

ACT No. 260

Regular Session, 2014

HOUSE BILL NO. 807

BY REPRESENTATIVE BARRAS

AN ACT

To amend and reenact R.S. 6:1082, 1083(18) and (20), 1086(A)(1), 1087(F)(introductory paragraph), 1088(D), (F), (G)(3)(introductory paragraph), and (J), 1088.2(A)(1) and (3), 1088.3(A)(1) and (3), (C)(2)(introductory paragraph) and (b), and (D)(2), 1089(A), 1090(B)(1), 1092(B)(1)(e), (G), and (K), and 1099(F) and to enact R.S. 6:1083(11.1) and 1088(G)(3)(d), relative to mortgage servicers; to require that mortgage servicers be licensed and regulated pursuant to the Louisiana Secure and Fair Enforcement of Mortgage Licensing Act of 2009; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 6:1082, 1083(18) and (20), 1086(A)(1), 1087(F)(introductory paragraph), 1088(D), (F), (G)(3)(introductory paragraph), and (J), 1088.2(A)(1) and (3), 1088.3(A)(1) and (3), (C)(2)(introductory paragraph) and (b), and (D)(2), 1089(A), 1090(B)(1), 1092(B)(1)(e), (G), and (K), and 1099(F) are hereby amended and reenacted and R.S. 6:1083(11.1) and 1088(G)(3)(d) are hereby enacted to read as follows:

§1082. Purpose

The Legislature of Louisiana does hereby declare that it is in the best interest of the citizens of the state to protect consumers in the most important financial investment most will make, the purchase of a home, by requiring the licensing and regulation of residential mortgage lenders, brokers, ~~and~~ originators, and servicers. The purpose of this Chapter is to promote the safety and welfare of the people of the state by providing for regulatory oversight and by establishing educational

requirements in a professional field in which unqualified individuals may injure or mislead the public.

§1083. Definitions

As used in this Chapter:

* * *

(11.1) "Mortgage servicing" means collecting or remitting payment for another, or the right to collect or remit payments for another, of any of the following: principal, interest, tax, insurance, or other payment under a mortgage loan.

* * *

(18) "Residential loan transaction" means any agreement by a consumer with a mortgage broker, mortgage loan originator, mortgage loan servicer, or mortgage lender in connection with a residential mortgage loan.

* * *

(20) "Residential mortgage lending activity" means an activity, including electronic activity, engaged in for compensation or with the expectation of compensation in connection with a residential loan transaction, including the origination or funding of a residential mortgage loan and the negotiation and placement, or offering to negotiate, place, or fund a residential mortgage loan for another person, or servicing a mortgage loan.

* * *

§1086. Licensure requirement

A. Except as otherwise provided in Subsection B of this Section, beginning on July 31, 2009, and unless otherwise exempt pursuant to this Chapter, no person shall engage in any residential mortgage lending activity in this state without first obtaining and maintaining annually the following:

(1) A license and registration as a mortgage loan originator, or a license as a mortgage lender ~~or, mortgage broker, or mortgage servicer.~~

* * *

§1087. Exemptions; annual registration statement; fees

* * *

F. The following employers and their employees shall be exempt from the provisions of this Part applicable to residential mortgage lenders, ~~and residential mortgage brokers, and mortgage servicers:~~

* * *

§1088. Application for licensure; surety bond

* * *

D. To comply with the requirements of this Section, an applicant for a mortgage lender, ~~or mortgage broker license, or mortgage servicer license~~ shall furnish the required information as to each owner and member if the applicant is a partnership or limited liability company, each officer, director, and direct or indirect owner of ten percent or more of applicant's outstanding shares if the applicant is a corporation, and each settlor, trustee, and beneficiary if the applicant is a trust.

* * *

F. Notwithstanding any other law to the contrary, the commissioner may not issue a mortgage lender license, ~~or a mortgage broker license, or mortgage servicer license~~ unless the commissioner makes the minimum findings provided in Paragraphs (E)(1), (2), (3), and (4) of this Section, and as to each owner, partner, and member if the applicant is a partnership or a limited liability company, each officer, director, and direct or indirect owner of ten percent or more of the outstanding shares if the applicant is a corporation, and each settlor, trustee, and beneficiary if the applicant is a trust.

G.

* * *

(3) The required amount of the surety bond shall be determined by information in a report submitted by an applicant or licensee as prescribed by the commissioner. The total dollar amount of the original outstanding principal balance of all residential mortgage loans serviced or originated by the applicant secured by immovable property located in this state, including all such loans originated by

mortgage loan originators employed by the applicant during the previous calendar year and reported pursuant to this Subsection shall be used to determine the amount of the bond. The required amount of the bond shall be determined by information in a report of total loan volume submitted by the applicant as prescribed by the commissioner. Total loan volume of the applicant shall be calculated by adding all of the following:

* * *

(d) The total outstanding principal balance as of the end of the previous calendar year for all residential mortgage loans serviced.

* * *

J. An applicant for a mortgage originator license who is employed by, or is an exclusive agent for, a juridical person engaging in residential mortgage lending activities as a licensed mortgage broker, ~~or mortgage lender, or mortgage servicer~~ may satisfy the requirement of furnishing a surety bond by submitting evidence in a form and manner satisfactory to the commissioner that his employer or principal has obtained a surety bond which satisfies the requirements of this Section. Notwithstanding any provision of law to the contrary, a mortgage originator whose license remains in a status of inactive or any other status which would not allow them to originate mortgage loans shall not be required to maintain the surety bond as required by this Section until such time as their license is returned to a status which allows them to originate mortgage loans.

* * *

§1088.2. Application for licensure; application and renewal fees

A. The application shall be accompanied by the following nonrefundable fees as determined by and payable to the commissioner:

(1) In the case of an application for a license to act as a mortgage lender, a mortgage broker, mortgage servicer, or ~~both~~ combination of any, a license fee in an amount not to exceed four hundred dollars.

* * *

1 (3) An annual license renewal fee for each person licensed as a mortgage
2 broker, ~~or mortgage lender, or mortgage servicer~~ in an amount not to exceed three
3 hundred dollars.

4 * * *

5 §1088.3. Application for renewal of license; restriction; late renewal fees

6 A.(1) Each person licensed as a mortgage broker, ~~or mortgage lender, or~~
7 mortgage servicer shall submit an annual license renewal application on or before
8 December thirty-first of each year in a manner and form prescribed by the
9 commissioner.

10 * * *

11 (3) An annual renewal application shall be accompanied by the required
12 annual license renewal fee pursuant to R.S. 6:1088.1. An annual license renewal
13 application submitted after December thirty-first and before March first of the
14 following year shall be charged an annual license renewal late fee of two hundred
15 dollars for residential mortgage lenders, ~~and brokers, and servicers,~~ and fifty dollars
16 for mortgage loan originators, in addition to the annual license renewal fee.

17 * * *

18 C.

19 * * *

20 (2) The commissioner shall not renew a residential mortgage broker, ~~or~~
21 lender, or servicer license for which an application for license renewal is submitted
22 for the year 2010, and shall not renew any residential mortgage lender or broker
23 license for which an application for license renewal is submitted for any year
24 thereafter, unless the commissioner finds at a minimum:

25 * * *

26 (b) The applicant for renewal of a residential mortgage lender, ~~or broker, or~~
27 servicer license is in compliance with all final or uncontested orders of, and consent

agreements with the commissioner, including but not limited to the payment of all fees, penalties, or refunds.

D.

* * *

(2) The license of a mortgage loan broker, ~~or lender,~~ or servicer failing to satisfy the minimum standards for annual license renewal in Paragraph (C)(2) of this Section shall expire on December thirty-first.

* * *

§1089. Name or location changes and closures; fees

A.(1) No residential mortgage lender, ~~or originator,~~ or servicer shall conduct the residential mortgage lending activities provided for in this Chapter under any name other than the one stated in its current record of information in the licensing system.

(2) A residential mortgage lender or servicer shall notify the commissioner of a change in the location or name of the business or the addition of offices by submitting such information to the licensing system prior to the change. A notice of change of location or name or addition of offices shall be accompanied by a filing fee of one hundred dollars.

(3) A residential mortgage lender or servicer shall notify the commissioner of the closing of any office by submitting such information to the licensing system and within thirty days of such closure.

* * *

§1090. Restrictions

* * *

B.(1) No person shall acquire or control a license to make, service, or broker residential mortgage loans through the acquisition or control of fifty-one percent or more of the ownership interest in a licensee without first having obtained written approval from the commissioner, pursuant to an application for a change of control in ownership of the licensee, filed in the manner and on a form prescribed by the commissioner and accompanied by a fee of three hundred dollars. Any person who

1 acquires controlling interest in a licensee without first having filed an application for
2 change of control with the commissioner shall be deemed to be operating without
3 proper authority under this Chapter and is subject to the penalties of R.S. 6:1092(C).

4 * * *

5 §1092. Suspension and revocation of licensure; commissioner's interpretations;
6 prohibitions

7 * * *

8 B.(1) Notwithstanding any other law to the contrary, and in addition to any
9 other authority conferred upon the commissioner by any other provision of law, the
10 commissioner may upon discovery order an immediate suspension of the license of
11 any person licensed pursuant to this Chapter who:

12 * * *

13 (e) Has his license to act as a residential mortgage broker, residential
14 mortgage lender, mortgage servicer, or residential mortgage loan originator
15 suspended or revoked in this or another jurisdiction.

16 * * *

17 G. Any person who acts as a mortgage broker, mortgage lender, mortgage
18 servicer, or mortgage loan originator without complying with the licensing
19 provisions of this Chapter shall be subject to forfeiture of the compensation
20 attributable to and received by the mortgage broker, mortgage lender, mortgage
21 servicer, or mortgage loan originator in connection with residential mortgage lending
22 activity occurring on or after August 15, 2001; provided that the forfeiture of such
23 compensation by the mortgage broker, mortgage lender, mortgage servicer, or
24 mortgage loan originator shall not impair the validity of the note and mortgage.

25 * * *

26 K. Any residential mortgage lender, ~~or broker, or servicer~~ whose license
27 under this Chapter has been revoked for any reason may not reapply for a license
28 until at least five years have elapsed from the date of the order of revocation, unless
29 the commissioner, in his sole discretion, prescribes an earlier or later date. For
30 purposes of this Subsection, the order shall be considered to be the commissioner's

1 notification of revocation of the license. For the purposes of this Subsection,
 2 mortgage lender, ~~or mortgage broker,~~ or mortgage servicer shall include the licensee,
 3 owners of ten percent or more, and its members if the licensee is a limited liability
 4 company, its partners if the licensee is a partnership, its officers and directors, if the
 5 licensee is a corporation, and any other person determined by the commissioner, in
 6 his sole discretion, to be closely related to the mortgage lender, ~~or broker,~~ or
 7 servicer.

8 * * *

9 §1099. Criminal penalties

10 * * *

11 F. A lender, broker, ~~or originator,~~ or servicer who knowingly operates
 12 without a license or while not exempt from the provisions of this Chapter shall be
 13 guilty of a misdemeanor and upon conviction shall be subject to a fine not less than
 14 five hundred dollars and not more than one thousand dollars, or to imprisonment not
 15 exceeding one year, or both.

16 Section 2. Persons required to obtain a license solely as a result of the provisions of
 17 this Act shall obtain the required license on or before June 30, 2015.

18 Section 3. This Act shall become effective on June 30, 2014; if vetoed by the
 19 governor and subsequently approved by the legislature, the Act shall become effective on
 20 June 30, 2014, or on the day following such approval by the legislature, whichever is later.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____