the requirements of this chapter. The Superintendent shall make such investigations as deemed necessary to determine if the applicant has complied with all applicable provisions of law and any regulations promulgated thereunder.

(b) The Superintendent shall approve or deny each application for a license within 60 days after the date from when the application and bond are filed and the fees are paid.

(c) The Superintendent shall issue a license to any applicant who meets the requirements of this chapter.

(d) Every license shall remain in force until it has been surrendered, revoked, or suspended. The surrender, revocation, or suspension of a license shall not affect any pre-existing legal right or obligation of such licensee.

(1) A license issued under this section authorizes the licensee to act as mortgage lender, mortgage broker, mortgage loan originator, or loan officer under the license at the licensed place of business.

(2) Only 1 place of business may be maintained under any 1 license.

(3) A licensee may maintain more than 1 license under this section provided that a separate application for each license is made pursuant to § 26-1103 and the Superintendent approves such application.

(e)(1) The Superintendent shall include on each license:

(A) The name of the licensee; and

(B) The address at which the business is to be conducted.

(2) A person may not conduct any mortgage loan business at any location or under any name different from the address and name that appears on the person's license.

(f)(1) A licensee may not receive any application for a loan or allow any note or contract for a loan or

mortgage, evidence of any note or contract for a loan or mortgage, or evidence of indebtedness to be signed or executed at any place for which the licensee does not have a license, except at the office of:

(A) The attorney for the borrower or for the licensee; or

(B) A title insurance company, a title company, or an attorney for a title insurance company or a title company.

(2) Notwithstanding paragraph (1)(A) of this subsection, a licensee may accept a loan application from a borrower by mail or telephone or in person at the borrower's residence or place of employment to accommodate the borrower at the borrower's request.

(3) The Superintendent shall adopt regulations to ensure that the loan application process is conducted fairly and in a manner consistent with the best interests of both the borrower and mortgage lender.

(g) A license may be issued under this chapter to a business entity whose principal office is located outside the District provided that the business entity maintains a resident agent within the District at all times during the term of the license, regardless of whether:

(1) The business entity maintains any office within the District; and

(2) The activities of the business entity constitute doing business or having a tax situs in the District.

(h) Each license shall be prominently posted in each place of business of the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use any name other than the name set forth on the license issued by the Superintendent.

(Sept. 9, 1996, D.C. Law 11-155, § 5, 43 DCR 4213; July 18, 2009, D.C. Law 18-38, § 2(d), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1004.

Effect of Amendments

D.C. Law 18-38, in subsec. (d)(1), substituted "mortgage lender, mortgage broker, mortgage loan originator, or loan officer" for "mortgage lender or mortgage broker".

Temporary Amendments of Section

Section 2(d) of D.C. Law 17-350, in subsec. (c), inserted the following sentence at the end: "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."; and, in subsec. (d)(1), substituted "mortgage lender, mortgage broker, mortgage loan originator, or loan officer" for "mortgage lender or mortgage broker".

Section 5(b) of D.C. Law 17-350 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary amendment of section, see § 2(b) of the Mortgage Lender and Broker Act of 1996 Time Extension Emergency Act of 1996 (D.C. Act 11-439, December 4, 1996, 44 DCR 6656), and § 2(b) of the Mortgage Lender and Broker Act of 1996 Time Extension Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-21, March 3, 1997, 44 DCR 1768).

For temporary (90 day) amendment of section, see § 2(d) of Mortgage Lender and Broker Emergency Amendment Act of 2008 (D.C. Act 17-617, December 22, 2008, 56 DCR 189).

For temporary (90 day) amendment of section, see § 2(d) of Mortgage Lender and Broker Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-31, March 16, 2009, 56 DCR 2327).

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

For Law 18-38, see notes following § 26-1101.

§ 26-1105. ACQUISITION OF CONTROL; APPLICATION.

(a) Except as provided in this section, no person shall acquire directly or indirectly 25% or more of the voting shares of a corporation or 25% of the ownership of any other entity licensed to conduct business under this chapter unless such person first:

(1) Files an application with the Superintendent in such form as the Superintendent may prescribe from time to time;

(2) Delivers such other information to the Superintendent as the Superintendent may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, officers, principals, and members, and of any proposed new directors, officers, principals, or members of the licensee; and

(3) Pays such application fee as the Superintendent may prescribe.

(b) Upon the filing and investigation of an application, the Superintendent shall permit the applicant to acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors, officers, and principals and any proposed new directors, members, officers, and principals have the financial responsibility, character, reputation, experience and general fitness to warrant the belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with the law. The Superintendent shall grant or deny the application within 60 days after the date a completed application accompanied by the required fee is filed unless the period is extended by order of the Superintendent reciting the reasons for the extension. If the application is denied, the Superintendent shall notify the applicant of the denial and the reasons for the denial.

(c) The provisions of this section shall not apply to:

(1) The acquisition of an interest in a licensee directly or indirectly, including an acquisition by merger or consolidation by or with a person licensed by this chapter or a person exempt from this chapter;

(2) The acquisition of an interest in a licensee directly or indirectly, including an acquisition by merger or consolidation by or with a person affiliated through common ownership with the licensee; or

(3) The acquisition of an interest in a licensee by a person by bequest, descent, survivorship, or operation of law.

(d) The person acquiring an interest in a licensee in a transaction which is exempt from filing an application pursuant to subsection (c) of this section shall send written notice to the Superintendent of such acquisition within 10 days after the closing of such acquisition.

(Sept. 9, 1996, D.C. Law 11-155, § 6, 43 DCR 4213.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1005.

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

Miscellaneous Notes

Fees credited to the Office of Banking and Financial Institutions Enterprise Fund: Section 1804(4) of D.C. Law 12-60 provided that all fees received pursuant to § 26-1005(a)(3) shall be credited to the Office of Banking and Financial Institutions Enterprise Fund.

§ 26-1106. REJECTION OF LICENSE APPLICATION.

(a)(1) If an applicant does not meet the requirements of § 26-1103, the Superintendent shall:

(A) Immediately notify the applicant in writing of this fact;

(B) Return the bond filed under § 26-1103; and

(C) Refund the license fee.

(2) The Superintendent shall, subject to the appropriations process, keep the investigation fee and application fee.

(b) Within 30 days after the Superintendent denies an application, the Superintendent shall:

(1) Issue a written decision containing the reasons upon which the denial was based;

(2) Send a copy of the decision to the applicant; and

(3) Advise the applicant of a right to a hearing which shall be held in accordance with subchapter I of Chapter 5 of Title 2.

(c)(1) An applicant who seeks a hearing on a license application denial shall file a written request for a hearing within 45 days following receipt of the written decision for denial.

(2) A hearing date established in response to the filing of a notice under this subsection may be postponed only once for a period of up to 30 days after the initial hearing date.

(Sept. 9, 1996, D.C. Law 11-155, § 7, 43 DCR 4213.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1006.

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

§ 26-1107. LICENSE EXPIRATION AND RENEWAL; ANNUAL FEE.

(a)(1) A license issued under this chapter shall expire on a date to be determined by the Superintendent; provided, that the initial term of the license shall be not less than 180 days, or greater than 18 months, after the effective date of the license. A license may thereafter be renewed for one-year term extensions as provided by this section.

(2) The Superintendent may change the expiration date of a license for the purpose of staggering the expiration dates of licenses issued under this chapter; provided, that the new expiration date shall not be less than 180 days after the effective date or renewal date of the license.

(b) Before a license expires, the licensee periodically may renew the license for additional 1-year terms, if the licensee:

(1) Demonstrates that he or she continues to meet the licensing standards under this chapter and has satisfied the annual continuing education requirements under this chapter;

(1A) Pays all applicable fees and assessments as prescribed by the Commissioner and all third-party fees;

(2) Submits to the Superintendent a renewal application on the form that the Superintendent requires; and

(3) Files a bond or bond continuation certificate for the amount required under § 26-1103.

(c) If a license is issued for less than a full year, is surrendered voluntarily, is suspended, or is revoked, the Superintendent may not refund any part of the license fee regardless of the time remaining in the license year.

(d) Repealed.

(Sept. 9, 1996, D.C. Law 11-155, § 8, 43 DCR 4213; Apr. 3, 2001, D.C. Law 13-239, § 2, 48 DCR 606; Oct. 3, 2001, D.C. Law 14-28, § 3202(b), 48 DCR 6981; July 18, 2009, D.C. Law 18-38, § 2(e), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1007.

Effect of Amendments

D.C. Law 13-239 rewrote subsec. (a) which had read:

"(a) A license expires on the December 31 after its effective date unless the license is renewed for a 1-year term as provided in this section."

D.C. Law 14-28 rewrote subsec. (d) which had read:

"(d) In order to defray the costs of their examination, supervision, and regulation, every mortgage lender required to be licensed under this chapter shall pay an annual renewal fee calculated in accordance with a schedule set by regulation promulgated by the Superintendent. The schedule shall bear a reasonable relationship to the total assets of such individual mortgage lenders and to other factors relating to their supervision and regulation. Every mortgage broker required to be licensed under this chapter shall pay an annual renewal fee calculated in accordance with a schedule set by regulation promulgated by the Superintendent. All such fees shall be assessed on or before April 25, for that calendar year, and on or before April 25 for every calendar year thereafter. All such fees shall be paid by the licensed mortgage lenders and mortgage brokers to the Superintendent on or before May 25 of each calendar year or within 30 days of the receipt of each assessment."

D.C. Law 18-38 rewrote subsec. (b)(1); added subsec. (b)(1A); and repealed subsec. (d). Prior to amendment or repeal, subsecs. (b)(1) and (d) read as follows:

"(1) Otherwise is entitled to be licensed;"

"(d) To defray the costs of their examination, supervision, and regulation, every mortgage lender and mortgage broker required to be licensed under this chapter shall pay an annual renewal fee and examination

fee as follows:

"(1) At the time the licensee submits its application for renewal, the licensee shall pay a renewal fee of \$900 for a mortgage broker license, \$1,000 for a mortgage lender license, or \$1,200 for a dual mortgage broker and lender license.

(2) "At the time the licensee is examined, the licensee shall pay an examination fee of \$400, plus \$6.60 per loan brokered in the expiring license period, for a mortgage broker license; \$800, plus \$6.60 per loan made, originated, brokered, or serviced in the expiring license period, for a mortgage lender license; or \$1,200, plus \$6.60 per loan made, originated, brokered, or serviced in the expiring license period, for a dual mortgage broker and lender license."

Temporary Amendments of Section

Section 2(e) of D.C. Law 17-350, in subsec. (d), repealed pars. (1) and (2) and added pars. (3) and (4) 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."

Section 5(b) of D.C. Law 17-350 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2 of the Mortgage Lender and Broker License Renewal Emergency Amendment Act of 2000 (D.C. Act 13-523, December 30, 2000, 48 DCR 622).

For temporary (90 day) amendment of section, see § 2(e) of Mortgage Lender and Broker Emergency Amendment Act of 2008 (D.C. Act 17-617, December 22, 2008, 56 DCR 189).

For temporary (90 day) amendment of section, see § 2(e) of Mortgage Lender and Broker Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-31, March 16, 2009, 56 DCR 2327).

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

Law 13-239, the "Mortgage Lender and Broker License Renewal Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-708, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-517 and transmitted to both Houses of Congress for its review. D.C. Law 13-239 became effective on April 3, 2001.

For Law 14-28, see notes under § 26-131.01.

For Law 18-38, see notes following § 26-1101.

Miscellaneous Notes

Fees credited to the Office of Banking and Financial Institutions Enterprise Fund: Section 1804(4) of D.C. Law 12-60 provided that all fees received pursuant to § 26-1007(d) shall be credited to the Office of Banking and Financial Institutions Enterprise Fund.

§ 26-1108. CHANGE OF PLACE OF BUSINESS.

(a) A licensee may not change the place of business for which a license is issued unless the licensee:

- (1) Notifies the Superintendent in writing of the proposed change; and
- (2) Receives the written consent of the Superintendent.

(b) The application for a change of place of business shall be approved unless the Superintendent finds that the applicant has not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance with all applicable laws and regulations.

(c) Notwithstanding subsection (a)(2) of this section, if the Superintendent does not approve or disapprove of the proposed change of place of business within 30 days of the mailing of the notice required under subsection (a)(1) of this section, the proposed change of place of business shall be deemed approved.

(d) After approval, the applicant for a change of place of business shall give written notice to the Superintendent within 10 days after the commencement of business at the additional or relocated office.

(e) Every licensee shall notify the Superintendent, in writing of the closing of any office not less than 10 days before such closing, and of the name, address, and position of each new principal, officer, member, partner, or director not more than 10 days after such new principal, officer, member, partner, or director

assumes such position. Every licensee shall also provide such other information with respect to any such changes as the Superintendent may reasonably require.

(Sept. 9, 1996, D.C. Law 11-155, § 9, 43 DCR 4213.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1008.

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

§ 26-1109. RECORD KEEPING REQUIREMENTS.

(a) Each licensee shall keep and make available to the Superintendent at the licensee's place of business any books and records that the Superintendent, by rule or regulation, requires to enable the Superintendent to enforce this chapter and any rule or regulation adopted under this chapter.

(b) Each mortgage lender required to be licensed under this chapter shall retain for at least 3 years after final payment is made on any mortgage loan or after the mortgage loan is sold, whichever first occurs, copies of the note, settlement statement, truth-in-lending disclosure, and such other papers or records relating to the loan as may be required by rule or regulation.

(c) On approval of the Superintendent, a licensee need not keep at the licensee's place of business any books and records otherwise required by the Superintendent under subsection (a) of this section if the licensee:

(1) Is a federally approved seller-servicer; or

(2)(A) Makes the books and records available to the Superintendent at the licensee's place of business within 5 business days of the Superintendent's official request; and

(B) Retains the records for at least 60 months in a storage facility disclosed to the Superintendent.

(d) Each independent contractor or mortgage broker required to be licensed under this chapter shall retain for at least 3 years after a mortgage loan is made the original contract for his or her compensation, a copy of the settlement statement, an account of fees received in connection with the loan, and such other papers or records as may be required by rule or regulation.

(Sept. 9, 1996, D.C. Law 11-155, § 10, 43 DCR 4213; July 18, 2009, D.C. Law 18-38, § 2(f), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1009.

Effect of Amendments

D.C. Law 18-38, in subsec. (d), substituted "independent contractor or mortgage broker" for "mortgage broker".

Temporary Amendments of Section

Section 2(f) of D.C. Law 17-350, in subsec. (d), substituted "independent contractor or mortgage broker" for "mortgage broker".

Section 5(b) of D.C. Law 17-350 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(f) of Mortgage Lender and Broker Emergency Amendment Act of 2008 (D.C. Act 17-617, December 22, 2008, 56 DCR 189).

For temporary (90 day) amendment of section, see § 2(f) of Mortgage Lender and Broker Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-31, March 16, 2009, 56 DCR 2327).

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

For Law 18-38, see notes following § 26-1101.

§ 26-1110. ANNUAL REPORT.

(a) Each mortgage lender or mortgage broker required to be licensed under this chapter shall annually, on

or before March 31, file a written report with the Superintendent containing such information as the Superintendent may require concerning the licensee's operations during the preceding calendar year as to each licensed place of business. Reports shall be accompanied by a sworn affidavit and in the form prescribed by the Superintendent who shall make and publish annually an analysis and recapitulation of the reports.

(b) Annual reports shall include:

- (1) The number and total dollar amount of mortgage loans which were originated or purchased by the licensee in the District during each fiscal year for which a valid license is maintained by the licensee;
- (2) The number and dollar amount of all loans where the applicant filed notices of intent to foreclose in the last year, including the borrower's:
 - (A) Address;
 - (B) Tract income level;
 - (C) Racial characteristics; and
 - (D) Census tract where the property is located; and

(3) The number of loans brokered, originated, made, and serviced under Chapter 11A of this title.

(c) Any information relating to mortgage loans required to be maintained under subsection (b) of this section shall be itemized in order to disclose for each such item:

- (1) The number and dollar amount of mortgage loans made to mortgagors who did not, at the time of execution of the mortgage, intend to reside in the property securing the mortgage; and
- (2) The number and dollar amount of mortgage loans and completed application involving mortgagors or mortgage applicants grouped according to census tract, income level, racial characteristics and gender.

(Sept. 9, 1996, D.C. Law 11-155, § 11, 43 DCR 4213; May 7, 2002, D.C. Law 14-132, § 601(a)(2), 49 DCR 2551).

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1010.

Effect of Amendments

D.C. Law 14-132 made nonsubstantive changes in subsecs. (b)(1) and (b)(2)(D); and added subsec. (b)(3).

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 601(a)(2) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

For Law 14-132, see notes following § 26-603.

§ 26-1111. SURRENDER OF LICENSE.

(a) A licensee may surrender a license by sending to the Superintendent the license and a written statement that the license is surrendered.

(b) The surrender of a license does not affect any civil or criminal liability of a licensee for acts committed before the license was surrendered.

(Sept. 9, 1996, D.C. Law 11-155, § 12, 43 DCR 4213.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1011.

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

§ 26-1112. EXAMINATIONS AND INVESTIGATIONS.

(a) The Superintendent, or his or her designated agent, shall examine the affairs, business, premises, and records of each licensee at least once in every 3 year period and at any other time the Superintendent reasonably considers necessary.

(b)(1) Any person aggrieved by the conduct of a licensee under this subsection in connection with a mortgage loan may file a written complaint with the Superintendent who shall investigate the complaint.

(2) The Superintendent may make any other examination or investigation of any person if the Superintendent has reasonable cause to believe that the person has violated any provision of this chapter, any regulation adopted under this chapter, or any other law regulating mortgage loan lending in the District.

(c) In the course of any investigation or examination, the owners, member, officers, directors, partners, and any employees of such mortgage lender or mortgage broker being investigated or examined shall afford the Superintendent full access to all premises, books, and records. For the foregoing purposes, the Superintendent, or his or her designated agent, shall have authority to administer oaths, examine under oath all the aforementioned persons, compel the production of papers and objects of all kinds, subpoena documents or other evidence, and summons and examine under oath any person whose testimony the Superintendent requires.

(d)(1) If any person fails to comply with a subpoena or summons of the Superintendent under this chapter or to testify concerning any matter about which the person may be interrogated under this chapter, the Superintendent may file a petition for enforcement with the Civil Actions Branch of the Superior Court of the District of Columbia.

(2) On petition by the Superintendent, the court may order the person to attend and testify or produce evidence.

(e) When it becomes necessary to examine or investigate the books and records of a licensee required to be licensed under this chapter at a location outside the Washington, D.C. metropolitan region, the licensee shall be liable for, and shall pay to the Superintendent within 30 days, the actual travel and reasonable living expenses incurred on account of its examination, supervision, and regulation, or shall pay a reasonable per diem rate approved by the Superintendent.

(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 chapter;

(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 chapter, 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; or

(6) Assess the licensee, or person subject to this chapter, 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 chapter, 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.

(Sept. 9, 1996, D.C. Law 11-155, § 13, 43 DCR 4213; July 18, 2009, D.C. Law 18-38, § 2(g), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1012.

Effect of Amendments

D.C. Law 18-38 added subsecs. (f) to (i).

Temporary Amendments of Section

Section 2(g) of D.C. Law 17-350 added subsecs. (f), (g), (h), and (i) to read as follows:

"(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."

Section 5(b) of D.C. Law 17-350 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(g) of Mortgage Lender and Broker Emergency Amendment Act of 2008 (D.C. Act 17-617, December 22, 2008, 56 DCR 189).

For temporary (90 day) amendment of section, see § 2(g) of Mortgage Lender and Broker Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-31, March 16, 2009, 56 DCR 2327).

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

For Law 18-38, see notes following § 26-1101.

Miscellaneous Notes

Section 3 of D.C. Law 18-38 provides:

"Sec. 3. Applicability.

"Except for section 2(c)(1), (g), (j), and (o), this act shall not apply until the Commissioner of the Department of Insurance, Securities, and Banking has promulgated rules implementing this act."

§ 26-1113. REQUIRED LOAN DISCLOSURES.

(a)(1) A licensee who offers to make or procure a loan secured by a first or subordinate mortgage or deed of trust on a single to 4-family home shall provide the borrower with a financing agreement executed by the lender.

(2) The financing agreement shall provide:

(A) The term and principal amount of the loan;

(B) An explanation of the type of mortgage loan being offered;

(C) The rate of interest that will apply to the loan and, if the rate is subject to change, or is a variable rate, or is subject to final determination at a future date based on some objective standard, a specific statement of those facts;

(D) The points and all fees, if any, to be paid by the borrower or the seller, or both; and

(E) The term during which the financing agreement remains in effect.

(3) If all the provisions of the financing agreement are not subject to future determination, change, or alteration, the financing agreement shall constitute a final binding agreement between the parties as to the items covered by the financing agreement.

(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.

(2) No non-conventional mortgage loan shall be consummated unless the borrower has signed the disclosures required under this section and returned the disclosures to the mortgage lender.

(3) The written disclosures required under this section shall be printed on a single page, front and back, and include the following:

"Mortgage Disclosure Form

"(A) Borrower(s)

"(B) Property Address

"(C) Lender

"(D) Lender Address

"(E) Lender Phone Number

"(F) Your loan is for \$....., for a term of years. The final maturity date is

"Your beginning interest rate is%. This rate is good for ____ months/years [circle one]. This rate and your payment can increase, starting on [date], and may continue to increase, depending on the terms of your mortgage.

"(G) Beginning on, you will be charged at the fully-indexed rate, which is your margin (.....%) plus an index value, which for you is Estimating based on the current rate of the index, which is%, your monthly payment at the fully-indexed rate would be \$..... While the index rate does vary, your mortgage provides that the fully-indexed rate will not rise above%. At that rate, your monthly payment would be \$.....

"(H) YOU HAVE INDICATED THAT YOUR GROSS MONTHLY INCOME IS \$.....

"(I) WARNING: Industry standards suggest that a homeowner should spend no more than 28% of his or her gross monthly income on mortgage costs (including taxes and insurance).

"(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.

"(M) \$...../month = 28% of your current gross monthly income (the recommended limit).

"(N) Your gross monthly income may rise or fall over time, but if either of the first 3 amounts exceeds the fourth, you may want to reconsider the suitability of this loan for your needs. You may cancel your mortgage application within 5 business days of receiving this form.

"(O) Your mortgage carries a balloon payment. This means that on, you will have to fully pay the remaining balance on the loan.

"(P) Your loan has a prepayment penalty. This means that if you pay off your mortgage in the first years, you will have to pay a penalty of \$..... If you refinance your mortgage in that period, you will be required to pay this amount.

"(Q) See definitions of underlined terms on reverse side. DO NOT SIGN THIS IF YOU DO NOT UNDERSTAND IT!

"

"Lender's Authorized Representative and date

"

"Borrower(s) and date."

(4) The disclosures required under this section shall be in the following form:

Borrower(s): _____ Lender: _____
Property: _____ Address: _____

Phone: (_____) _____

Your loan is for \$_____, for a term of _____ years. The final maturity date is _____.

Your beginning interest rate is _____. This rate is good for _____

months/years [circle one]. This rate and your payment can increase, starting on _____, and may continue to increase, depending on the terms of your mortgage.

Beginning on [date] , you will be charged at the fully-indexed rate, which is your margin (_____) plus an index value, which for you is [index name] . Estimating based on the current rate of the index, which is _____%, your monthly payment at the fully-indexed rate would be \$_____. While the index rate does vary, your mortgage provides that the fully-indexed rate will not rise above _____. At that rate, your monthly payment would be \$_____.

YOU HAVE INDICATED THAT YOUR GROSS MONTHLY INCOME IS \$_____.

WARNING: Industry standards suggest that a homeowner should spend no more than 28% of his or her gross monthly income on mortgage costs (including taxes and insurance).

\$_____/month = Your beginning interest rate + property taxes and insurance.

\$_____/month = Your estimated fully-indexed rate (i.e. what you pay after the beginning rate ends) + property taxes and insurance.

\$_____/month = Your maximum possible interest rate + property taxes and insurance.

\$_____/month = 28% of your current gross monthly income (the recommended limit).

Your gross monthly income may rise or fall over time, but if any of the first three amounts exceeds the fourth, you may want to reconsider the suitability of this loan for your needs. You

[] Your mortgage carries a balloon payment. This means that on _____ you will have to fully pay the remaining balance on the loan.

[] Your loan has a prepayment penalty. This means that if you pay off your mortgage in the first _____ years, you will have to pay a penalty of \$_____. If you refinance your mortgage in that period, you will be required to pay this amount.

See definitions of underlined terms on the reverse side.

DO NOT SIGN THIS IF YOU DO NOT UNDERSTAND IT!

Lender

Date

Borrower

Date

(5) The Commissioner may prescribe, by rule, a different form for the written disclosures. The proposed rules shall be transmitted to the Council for a 60- day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules by resolution within the 60-day review period, the proposed rules shall be deemed approved.

(6) Certain definitions and explanations arising from the written disclosures required under this section shall be printed on a single page, front and back, and include the following:

"Beginning interest rate: means the interest rate the borrower pays at the beginning of the loan. In many types of loans, this rate is good for only a few years and may increase significantly.

"Fully indexed rate: is an indicator of what will happen to the interest rate on the loan and the monthly payments. It is today's estimate of how high the interest rate on an adjustable rate mortgage will go. It is calculated by taking a defined index rate and adding a certain number of percentage points, called the margin. Since the index rate can go up or down, the borrower cannot be sure what the future adjustable interest rate will be. Borrowers must make sure they can afford the fully indexed interest rate and not just the initial interest rate.

"Maximum possible interest rate: means the highest your interest rate can go. Most loans with adjustable rates have a defined maximum rate or lifetime cap. Borrowers need to think about how likely it may be that the interest rate can go this high.

"Gross monthly income: means the borrower's gross, pre-tax income per month. Borrowers should make sure the monthly household income amount shown on the form is correct.

"Monthly mortgage payment including taxes and insurance: means the amount the borrower must pay every month for interest, repayment of loan principal, home insurance premiums, and property taxes owed to the District of Columbia. Over time, in addition to any possible increases in the loan's interest rate, the insurance premiums and property taxes are likely to increase.

"Prepayment penalty: means any additional fee imposed by the mortgage lender on the borrower if the borrower pays off the loan early. Borrowers must make sure they know whether their loan has a prepayment penalty fee and how it works.

"Balloon payment: means that a large repayment of loan principal is due at the end of the loan. This almost always means that the borrower has to get a new loan to make the balloon payment.

"Payment option loan: means a mortgage loan that allows the borrower to pay less than the interest being charged on the loan. The unpaid interest is added to the loan, so the loan amount grows larger. Borrowers must make sure they know whether their loan is a payment option loan and how it works.

"Points: means the fee, expressed as a percentage of the loan, a borrower pays to the mortgage lender at closing, usually in exchange for a lower interest rate.

"Default: means a borrower has failed to make the payments due on the mortgage loan. Once a borrower is in default on the loan, the mortgage lender can seek to foreclose on the property.

"Foreclosure: means the legal process in which the mortgage lender can seize the borrower's property if the borrower continually fails to make the payments due on the mortgage loan.

"Property tax: means the taxes owed to the District of Columbia as a result of the borrower owning the property.

"Insurance: means property insurance that covers private homes and residences. It is required by mortgage loans in order to protect the mortgage lender if the home is destroyed.

"Monthly condominium/co-operative/homeowner association fees: means the monthly fees that must be paid by the borrower if the borrower's property is a condominium, co-operative, or subject to a homeowner association. These fees usually are collected on a monthly basis. Failure to pay these fees can result in a lawsuit against the borrower by the condominium, co-operative, or homeowner association. As with property taxes and homeowners' insurance, these fees are likely to increase over time."

(7) The Commissioner may prescribe, by rule, additional terms, definitions, and explanations. The proposed rules shall be transmitted to the Council for a 60- day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules by resolution within the 60-day review period, the proposed rules shall be deemed approved.

(8) The information pursuant to this section shall be given to the borrower in a prominent form, separate from other disclosures, in either electronic or physical form and:

(A) In a 12-point font;

(B) In plain English or in the language of the mortgage lender's presentation to the borrower; and

(C) If given to the borrower on a physical piece of paper, shall be printed on a red piece of paper measuring 8.5 inches by 11 inches.

(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.

(b)(1) The financing agreement executed by the lender shall be delivered to the borrower at least 72 hours before the time of settlement agreed to by the parties and shall include:

(A) The effective fixed interest rate or initial interest rate that will be applied to the loan; and

(B) A restatement of all the remaining unchanged provisions of the financing agreement.

(2) Prior to execution of the financing agreement, the borrower may waive in writing the 72-hour advance presentation requirement and accept the commitment at settlement only if compliance with the 72-hour requirement is shown by the lender to be infeasible.

(3) A borrower aggrieved by any violation of this section shall be entitled to bring a civil suit for damages, including reasonable attorney's fees, against the lender.

(Sept. 9, 1996, D.C. Law 11-155, § 14, 43 DCR 4213; Jan. 29, 2008, D.C. Law 17-90, § 2(b), 54 DCR 11925; July 18, 2009, D.C. Law 18-38, § 2(h), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1013.

Effect of Amendments

D.C. Law 17-90 added subsec. (a-1).

D.C. Law 18-38, in subsec. (a)(1), deleted "to be occupied by the borrower" following "home"; in subsec. (a-1), rewrote pars. (1), (3)(J) to (L), and (9), which had read as follows:

"(a-1)(1) Within 3 business days of an application for a non-conventional mortgage loan, the mortgage lender shall provide to the borrower the written disclosures required under this section."

"(J) \$...../month = Your beginning interest rate + taxes and insurance.

"(K) \$...../month = Your estimated fully-indexed rate (i.e., what you pay after the beginning rate ends) + taxes and insurance.

"(L) \$...../month = Your maximum possible interest rate + taxes and insurance."

"(9) Within 5 business days of receiving from the mortgage lender 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 mortgage lender provides the information pursuant to this section."

Temporary Amendments of Section

Section 2(h) of D.C. Law 17-350, in subsec. (a)(1), deleted "to be occupied by the borrower"; and, in subsec. (a-1), rewrote pars. (1), (3)(J) through (L), and (9), 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."

"(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."

"(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."

Section 5(b) of D.C. Law 17-350 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(h) of Mortgage Lender and Broker Emergency

Amendment Act of 2008 (D.C. Act 17-617, December 22, 2008, 56 DCR 189).

For temporary (90 day) amendment of section, see § 2(h) of Mortgage Lender and Broker Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-31, March 16, 2009, 56 DCR 2327).

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

For Law 17-90, see notes following § 26-1101.

For Law 18-38, see notes following § 26-1101.

Miscellaneous Notes

Section 4 of D.C. Law 17-90 provides that section 2 shall apply 30 days after the effective date of this act.

§ 26-1114. PROHIBITED PRACTICES.

(a) No mortgage broker, mortgage lender, mortgage loan originator, or loan officer required to be licensed under this chapter, or person required to be licensed under this chapter, shall:

- (1) Obtain any agreement or instrument in which blanks are left to be filled in after execution;
- (2) Take an interest in collateral other than the real estate or residential property, including fixtures and appliances thereon, securing a mortgage loan;
- (3) Obtain any exclusive dealing or exclusive agency agreement from any borrower;
- (4) Delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;
- (5) Obtain any agreement or instrument executed by a borrower which contains an acceleration clause permitting the unpaid balance of a mortgage loan to be declared due for any reason other than failure to make timely payments of interest and principal or to perform other obligations undertaken in the agreement or instrument;
- (6) Make, directly or indirectly, any mortgage loan with the intent to foreclose on the borrower's property. For purposes of this paragraph, any of the following factors may be considered in determining whether a mortgage loan was made with the intent to foreclose on the borrower's property:
 - (A) Lack of the probability of full repayment of the loan by the borrower; and
 - (B) A significant proportion of similarly foreclosed loans by the lender;
- (7) If acting as a mortgage lender, fail to require the person closing the mortgage loan to provide to the borrower prior to the closing of the mortgage loan:
 - (A) A settlement statement as required pursuant to the Real Estate Settlement Procedures Act, approved December 22, 1974 (88 Stat. 1724; 12 U.S.C. § 2601 et seq.), and any regulations promulgated thereunder; and
 - (B) Any disclosure which is required by the Truth in Lending Act, approved May 29, 1968 (82 Stat. 146; 15 U.S.C. § 1601 et seq.), and Regulation Z (12 CFR Part 226);
- (8) Except for an application fee in an amount not to exceed 1% of the original principal amount of the mortgage loan applied for, and documented costs of credit reports and appraisals, receive compensation from a borrower until a written commitment to make a mortgage loan is given to the borrower by a mortgage lender which written commitment shall be given not less than 72 hours prior to the closing of the mortgage loan, unless this time period is waived by the borrower;
- (9) Make predatory loans or engage in predatory lending activities in violation of Chapter 11A of this title;
- (10) Purchase loans from an unlicensed mortgage broker or lender, unless the unlicensed mortgage broker or lender is exempt under § 26-1102; or
- (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 § 26-1104 or without an exemption under § 26-1102.

(b) No mortgage broker required to be licensed under this chapter shall:

- (1) Receive compensation from a mortgage lender of which he is a principal, partner, trustee, director, member, officer, or employee;
- (2) Receive compensation from a borrower in connection with any mortgage loan transaction in which he is the lender or a principal, partner, trustee, director, member, officer, or employee of the mortgage lender; or
- (3)(A) Receive compensation for negotiating, placing, or finding a mortgage loan where a mortgage

broker, or any person affiliated with such mortgage broker, has otherwise acted as a real estate broker, agent, or salesperson in connection with the sale of the real estate which secures the mortgage loan and such mortgage broker or affiliated person has received or will receive any other compensation or thing of value from the lender, borrower, seller, or any other person, unless the borrower is given the following notice in writing at the time the mortgage broker's services are first offered to the borrower:

DISCLOSURE OF DUAL CAPACITY

WE HAVE OFFERED TO ASSIST YOU IN OBTAINING A MORTGAGE LOAN. IF WE ARE SUCCESSFUL IN OBTAINING A LOAN FOR YOU, WE WILL CHARGE AND COLLECT FROM YOU A FEE NOT TO EXCEED ____% OF THE LOAN AMOUNT. THIS FEE IS IN ADDITION TO ANY OTHER FEE WE MAY RECEIVE IN CONNECTION WITH THE SALE OR PURCHASE OF THE REAL ESTATE THAT WILL SECURE THE LOAN. WE DO NOT REPRESENT ALL OF THE LENDERS IN THE MARKET AND THE LENDERS WE DO REPRESENT MAY NOT OFFER THE LOWEST INTEREST RATES OR BEST TERMS AVAILABLE TO YOU. YOU ARE FREE TO SEEK A LOAN WITHOUT OUR ASSISTANCE, IN WHICH EVENT YOU WILL NOT BE REQUIRED TO PAY US A FEE FOR THAT SERVICE. THE BORROWER ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS DISCLOSURE OF DUAL CAPACITY AND HAVING RECEIVED A COPY HEREOF.

BORROWER'S SIGNATURE

DATE

BROKER'S SIGNATURE

DATE

(B) The foregoing notice shall be at least 10-point type and the prospective borrower shall acknowledge receipt of the written notice.

(C) The phrase "person affiliated with such mortgage broker" means any person which is a subsidiary, stockholder, partner, trustee, director, member, officer, or employee of a mortgage broker, and any corporation, 10% or more of the capital stock of which is owned by a mortgage broker or by any person which is a subsidiary, stockholder, partner, trustee, director, member, officer, or employee of a mortgage broker.

(c) Notwithstanding the provisions of subsection (b) of this section, no person shall act as a mortgage broker in connection with any real estate sales transaction entered into prior to September 9, 1996 in which such person, or any person affiliated with such person, has acted as a real estate broker, agent, or salesperson and has received or will receive compensation in connection with such transaction, unless such person was regularly engaged in acting as a mortgage broker in connection with such transaction as of September 9, 1996.

(d) A licensee or any person required to be licensed under this chapter 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 chapter 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 chapter without a valid license as required under this chapter;
- (7) Fail to make disclosures as required by this chapter and any other applicable federal or District law, including regulations thereunder;
- (8) Fail to comply with this chapter or rules promulgated under this chapter, 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 chapter;
- (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 chapter;

(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.

(Sept. 9, 1996, D.C. Law 11-155, § 15, 43 DCR 4213; May 7, 2002, D.C. Law 14-132, § 601(a)(3), 49 DCR 2551; July 18, 2009, D.C. Law 18-38, § 2(i), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1014.

Effect of Amendments

D.C. Law 14-132, in subsec. (a), substituted ", or person required to be licensed under this chapter, shall;" for "shall"; made nonsubstantive changes in subsecs. (a)(7) and (a)(8); and added subsecs. (a)(9), (a)(10), and (a)(11).

D.C. Law 18-38, in subsec. (a), rewrote the introductory language and par. (11); and added subsec. (d). Prior to amendment, the introductory language and par. (11) of subsec. (a) read as follows:

"(a) No mortgage lender or mortgage broker required to be licensed under this chapter, or person required to be licensed under this chapter, shall:"

"(11) Engage in the business as a mortgage lender, mortgage broker, or hold himself or herself out to the public to be a mortgage lender or mortgage broker, without a license under § 26-1104 or an exemption under § 26-1102."

Temporary Amendments of Section

Section 2(i) of D.C. Law 17-350, in subsec. (a), substituted "mortgage broker, mortgage lender, mortgage loan originator, or loan officer" for "mortgage broker or lender" in the lead-in text and rewrote par. (11) 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."

; and added subsec. (d) 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."

Section 5(b) of D.C. Law 17-350 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 601(a)(3) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

For temporary (90 day) amendment of section, see § 2(i) of Mortgage Lender and Broker Emergency Amendment Act of 2008 (D.C. Act 17-617, December 22, 2008, 56 DCR 189).

For temporary (90 day) amendment of section, see § 2(i) of Mortgage Lender and Broker Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-31, March 16, 2009, 56 DCR 2327).

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

For Law 14-132, see notes following § 26-603.

For Law 18-38, see notes following § 26-1101.

§ 26-1115. ESCROW ACCOUNTS.

(a) All moneys required by a mortgage lender to be paid by borrowers in escrow to defray future taxes or insurance premiums, or for other lawful purposes, shall be kept in accounts segregated from accounts of the mortgage lender, and shall not be commingled with other funds of the mortgage lender.

(b) No licensed mortgage lender shall require any borrower who, on the date of execution of the loan or financial transaction, has made a down payment equaling 20% or more of the total purchase price of the property or who has an equity interest in the property equal to, or greater than, 20% of the fair market value of the property, to make advance payments of the real estate taxes or casualty insurance premiums to enable the mortgage lender to have funds on hand for disbursement for payment of such taxes or insurance premiums. Licensed mortgage lenders shall provide such borrowers with a separate statement, in writing, which clearly and conspicuously sets forth the right to pay such taxes and insurance premiums directly. Nothing contained in this subsection shall be construed to prohibit a licensed mortgage lender from obtaining, during any period during which the loan is in default and in consideration for the lender not exercising some or all of the remedies to which it is entitled, a written agreement from the borrower to make such advance payments to enable the mortgage lender to have funds on hand for disbursement from payment of such taxes or insurance premiums.

(c) No licensed mortgage lender shall require any borrower to pay any money in escrow to defray future taxes and insurance premiums, or for any other purposes, in connection with a subordinate mortgage loan, except where escrows for such purposes are not being maintained in connection with the mortgage loan superior to such subordinate mortgage loans.

(Sept. 9, 1996, D.C. Law 11-155, § 16, 43 DCR 4213.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1015.

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

§ 26-1116. ADVERTISING.

No mortgage lender, mortgage broker, mortgage loan originator, or loan officer required to be licensed under this chapter shall use, or cause to be published, any advertisement which:

- (1) Contains any false, misleading, or deceptive statement or representation; or
- (2) Identifies the mortgage lender, mortgage broker, mortgage loan originator, or loan officer by any name other than the name set forth on the license issued by the Superintendent.

(Sept. 9, 1996, D.C. Law 11-155, § 17, 43 DCR 4213; July 18, 2009, D.C. Law 18-38, § 2(j), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1016.

Effect of Amendments

D.C. Law 18-38, in the introductory language, substituted "mortgage lender, mortgage broker, mortgage loan originator, or loan officer" for "mortgage lender or mortgage broker"; and, in par. (2), substituted "mortgage lender, mortgage broker, mortgage loan originator, or loan officer" for "lender or broker".

Temporary Amendments of Section

Section 2(j) of D.C. Law 17-350, in the lead-in text, substituted "mortgage lender, mortgage broker, mortgage loan originator, or loan officer" for "mortgage lender or mortgage broker"; and, in par. (2), substituted "mortgage lender, mortgage broker, mortgage loan originator, or loan officer" for "lender or broker".

Section 5(b) of D.C. Law 17-350 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(j) of Mortgage Lender and Broker Emergency Amendment Act of 2008 (D.C. Act 17-617, December 22, 2008, 56 DCR 189).

For temporary (90 day) amendment of section, see § 2(j) of Mortgage Lender and Broker Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-31, March 16, 2009, 56 DCR 2327).

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

For Law 18-38, see notes following § 26-1101.

Miscellaneous Notes

Section 3 of D.C. Law 18-38 provides:

"Sec. 3. Applicability.

"Except for section 2(c)(1), (g), (j), and (o), this act shall not apply until the Commissioner of the Department of Insurance, Securities, and Banking has promulgated rules implementing this act."

§ 26-1117. EVASIVE BUSINESS TACTICS.

(a) If the Commissioner finds that the conduct of any other business conceals a violation or evasion of this chapter, any rule or regulation adopted under this chapter, or any law regulating mortgage loan lending in the District, the Commissioner may issue a written order to a licensee or person required to be licensed under this chapter to:

- (1) Stop doing business at any place in which the other business is conducted or solicited; or
- (2) Stop doing business in association or conjunction with the other business.

(b) A licensee or person required to be licensed under this chapter who violates an order of the Commissioner issued under this section shall be subject to the penalties provided by § 26-1118.

(c) The Commissioner may request the Attorney General of the District of Columbia to take appropriate action for the enforcement of an order issued under this section.

(Sept. 9, 1996, D.C. Law 11-155, § 18, 43 DCR 4213; July 18, 2009, D.C. Law 18-38, § 2(k), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1017.

D.C. Law 18-38 substituted "Commissioner" for "Superintendent"; in subsecs. (a) and (b), substituted "licensee or person required to be licensed under this chapter" for "licensee"; and, in subsec. (c), substituted "Attorney General" for "Corporation Counsel".

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

For Law 18-38, see notes following § 26-1101.

§ 26-1118. SUSPENSION, REVOCATION, AND ENFORCEMENT.

(a) The Superintendent may suspend or revoke the license of any licensee if the licensee or any owner, director, officer, member, partner, stockholder, employee, or agent of the licensee, while acting on behalf of the licensee:

- (1) Makes any material misstatement in an application for a license;
- (2) Has been convicted of any crime of moral turpitude;
- (3) In connection with any mortgage loan or loan application transaction:
 - (A) Commits any fraud;
 - (B) Engages in any illegal or dishonest activities; or
 - (C) Misrepresents or fails to disclose any material facts to anyone entitled to that information;
- (4) Violates any provision of this chapter, any rule or regulation adopted under it, or any other law regulating mortgage loan lending in the District;
- (5) Engages in a course of conduct consisting of the failure to perform written agreements with borrowers;
- (6) Fails to account for funds received or disbursed to the satisfaction of the person supplying or receiving such funds;
- (7) Fails to disburse funds in accordance with any agreement connected with, and promptly upon closing of, a mortgage loan, taking into account any applicable right of rescission;
- (8) Is convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit;
- (9) Has a judgment entered against such licensee involving fraud, misrepresentation, or deceit;
- (10) Has been found by a federal, state, or District agency to be in violation of any law or any regulation applicable to the conduct of the licensee's business;
- (11) Refuses to permit an investigation or examination by the Superintendent;
- (12) Fails to pay any fee or assessment imposed by this chapter;
- (12A) Has been found in violation of Chapter 11A of this title or determined by the Commissioner to have made a loan in violation of Chapter 11A of this title;
- (13) Fails to comply with any order of the Superintendent; or
- (14) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been, or will not be, conducted honestly, fairly, equitably, and efficiently.

(b)(1) The Commissioner may enforce the provisions of this section or any rules and regulations adopted hereunder, by issuing an order against any licensee or person required to be licensed. The Commissioner may issue an order requiring a licensee or any person engaging in any activity or business within the scope of this chapter to show cause as to the reasons enforcement action should not be taken against such licensee or person.

- (2) If a violator fails to comply with an order issued under paragraph (1) of this subsection, the Superintendent may impose a civil penalty of up to \$25,000 for each violation from which the violator failed to cease and desist or for which the violator failed to take affirmative action to correct.

(c) The Superintendent may request the Corporation Counsel of the District of Columbia to take appropriate action in the Superior Court of the District of Columbia for the enforcement of an order issued under this section. The Corporation Counsel may also seek, and the Superior Court of the District of Columbia may order or decree, damages and such other relief allowed by law, including restitution. Persons entitled to any relief as authorized by this section shall be identified by order of the court within 180 days after the date of the order permanently enjoining the unlawful act or practice. In any action brought by the Corporation Counsel by virtue of this provision, the Corporation Counsel shall be entitled to seek attorney's fees and costs.

(d) In determining the amount of financial penalty to be imposed under subsection (b) of this section, the Superintendent shall consider the following:

- (1) The seriousness of the violation;
- (2) The good faith of the violator;
- (3) The violator's history of previous violations;
- (4) The deleterious effect of the violation on the public and mortgage industry;
- (5) The assets of the violator; and
- (6) Any other factors relevant to the determination of the financial penalty.

(e) Nothing in this chapter shall be construed to preclude any individual or entity who suffers loss as a result of any violation of this chapter from maintaining an action to recover damages or restitution and, as provided by statute, attorney's fees.

(Sept. 9, 1996, D.C. Law 11-155, § 19, 43 DCR 4213; May 7, 2002, D.C. Law 14-132, § 601(a)(4), 49 DCR 2551; July 18, 2009, D.C. Law 18-38, § 2(l), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1018.

Effect of Amendments

D.C. Law 14-132 added subsec. (a)(12A); and, in subsec. (b)(1), substituted "The Commissioner may enforce the provisions of this section, or any rules and regulations adopted hereunder, by issuing an order against any licensee or person required to be licensed." for "The Superintendent may enforce the provisions of this section or any rules and regulations adopted by issuing an order: (A) To cease and desist from the violation and any further similar violations; and (B) Requiring the violator to take affirmative action to correct the violation including the restitution of money or property to any person aggrieved by the violation."

D.C. Law 18-38, in subsec. (b)(1), added the second sentence; and, in subsec. (b)(2), substituted "\$25,000" for "\$1,000".

Temporary Amendments of Section

Section 2(k) of D.C. Law 17-350, in subsec. (b)(2), substituted "\$25,000" for "\$1,000".

Section 5(b) of D.C. Law 17-350 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 601(a)(4) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

For temporary (90 day) amendment of section, see § 2(k) of Mortgage Lender and Broker Emergency Amendment Act of 2008 (D.C. Act 17-617, December 22, 2008, 56 DCR 189).

For temporary (90 day) amendment of section, see § 2(k) of Mortgage Lender and Broker Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-31, March 16, 2009, 56 DCR 2327).

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

For Law 14-132, see notes following § 26-603.

For Law 18-38, see notes following § 26-1101.

§ 26-1119. HEARING PROCEDURES.

(a) A person to whom an order is issued pursuant to § 26-1117 or § 26-1118 shall be given reasonable notice and the opportunity for a hearing as provided in this section. Upon the issuance of any order, the Commissioner shall notify the respondent, applicant, licensee, or person required to be licensed that the order has been entered and the reasons for the order. The order shall include a statement that the respondent, applicant, licensee, or person required to be licensed may submit a written request for a hearing within 20 days of receipt of the order.

(b) The order under subsection (a) of this section shall be served by hand or by certified mail, return receipt requested at the last known address of the person required to be licensed or the last known address maintained in the Department of Insurance and Securities and Banking records for the applicant or licensee.

(c) If the person to whom an order has been issued fails to request a hearing within 20 days of receipt or

delivery of the order, the person shall be deemed in default and the order shall, on the 21st day, become permanent and remain in full force and effect until and unless later modified or vacated by the Commissioner.

(Sept. 9, 1996, D.C. Law 11-155, § 20, 43 DCR 4213; May 7, 2002, D.C. Law 14-132, § 601(a)(5), 49 DCR 2551; July 18, 2009, D.C. Law 18-38, § 2(m), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1019.

Effect of Amendments

D.C. Law 14-132, rewrote subsec. (a); and added subsec. (d). Subsec. (a) had read as follows:

"(a) Before the Superintendent takes any action under § 26-1117 or § 26-1118, the Superintendent shall give the licensee an opportunity for a hearing."

D.C. Law 18-38 rewrote the section, which had read as follows:

"(a) Except as provided in subsection (d) of this section, the Commissioner shall give the licensee an opportunity for a hearing before the Commissioner takes any action under § 26-1117 and § 26-1118.

"(b) Notice of the hearing shall be given to the licensee and the hearing shall be held in accordance with the contested case provisions of subchapter I of Chapter 5 of Title 2.

"(c) The hearing notice to the licensee shall be sent by certified mail, return receipt requested, to the principal place of business of the licensee at least 30 days before the hearing.

"(d) If the Commissioner determines that an emergency condition exists that may endanger the public health or safety of the District due to noncompliance with this chapter, the Commissioner may issue a temporary cease and desist order to require a licensee, or a person required to have a license, to cease operations immediately; provided, that the duration of a temporary cease and desist order issued under this subsection shall not exceed 30 days and the order includes notice of a hearing to be held within 30 days of the order to be held pursuant to subsection (b) and (c) of this section. Any person subject to a cease and desist order may appeal the order within 15 days, but shall be required to comply with the order pending appeal."

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 601(a)(5) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

For Law 14-132, see notes following § 26-603.

For Law 18-38, see notes following § 26-1101.

§ 26-1120. LIMITATION ON NAME OF MORTGAGE BUSINESS.

A mortgage lender, mortgage broker, mortgage loan originator, or loan officer may not do business under any trade name that misrepresents or tends to misrepresent that the mortgage lender is:

- (1) A bank, trust company, or savings bank;
- (2) A savings and loan association;
- (3) A credit union; or
- (4) An insurance company.

(Sept. 9, 1996, D.C. Law 11-155, § 21, 43 DCR 4213; July 18, 2009, D.C. Law 18-38, § 2(n), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1020.

Effect of Amendments

D.C. Law 18-38 substituted "mortgage lender, mortgage broker, mortgage loan originator, or loan officer" for "mortgage lender or mortgage broker".

Temporary Amendments of Section

Section 2(l) of D.C. Law 17-350 substituted "mortgage lender, mortgage broker, mortgage loan originator, or

loan officer" for "mortgage lender or mortgage broker".

Section 5(b) of D.C. Law 17-350 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(l) of Mortgage Lender and Broker Emergency Amendment Act of 2008 (D.C. Act 17-617, December 22, 2008, 56 DCR 189).

For temporary (90 day) amendment of section, see § 2(l) of Mortgage Lender and Broker Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-31, March 16, 2009, 56 DCR 2327).

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.

For Law 18-38, see notes following § 26-1101.

§ 26-1120.01. CONFIDENTIAL INFORMATION.

(a) To assist in the performance of the Commissioner's duties under this chapter, the Commissioner may:

(1) Share documents, materials, or other information, including confidential and privileged documents, materials, or information subject to this chapter, 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 this chapter;

(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 chapter; or

(5) 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.

(Sept. 9, 1996, D.C. Law 11-155, § 21a, as added July 18, 2009, D.C. Law 18-38, § 2(o), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 18-38, see notes following § 26-1101.

Miscellaneous Notes

Section 3 of D.C. Law 18-38 provides:

"Sec. 3. Applicability.

"Except for section 2(c)(1), (g), (j), and (o), this act shall not apply until the Commissioner of the Department of Insurance, Securities, and Banking has promulgated rules implementing this act."

§ 26-1120.02. NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY REPORTING REQUIREMENTS.

(a) The Commissioner shall regularly report violations of this chapter, as well as enforcement actions and other relevant information, to the NMLSR. The reports shall be subject to the provisions of § 26-1120.01.

(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.

(Sept. 9, 1996, D.C. Law 11-155, § 21b, as added July 18, 2009, D.C. Law 18-38, § 2(o), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 18-38, see notes following § 26-1101.

Miscellaneous Notes

Section 3 of D.C. Law 18-38 provides:

"Sec. 3. Applicability.

"Except for section 2(c)(1), (g), (j), and (o), this act shall not apply until the Commissioner of the Department of Insurance, Securities, and Banking has promulgated rules implementing this act."

§ 26-1120.03. 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.

(Sept. 9, 1996, D.C. Law 11-155, § 21c, as added July 18, 2009, D.C. Law 18-38, § 2(o), 56 DCR 4290.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 18-38, see notes following § 26-1101.

Miscellaneous Notes

Section 3 of D.C. Law 18-38 provides:

"Sec. 3. Applicability.

"Except for section 2(c)(1), (g), (j), and (o), this act shall not apply until the Commissioner of the Department of Insurance, Securities, and Banking has promulgated rules implementing this act."

§ 26-1121. AUTHORITY OF SUPERINTENDENT TO ISSUE RULES AND REGULATIONS.

The Superintendent is hereby authorized to promulgate such rules and regulations as deemed necessary and appropriate to implement the provisions of this chapter in accordance with subchapter I of Chapter 5 of Title 2.

(Sept. 9, 1996, D.C. Law 11-155, § 22, 43 DCR 4213.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 26-1021.

Temporary Addition of Section

Section 2(m) of D.C. Law 17-350 added sections 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."

Section 3 of D.C. Law 17-350 added a provision to read as follows:

"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."

Section 5(b) of D.C. Law 17-350 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) additions, see §§ 2(m), 3 of Mortgage Lender and Broker Emergency Amendment Act of 2008 (D.C. Act 17-617, December 22, 2008, 56 DCR 189).

For temporary (90 day) additions, see §§ 2(m), 3 of Mortgage Lender and Broker Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-31, March 16, 2009, 56 DCR 2327).

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 26-1101.